



**STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



The following written comments were submitted to the Department of Environmental Protection during the public hearing process for consideration of the *Proposed State Solid Waste Management Plan, July 2006*. These documents include written testimonies that were received during the published comment period and are considered timely and also include comments received after the published comment period and are considered untimely. Comments that were timely were made part of the formal public hearing record; those few that came after the close of the comment period are not. Some untimely comments were similar in content to timely comments received from other parties and were considered as part of the Hearing Officer's Report. Any untimely comments that were not identified in timely testimonies were referred to the appropriate DEP program area for their consideration and will be made available to the Agency's State Solid Waste Management Plan Advisory Committee.



RECEIVED

SEP 08 2006

Waste Management Bureau
Planning & Standards Division

September 5, 2006

Mr. Michael Harder
DEP Office of Planning and Program Development
4th Floor, 79 Elm Street
Hartford, CT 06106

Re: Proposed Amendment to the State Solid Waste Management Plan

Dear Mr. Harder:

The Association of Postconsumer Plastic Recyclers (APR) is a Washington, DC based trade association whose member companies acquire, reprocess and sell more than 90% of the postconsumer plastics that are recycled in North America. We are the businesses that take collected material and turn it into feedstock for new products, ranging from carpet and strapping to new plastic bottles.

Our industry needs more material to satisfy the market demand for recycled material. Including plastics in recycling collection programs is one of the most effective ways to generate that material.

APR is pleased to submit comments in to support DEP's proposed amendment to the Connecticut Solid Waste Management Plan to expand the existing deposit legislation to include non-carbonated plastic bottles such as water and juice containers made of PET and HDPE resin. We believe including such non-carbonated bottles will increase recycling rates for municipalities and generate the volume, consistency, and quality of supply required by the plastics recycling industry.

Today, the quantity of post-consumer HDPE and PET bottles is less than what the reclaiming industry needs to sustain industry investment and growth. We believe markets are available for many more processed bottles than are currently available. PET reclaimers can secure only 35-50% of the supply that the market demand can support.

Let me be clear, APR does not proactively support the enactment of new deposit laws. Rather, for those states that have chosen to use deposit legislation to return used beverage containers, APR supports the inclusion of all beverage containers to achieve needed increases in supply of our industry's raw material needs.

I have attached a copy of our position statement for your information. Please feel free to contact me should you have any questions or desire further information.

Sincerely,

Steve Alexander
Executive Director



APR POSITION STATEMENT

5/30/06

LEGISLATIVE ISSUE:

Expansion of current deposit laws to include non-carbonated bottles

APR POSITION: The Association of Postconsumer Plastic Recyclers (APR) and its members collectively represent more than 90% of the post-consumer plastics recycling capacity in North America. APR members have a direct interest in the enhancement of post-consumer plastics recycling.

The APR supports the expansion of existing deposit collection programs to include non-carbonated bottles such as used water and juice containers made of PET and HDPE resin; when such expansion is proposed by State Legislative bodies in states that currently have deposit laws.

Value: Expansion of current bottle bills would significantly increase the supply of high quality post-consumer plastic waste for recyclers and end users.



Audubon CONNECTICUT RECEIVED

185 East Flat Hill Road
Southbury, CT 06488
Tel: 203-264-5098
Fax: 203-264-6332
www.audubon.org

September 7, 2006

SEP 08 2006

Mr. Michael Harder,
DEP Office of Planning and Program Development,
4th Floor, 79 Elm St.,
Hartford, CT 06106

Waste Management Bureau
Planning & Standards Division

Re: Connecticut Department of Environmental Protection (DEP) Proposed Amendment to the State Solid Waste Management Plan.

Dear Mr. Harder:

Thank you for the opportunity to provide comments regarding the Connecticut Department of Environmental Protection's (DEP) draft "Proposed Amendment to the State Solid Waste Management Plan" (the Plan). Audubon Connecticut applauds the Department's commitment to reduction of the state's solid waste stream, especially through increased recycling opportunities and efforts.

In addition to improving the state's handling of solid waste, Audubon Connecticut believes the Plan offers a key opportunity to meet conservation goals laid out in the DEP Wildlife Division's Comprehensive Wildlife Conservation Strategy (CWCS) announced January 2006. A key focus of the CWCS is to find ways to stem the population declines of Connecticut's early successional (shrubland and grassland) specialist species. Chief among the recommendations to stem this decline are the creation and maintenance of additional grassland and early successional habitat. Properly managed, closed and/or capped landfills have the potential to provide significant new acreage of grassland and early successional habitat.

Nine species of grassland birds are native breeders in Connecticut, all of which are listed by the Connecticut Department of Environmental Protection (DEP) as threatened, endangered or of special concern, and at least two species of grassland-nesting birds have become extirpated as breeders in the state in the last century. Connecticut also hosts four birds of prey whose primary habitat is in grasslands. These species also appear to be in serious decline, and each is listed as threatened, endangered or of special concern in Connecticut. Additionally, many of our shrubland-specialist species are declining at rates that will likely lead to the need to include them on state lists if the tide is not turned.

For example, the Breeding Bird Survey, a standardized national bird monitoring effort coordinated by the US Fish and Wildlife Service, as identified the following statistically-significant trends for shrubland-nesting birds in Connecticut for the period of 1966-2005: Brown Thrasher (-10.7 %/year), Prairie Warbler (-6.5 %/year), Eastern Towhee (-6.1 %/year) and Blue-winged Warbler (-3.4 %/year).

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Mr. Michael Harder, page 2

The CWCS lists the following species as priorities and as dependent upon "Intensively Managed" (early successional) habitats:

Intensively Managed (Habitat 12) GCN Species by Taxon		
<p>Mammal Most Important Eastern Small-footed Bat Hoary Bat Indiana Bat New England Cottontail Red Bat Silver-haired Bat Southern Bog Lemming Very Important Meadow Jumping Mouse Important Black Bear Eastern Pipistrelle Little Brown Bat Northern Long-eared Bat</p> <p>Bird Most Important Barn Owl Common Nighthawk Golden-winged Warbler Horned Lark Northern Harrier Red-headed Woodpecker Sedge Wren Vesper Sparrow Yellow-breasted Chat</p>	<p>Bird (cont.) Very Important American Black Duck American Kestrel American Woodcock Blue-winged Teal Blue-winged Warbler Bobolink Brown Thrasher Chestnut-sided Warbler Eastern Meadowlark Eastern Towhee Field Sparrow Glossy Ibis Great Crested Flycatcher Indigo Bunting Long-eared Owl Northern Bobwhite Prairie Warbler Ruffed Grouse Savannah Sparrow Short-eared Owl Whip-poor-will Yellow-billed Cuckoo Important American Redstart Eastern Kingbird Eastern Screech-owl Eastern Wood-pewee Gray Catbird Great Horned Owl Hooded Warbler Magnolia Warbler Orchard Oriole Rough-legged Hawk Ruby-throated Hummingbird Snowy Owl Warbling Vireo White-eyed Vireo Willow Flycatcher</p>	<p>Reptile/Amphibian Very Important Eastern Hog-nosed Snake Eastern Ribbonsnake Spotted Turtle Wood Turtle Important Copperhead Eastern Racer Smooth Greensnake</p> <p>Invertebrate Very Important Harris's Checkerspot Important Bronze Copper Cicindela purpurea Cucullia speyeri Culvers Root Borer Harpalus caliginosus Hop Vine Borer Moth Hops-stalk Borer Panagaeus fasciatus Regal Fritillary</p>

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Mr. Michael Harder, page 3

Among the recommended actions put forth by the CWCS for this habitat type are the following:

- Conserve and increase breeding populations of GCN early successional birds especially yellow-breasted chat. *Measure:* number of known breeding pairs statewide.
- Conserve and increase breeding populations of GCN grassland birds, especially the upland sandpiper. *Measure:* number of breeding pairs.
- Conserve and increase New England cottontails and their habitats. *Measure:* Number of habitat areas restored; number of populations located.
- Identify and protect key grassland areas. *Measure:* number of sites identified in each of 169 towns; percentage of these sites protected.
- Implement management techniques (e.g., burning) needed to maintain or create early successional habitats. *Measure:* number of projects implemented; number of acres managed.

Closed and/or capped landfills present a unique opportunity to provide significant acreage of both warm and cool season grassland as well as significant amounts of shrubland habitats in perpetuity and to help with the implementation of significant recommendations laid out in the DEP's Comprehensive Wildlife Conservation Strategy. Audubon Connecticut strongly recommends working with the DEP Wildlife Division to include reference to this opportunity in the State Solid Waste Management Plan. Thank you for your consideration in this matter.

Sincerely,



Patrick M. Comins, Director of Bird Conservation

CC Dale May, Director DEP Wildlife Division
Greg Chasko, DEP Wildlife Division
Jenny Dickson, DEP Wildlife Division

Exhibit 51

9/4/06

MR. HARDER,

THE CT BOTTLE BILL HAS WORKED TO KEEP BOTTLES AND CANS FROM FILLING OUR LANDFILLS AS WELL AS KEEPING THEM OFF OUR STREETS. HOWEVER I SEE MORE AND MORE 'NON-DEPOSIT' CONTAINERS ON OUR STREETS AND AT OUR LOCAL LANDFILL. FOR THIS REASON I URGE YOU TO EXPAND THE BOTTLE BILL TO INCLUDE PLASTIC WATER BOTTLES. I ALSO SUPPORT THE INCREASE IN DEPOSIT VALUE TO 10 CENTS. OLD BILLS NEED OCCASIONAL UPDATES AND IT IS TIME FOR THE 28 YEAR OLD BILL TO BE UPDATED. I SUPPORT A DEPOSIT OF 10 CENTS FOR ALL BEVERAGE BOTTLES CARBONATED OR NON-CARBONATED.

MITZ BRADLEY
47 IRONWOOD LN
DURHAM, CT
06422

RECEIVED

SEP 08 2006

Waste Management Bureau
Planning & Standards Division

Sincerely,
Mitz Bradley



TUNXIS RECYCLING OPERATING COMMITTEE

43 Enterprise Drive
Bristol, Connecticut 06010
www.brrfoc.org

(860) 585-0419
(860) 225-9811
Fax (860) 585-9875

September 7, 2006

Mr. Michael Harder
Hearing Officer
Bureau of Waste Management
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106

RECEIVED
SEP 08 2006
OFFICE OF BUREAU CHIEF
MATERIALS MANAGEMENT &
COMPLIANCE ASSURANCE

Re: Comments of the BRRFOC and TROC to the 2006 DEP Proposed Amendment to the State of Connecticut Solid Waste Management Plan

Dear Mr. Harder:

I am writing on behalf of the Bristol Resource Recovery Facility Operating Committee ("BRRFOC") and the Tunxis Recycling Operating Committee ("TROC") with respect to the July 2006 Proposed Amendment to the State Solid Waste Management Plan ("Proposed Plan"). The agency has taken great strides in preparing the Proposed Plan. We are thankful for the opportunity to participate in this process and commend you for establishing and implementing a well-executed procedure that enabled stakeholders the chance to provide input to the draft plan. We appreciate the fact that DEP has, in several respects, addressed stakeholder comments in the Proposed Plan. The BRRFOC and TROC now take this opportunity to formally comment on both the strategies and weaknesses of the Proposed Plan.

I. OVERVIEW OF CONCERNS AND SHORTCOMINGS OF THE PROPOSED PLAN

Before turning to section by section comments of BRRFOC and TROC on The Proposed Plan, I would like to highlight issues that we do not think have been adequately addressed to date. These overriding concerns, discussed in more detail below, include:

- The Proposed Plan Fails to Adequately Consider or Establish a Strategy to Achieve Statewide Self-Sufficiency in Managing Solid Waste-
 - *The plan does not recognize opportunities unique in Connecticut to achieve self-sufficiency*
 - *The plan does not encourage the implementation of existing Connecticut policy that the management of solid waste is a fundamental governmental responsibility*
 - *The plan does not evaluate the benefits of self-sufficiency including environmental protection, reliability and cost-effectiveness*

- *The plan does not advocate the expansion of existing resource recovery facilities and the siting of new resource recovery facilities to meet the expected five-fold increase in the existing shortfall in capacity by 2024, assuming diversion rates remain steady or a two-fold increase assuming the aggressive 49% diversion rate goal is met*
- Essential Components of Solid Waste Management are Not Fully Addressed in the Proposed Plan-
 - *The plan does not advocate the updating of the certificate of need and the permitting process to enable timely approvals of important solid waste facilities or expansion of existing solid waste facilities*
 - *The plan sidesteps certain important issues by suggesting that policy will be established after future discussion and debate*
 - *The necessity to better manage commercial, institutional and industrial waste to achieve the goals of the plan is not adequately addressed*
 - *The essential role of transfer stations is not analyzed or recognized*
 - *The benefits and importance of electric generation as a component of the state's existing solid waste management infrastructure is not sufficiently recognized*
- The Conclusions and Recommendations of the Plan Should be Clarified-
 - *Certain conclusions and recommendations in the plan are not, in several key instances, consistent with the data and conclusions contained in the appendices*
 - *The tasks outlined in the recommendations of the plan should include more detailed information regarding the DEP (and municipal) resources necessary to accomplish the tasks*

(i) Unique Opportunities Exist in Connecticut

There are several features of the State of Connecticut, which considered together, present a unique opportunity for the State to become nearly self-sufficient with respect to the management of solid waste. These features include: a) the small size of the State; b) its adoption, along with the State of Delaware, of enabling legislation that affords broader authority for the management of solid waste than any other state in the nation; c) nearly every municipality is located within 30 miles of a Resource Recovery Facility ("RRF") or transfer station; and d) the availability of substantial expansion capability of the existing RRFs and recycling facilities.

Connecticut's solid waste infrastructure has worked exceedingly well. It is cost-effective and environmentally sound. In the absence of new infrastructure and state support for recycling in the past ten years, our facilities are over capacity. Connecticut is no longer self-sufficient in managing solid waste generated within its borders. Based on the assumption that a recycling/diversion rate of 49% can be achieved, which is a challenging goal, the Proposed Plan concludes that shortfall in in-state capacity of MSW would be 614,000 tons by the year 2024; nearly doubling the current shortfall of 327,000 tons. See Appendix F at pages 12-13. Alarming, using the existing 30% rate

assumption of current waste diversion, the shortfall will swell to 1,597,000 tons by 2024; nearly a 500% increase. Those statistics clearly call for an examination and evaluation of the development of an increase in capacity along with an increase in diversion.

The Proposed Plan endorses the goal that Connecticut should become self-sufficient in managing its solid waste, but does not discuss in detail the many reasons why that goal should be achieved and does not set forth any strategy to accomplish it. In fact, parts of the Proposed Plan conclude that the goal is not achievable.

The Proposed Plan should discuss the reasons why self-sufficient disposal capacity within the State is beneficial, the unique features in Connecticut that facilitate a self-sufficient system, and a specific strategy for the State to achieve that goal.

(ii) Recognized Governmental Role of Connecticut Solid Waste Management

The parameters of governmental control of solid waste in Connecticut should be addressed in the Plan. Through its enabling legislation, Connecticut has established public policy that the management of solid waste, like the construction and maintenance of highways and the provision of fire and police services, is a fundamental governmental service and responsibility. That policy is in accord with United States Environmental Protection Agency policy that solid waste collection, recycling and disposal should be under the control of state and local government.

The Proposed Plan makes reference to the statutory authority establishing the CRRRA but does not analyze the scope of that authority and how it could be best utilized to take advantage of the several unique factors in Connecticut that lend themselves to statewide, self-sufficient management of solid waste.

The Proposed Plan should advocate more direct local governmental participation in solid waste managed under the authority of that legislation. At a minimum, the Plan should note that such an option exists and better analyze the legal limits of governmental management of solid waste. The Proposed Plan makes passing reference to the United States Supreme Court decision in *C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994) that ruled that certain governmental regulation of private sector solid waste collection and disposal are restricted by the Commerce Clause of the United States Constitution. The Proposed Plan makes no reference to the subsequent United States Second Circuit Court of Appeals decision that the Commerce Clause does not bar regulation of solid waste management that involves more direct governmental participation and management. *United Haulers Assoc., Inc. v. Oneida-Herkimer Solid Waste Mgmt. Authority*, 438 F. 3d 150 (2d Cir. 2001), *cert. denied*, 122 S. Ct. 815 (2002).¹

For these reasons, the Proposed Plan should discuss in detail the legal authority and the benefits in reliability, cost and environmental protection that could be realized if the State

¹ The Second Circuit is the federal court of appeals that governs the states of Connecticut, New York and Vermont. The Sixth Circuit, which governs the states of Kentucky, Michigan, Ohio and Tennessee, disagreed with the analysis of the *Oneida-Herkimer* decision. *NWWMA v. Daviess Cty.*, 434 F.3d 898 (6th Cir. 2006).

of Connecticut, its municipalities and regional entities undertake the central responsibility for solid waste management, including cost containment and stability. Based on that analysis, the Proposed Plan should advocate that Connecticut implement existing public policy by undertaking greater control of solid waste management to ensure that safe, reliable and cost-effective solid waste and recycling services are provided to our citizens.

(iii) The Benefits of Self-Sufficiency

In addition to adopting the goal of self-sufficiency, the Proposed Plan should analyze and discuss the several advantages associated with self-sufficiency. **Appendices G and I are impressive and make the case that the establishment of self-sufficient management of solid waste within Connecticut would significantly benefit the environment and, at the same time, guarantee reliable and economical waste disposal.** Such a reliable system would be insulated from unforeseen private sector market forces or changes in the policies and capacity of solid waste disposal of other states. Several other benefits will be enjoyed if the State becomes self-sufficient. Among them are the reduction in distances solid wastes are transported which will lower transportation costs and reduce emissions including NO_x, PM_{2.5} and greenhouse gases. Traffic congestion and traffic safety could be improved. In-state disposal at RRFs will also provide a renewal, reliable and environmentally safe energy supply.

(iv) Solid Waste Management Should be Considered in the Context of General Environmental Protection

Attaining self-sufficiency with respect to solid waste management should provide ancillary benefits to environmental quality that were not analyzed in the Proposed Plan. For example, both the Legislature and the DEP recognizes the adverse impacts of truck traffic to air quality in Connecticut. *See Public Act 05-07, Connecticut Clean Diesel Plan; Department of Environmental Protection Fact Sheet regarding Diesel Initiatives and Diesel Health*². Appendix I of the Proposed Plan includes general data regarding air pollution resulting from diesel emissions caused by truck traffic. However, no analysis is contained in the Proposal Plan and no conclusions reached regarding reduced air pollution that could be realized by the reduction in truck travel through direct implementation and oversight of in-state solutions financed and overseen by municipal or regional solid waste entities.

Further, considering the state-recognized policy that landfilling of municipal solid waste is contrary to important public health considerations, the Proposed Plan should specifically indicate that out-of-state landfilling is not an endorsed solution in the management of Connecticut solid waste.

Other aspects of the plan also warrant a broader analysis regarding general environmental impacts. For example, the plan advocates that the recycling of plastics 1 and 2 be mandated for all communities. Many communities, included those served by TROC,

² See, <http://dep.state.ct.us/air2/diesel/>.

already recycle those plastics. However, the interests of environmental protection will probably not be well served by such a mandate in those communities where the population density and trucking distances, coupled with the light weight and large space associated with those recyclables, results in a net detriment to the environment due to air quality impacts. We believe that those impacts should be considered before a statewide mandate is imposed.

(v) Private Ownership of Solid Waste Facilities

Another factor related to a policy of self-sufficiency not addressed in the Proposed Plan is the reversion of solid waste facilities to private ownership. Unforeseen market forces may adversely impact the profitability of privately owned solid waste management facilities and could cause facilities to close or reduce capacity. Private sector ownership could result in a significant increase in MSW imports to the detriment of Connecticut taxpayers. Without the cost-controls established by government operation and control of solid waste management, private market forces could result in dramatic cost increases like those experienced with electricity prices after privatization of that industry. I previously outlined the substantial risks associated with privatization of the six regional trash to energy plants in the attached Hartford Courant op-ed article entitled *Don't Let Connecticut's Trash Plants Go Private*. The costs and benefits of privatization of solid waste facilities should be analyzed in more detail in the Proposed Plan.

(vi) The Proposed Plan Should Advocate Solutions Rather than Raise Questions for Future Debate

The Proposed Plan, at several places, references solid waste management issues that should be the subject of future debate or discussions. For example, the executive summary states on page ES-8 that it is the "intent of this Plan to stimulate discussion and further debate" on how the State could become self-sufficient in managing solid waste. On the next page, the summary states that the Proposed Plan takes no position regarding whether solid waste management facilities should transfer from public to private ownership but, instead, "does urge the State's decision-makers to take note of the issue, fully debate it, and make the prudent decisions necessary to ensure that the interests of Connecticut's citizens and businesses are protected."

It goes without saying that solid waste management will be directed in large part by public policy implemented by state and local government in the future. The function of the Proposed Plan should be to advocate solutions after analyzing existing solid waste management policy and expected trends and opportunities in the future. The Proposed Plan should reach a conclusion or a recommendation with respect to each matter analyzed and discussed in the plan, especially on matters crucial to solid waste management such as the strategy to achieve self-sufficiency in the State and the benefits and risks associated with private ownership of the infrastructure of solid waste management in Connecticut.

(vii) **Commercial, Institutional and Industrial Wastes**

The Proposed Plan, particularly with respect to recycling and reuse, does not adequately discuss nor analyze the role of commercial, institutional and industrial waste in future solid waste management. **Significantly, that waste stream comprises one half of the solid waste generated in Connecticut.** There is no reliable data in the plan upon which to base a conclusion regarding possible increases in the generation of industrial, institutional and commercial solid waste. The only data used in the plan was 1990 residential recycling rates. Because the State should expect relatively modest increases in residential recycling rates, the plan should recognize that the principle method to significantly increase recycling rates would be through policies and programs related to commercial, institutional and industrial waste. The Proposed Plan makes no specific recommendations to accomplish that task.

The Proposed Plan should also better address the economics of general commercial and industrial waste disposal practices to better establish financial incentives to achieve the state-wide solid waste objectives. The plan should discuss the establishment of incentives for small business to recycle so that the costs and benefits to haulers of separating and recycling could be passed on to business. The plan should also consider the alternative of municipal franchising of commercial and industrial waste services if financial incentives fail. The Proposed Plan should also endorse programs such as income, corporate or property tax relief and reference and discuss congressional efforts to provide tax relief in the RISE Act (Recycling Investment Saves Energy) introduced in July 2006 by Senators Jim Jeffords of Vermont and Tom Carper of Delaware. *2006 Senate Bill 3654.*

(viii) **Role of Electric Generation**

The role of solid waste as a renewable source of electric power is not sufficiently discussed or analyzed in the plan. The fundamental purpose of adoption of the initial solid waste management plan in Connecticut was to improve public health and to reduce active landfills. That system has been put in place resulting in the virtual elimination of landfills and the construction of waste to energy facilities that currently dispose of 85% of Connecticut's post-recycled trash and produce 194 megawatts of power that serves 2-5% of all electricity needs in Connecticut. The waste-to-energy plants are clean, local, renewable, and operate on fuel indigenous to the state. The facilities are nearly 100% operational during periods of peak energy demand and are geographically dispersed across the State. The attached three-page testimony of the BRRFOC at the 3rd Legislative Energy Summit held on August 10, 2006 outlines the essential facts supporting public policy encouraging additional resource recovery facilities in Connecticut.

Considering the recognized need for environmentally-friendly methods to meet energy demands, solid waste management serves an important role in energy production that should grow if a system of self-sufficiency is established. The plan should acknowledge that the current solid waste management system works and discuss how success can be leveraged to better serve the energy needs of the State.

(ix) The Role of Transfer Stations

The 116 transfer stations in Connecticut are an essential component of the overall solid waste management system in Connecticut. Nonetheless, only one paragraph contained in Appendix F of the Proposed Plan is devoted to the function of transfer stations in the scheme of solid waste management in Connecticut. A more comprehensive discussion regarding transfer stations, including how they are sited and best utilized, should be included in the plan. It is unclear how DEP hopes to achieve the goals of the Plan without maximizing the State's transfer station resources.

(x) Certificate of Need Policy and Process Should be Updated

Additional solid waste management facilities are essential to accomplish the goals of the Proposed Plan. **The Proposed Plan adopts the goal of self-sufficiency and determines that the existing shortfall in capacity will at least double, and may increase by 500% by the year 2024.** Because new facilities are undoubtedly necessary, the existing certificate of need policy should be updated to enable timely review and approval of proposed new facilities and/or the expansion of the existing facilities to increase in-state capacity of solid waste disposal.

In addition, the policy should be updated to encourage siting of additional ash residue disposal sites. The Proposed Plan determines that the two permitted facilities for the disposal of RRF ash residue, one of which will soon close, have sufficient capacity to accommodate ash residue from each of the RRF's in Connecticut for at least twelve years. The Plan's review of ash disposal is overly simplistic and creates a defacto \$20 million monopoly for ash disposal in the state. The Proposed Plan should encourage the permitting of other ash disposal facilities to address the anticipated future need for ash disposal. Additional permitted facilities would reduce inherent risks associated with relying on a single source for all in-state disposal.

The certificate of need process for MSW and transfer station facilities should also be updated. **The current certificate of need process is outdated. The revisions should include economic and competitiveness issues and emergency management.**

As part of that process, an economic analysis regarding construction and expansion of MSW facilities should be undertaken on a State-wide scale.

(xi) The Implementation Plan Should More Specifically Describe the Necessary Resources Associated with Goals

The Proposed Plan is greatly improved by the inclusion of a matrix outlining the steps to implement the goals of the plan. The implementation plan is obviously a crucial element of the Proposed Plan. It includes symbols for the relative costs associated with implementation of the Proposed Plan's goals, but does not include any information regarding the actual anticipated costs of accomplishing the tasks. At least with respect to the tasks that the Proposed Plan identifies as high priority, a specific cost estimate should

be developed to accomplish the task. Where applicable, it should also include an estimate of the associated impact in the diversion rate if the task is not accomplished.

Further, the Proposed Plan should describe the steps that will be taken by DEP to ensure that staff resources dedicated to implementing the objectives of the Plan are not diverted to other projects. How will DEP be held accountable for staff allocation on Plan implementation?

(xii) Consistency of the Proposed Plans with Data and Conclusion of the Appendices

The final observation, before we turn to more specific comments of the Proposed Plan, is a concern that **the overall conclusions and recommendations of the plan do not, in several key instances, reflect the data and conclusions contained in the appendices of the plan.** The overall narrative should be revised, as discussed in more detail below, to be consistent with the conclusion of the specific analysis of the appendices.

II. SPECIFIC COMMENTS ON THE CONTENTS OF THE PROPOSED PLAN AND APPENDICES

Under the headings and numbering contained in the Proposed Plan and appendices, the BRRFOC and TROC offer the following specific comments to the Proposed Plan:

***CHAPTER 2
CURRENT CONDITIONS AND PRACTICES: CONNECTICUT AT A CROSS ROADS***

2.2 Solid Waste Generation and Management Practices in Connecticut

This section outlines a hierarchy of solid waste management but does not reference the threats and opportunities associated with the lack of a truly regionalized plan for the management of solid waste within the State. Past policy resulted in the formation/creation of the CRRA and various regional quasi-governmental solid waste management organizations including BRRFOC. Nearly all of the 169 municipalities in Connecticut are located within 30 miles of an RRF or transfer station. No policy is in place to maximize the efficiency and reduce the transportation costs associated with best use of these existing facilities. The Proposed Plan should also consider whether a uniform tipping fee would result in more efficient management of solid waste generated within the state.

2.2.6 Management of Other Types of "Special Wastes"

Household Hazardous Wastes (HHW)

The current system while generally effective, fails to provide for public participation of small business. The Proposed Plan should advocate participation of small businesses in the program. Current restrictions, including permitting requirements, provide significant hurdles for

business that generate small quantities of hazardous waste (Conditional Exempt Small Quantity Generators) from participating in the existing system for disposal of small quantities of HHW. Eliminating those barriers would encourage proper and cost-effective disposal of hazardous waste generated by the small businesses in the same fashion that it has with the small quantities of hazardous waste generated by households.

2.4 Key Factors Affecting Solid Waste Management in Connecticut

Demonstration that very high waste diversion rates in other states and communities have been achieved.

We certainly agree that the Proposed Plan should advocate an increase in diversion of solid waste. The Proposed Plan should not suggest that diversion rates in certain other states are far superior to Connecticut. No uniform method of measuring and reporting waste diversion rates has been established. As a result, there is no basis to compare waste diversion rates between states. The Proposed Plan should acknowledge the shortfalls in attempting to compare diversion rates with the data from other states and advocate development of a standardized method of determining those rates. The conclusion that the statewide waste diversion in other states is superior to Connecticut should be eliminated.

There is an increasing regional capacity for solid waste disposal.

The Proposed Plan includes the assertion that the regional capacity for solid waste disposal is increasing. That conclusion should be supported by specific facts.

Solid waste is a commodity.

The Proposed Plan references the Supreme Court precedent *Carbone* regarding flow control and the role of the interstate commerce clause in the United States Constitution on solid waste management. Because a number of the recommendations contained in the Proposed Plan may implicate constitutional limitations, more specific legal analysis should be included in the plan including discussion of the *Carbone* and *Oneida-Herkimer* decisions noted above.

2.5 Address Key Issues that Will Determine Connecticut's Future Direction

Connecticut is projected to have an increasing shortfall of MSW and C&D waste/over-sized MSW in-state disposal capacity.

Based on the assumption that a recycling/diversion rate of 49% can be achieved, which is a challenging goal, the Proposed Plan concludes that the shortfall in in-state capacity of MSW would be 614,000 tons by the year 2024; nearly twice the current amount of 327,000 tons. See Appendix F at pages 12-13. Alarming, using the existing 30% rate assumption of current waste diversion, the shortfall will swell to 1,597,000 tons by 2024; nearly a 500% increase. These figures, coupled with the goal to achieve self-sufficiency, call for more aggressive solutions to increase in-state capacity.

The projections of waste generation and in-state capacity shortfall should be reevaluated to take into account the availability of the expansion capacity of existing facilities. The Proposed Plan concludes that the only way to handle the increase in generation is to increase diversion from disposal and source reduction. The Plan should include an analysis of whether expansion of existing facilities could be undertaken to augment diversion and source reduction to manage increases in solid waste generation. For example, existing RRFs could add non-ferrous recovery systems. In addition, beneficial use of RRF ash would greatly change the assumptions in the Plan.

2.5 Addressing Key Issues That Will Determine Connecticut's Future Directions

To what extent should Connecticut see to increase waste diversion through source reduction, recycling and composting? How can Connecticut accomplish this?

The Proposed Plan establishes the goal that waste diversion levels will be increased from existing levels of 30% to 49%. The BRRFOC and TROC obviously support cost-effective and environmentally sound efforts to increase the diversion of waste utilizing source reduction and recycling. We believe that that Proposed Plan should include goals for the increase in recycling that are reasonably obtainable. Given the information available to us now, even if the recommendations of the plan are reasonably successful, it is very unlikely that the recycling rate of 49% would be achieved by 2024. If the recycling programs are more successful than we can currently anticipate, the Plan can be amended at a later date as part of the periodic updates recommended.

Commercial, institutional and industrial sources comprise 50% of all solid waste generated in Connecticut. The State will certainly not reach the suggested 49% recycling rate without including those sectors. The Plan should discuss the establishment of incentives for small business to recycle, such as similar legislation to the RISE Bill discussed previously. It should also include incentives to encourage haulers to separate and recycle. The Proposed Plan should also consider the alternative of municipal franchising of commercial and industrial waste services if financial incentives fail.

The Proposed Plan should also discuss institutional sources of solid waste. As a significant generator of solid waste, institutional waste must also be considered if the substantial diversion rate is to be achieved. The Proposed Plan should include analysis and recommendations regarding source reduction, recycling and reuse of solid waste generated at institutions within Connecticut.

The Proposed Plan should advocate that the 1990 solid waste legislation be updated with respect to commercial, industrial and institutional solid waste management. A legislative update should also amend the mechanism for policing commercial, industrial and institutional regulatory compliance. For a variety of reasons, waste haulers should not be the front line for monitoring compliance.

CHAPTER 3
**FROM WASTE MANAGEMENT TO RESOURCE MANAGEMENT: A LONG-RANGE
VISION FOR CONNECTICUT**

3.2 Guiding Principles

Shared Responsibility

The vision of having “manufacturers, other companies and the product supply chain and their customers” share in the responsibility of reuse and recycling programs should be amended to include “retailers”. Retailers should be expressly included in reuse and recycling programs. In addition, DEP should work on national and regional legislative solutions to problems associated with packaging.

CHAPTER 4
MOVING TOWARDS CONNECTICUT’S VISION: OBJECTIVE AND STRATEGIES

4.3 Objectives And Strategies

Strategies to Reduce the Amount and Toxicity of Solid Waste General Strategy 1-6. Promote through such activities as technical assistance, start-up funding, and/or other incentives, the implementation of effective PAYT pricing systems by municipalities and haulers for managing solid waste from residents and small businesses to achieve waste reduction.

The BRRFOC and TROC support assistance and incentive to encourage PAYT programs and agree that the programs should not be mandated.

4.3.2 Objective 2. Recycling and Composting

Recycling/Composting Mandates

Haulers

Haulers have an important role in assisting with the enforcement of recycling mandates. They should not be considered or expected to be the front line in policing and enforcing recycling mandates. However, the role of haulers in the solid waste management picture can not be glossed over. We understand that the final version of the Plan will be complimentary to the recommendations of the Governor’s Task Force on Statewide Hauler Licensing; nonetheless, with the majority of collection efforts being conducted by private haulers, DEP needs to be clear as to how it plans to engage the hauling community as a partner in achieving the goals of the Plan.

Recycling/Composting Outreach Programs

The Proposed Plan outlines some of the outreach programs undertaken in the State, including the market research study undertaken by TROC to determine ways to increase

recycling. Based on the varying demographics in recycling programs in Connecticut, the Proposed Plan should specifically advocate that a State-wide market study be performed so that resources can be best targeted to increase recycling.

Recycling and Composting Opportunities and Priorities

Incentives should include tax incentives comparable to the RISE Bill pending before the Congress.

Strategies to Increase Recycling

Strategy 2-4 Establish a subcommittee of the Agency's Solid Waste Management Advisory Committee for the purpose of identifying methods to implement PAYT on a voluntary basis. Specifically the subcommittee will identify incentives for municipalities and haulers to implement effective PAYT pricing systems for managing solid waste from residents and small businesses to achieve waste reduction.

The BRRFOC and TROC endorse the proposal that a subcommittee of the DEP's Solid Waste Management Advisory Board be established to determine methods to encourage and implement PAYT on a voluntary basis. We oppose mandates for PAYT.

Strategy 2-8. Develop the infrastructure necessary to increase the amount of paper that is recycled. Create incentives and funding for increased paper recycling and for source reducing the amount of waste paper generated.

The BRRFOC and TROC strongly support the policy that the State provide assistance and direction to establish the necessary infrastructure to collect and recycle additional amounts and types of paper and paper mixes.

4.3.3 Objective 3. Management of Solid Waste Requiring Disposal

Current Management of Connecticut Solid Waste Requiring Disposal

MSW Disposal Management Systems

The Proposed Plan erroneously states that out-of-state facilities are the only option for additional MSW requiring disposal. Expansion of existing facilities is a preferred option that should be encouraged in the plan.

MSW Disposal Management System

The determination of need process and the permitting process for MSW and ash residue facilities should be reviewed and revised to enable fast-track approvals to encourage an increase in-state capacity.

RRF Ash Residue

Only one in-state facility will exist to accept ash residue after October 2008. The Proposed Plan should endorse the siting and permitting of at least one other facility in the state to assure in-state capacity if unforeseen events cause the closing of the Putnam facility and also to foster economic competitiveness.

Strategies for Disposing Solid Waste

Strategy 3-2 The State will monitor solid waste generation and capacity on a regular basis, and with input from the Solid Waste Advisory Committee, evaluate the need for additional MSW, ash residue and C&D waste disposal capacity

The need for additional capacity is well-established by the data in the Proposed Plan. The State need not monitor generation to conclude that additional in-state capacity is necessary.

Strategy 3-3 The Department will seek legislative authorization to require any applicant for new RRF or landfill capacity, at the time any application is submitted to DEP, to create a fund to be accessed by the host municipality, to (1) create a local advisory committee and (2) hire appropriate experts, to assist the host municipality in reviewing the application and taking part in the application process. The advisory committee should include elected officials and residents from both the host community and contiguous communities.

The Proposed Plan should recommend simplifying and reducing the barriers to establishing facilities to increase in-state capacity to manage MSW. Imposing a mandate that a committee of officials from all communities neighboring a proposed site be formed to review any application to establish a facility and further requiring an applicant to fund what will likely be local opposition to siting provides a disincentive to the establishment of new facilities.

Electronic Wastes

The BRRFOC and TROC support implementation of legislation for the recycling of electronic wastes. Several states, including California, Maine, Maryland and Washington, have adopted legislation that could form a model for legislation in the State of Connecticut regarding electronic recycling. The Proposed Plan should discuss the role of retailers in an electronic recycling program. Convenience is a paramount goal in successfully achieving recycling of electronics. The retail industry, which is grounded on providing convenient service, should be considered as a focal point in electronics recycling. Connecticut will go from leader to laggard if the State fails to take timely action on electronics recycling.

4.3.5 Objective 5. Education and Outreach

Overview

The BRRFOC and TROC strongly disagree with the blanket statement that recycling education efforts at the local and regional levels have diminished. The Proposed Plan should certainly advocate increased funding and support for education, but should not include a

conclusion that discredits those municipalities and regions that have worked hard in a difficult financial climate to steadily maintain or increase their educational outreach.

Education and Outreach Opportunities and Priorities

The BRRFOC and TROC support the role of the DEP in establishing a comprehensive source reduction and recycling education program. The Proposed Plan proposes only a modest role for the agency. A resource reduction/recycling coordinator at the agency should be established to facilitate the comprehensive program advocated by the Proposed Plan.

Objective 4.3.6 Objective 6. Program Planning, Evaluation and Measurement

Overview Program Planning, Evaluation of Measurement

Undoubtedly, a uniform method of measuring the management of MSW must be established. Once established, specific State-wide goals should be set and monitored.

Strategies 6-1 and 6-2

The BRRFOC and TROC applaud the strategy of the Proposed Plan that disposal goals be established on a per capita basis and that the cumbersome reporting burdens currently imposed on municipalities and regional waste management organizations be substantially reduced.

Strategy 6-3: Establish a standing Solid Waste Management Advisory Committee of affected stakeholders to help implement the new plan, revise the plan, identify emerging issues and find solutions.

The BRRFOC and TROC, in concept, endorse the strategy of establishing a standing Solid Waste Management Plan Advisory Committee. The discussion regarding establishment of that committee should include more detail on the duties of such a committee and what role it would play, if any, in the future adoption or implementation of the solid waste management plans.

The plan could reference the Connecticut Energy Advisory Board as a model for establishing an effective committee. By employing that model, a standing Solid Waste Management Advisory Committee may be able to accomplish annual updates of the solid waste management plan as recommended by the Proposed Plan.

4.37 Objective 7. Permitting and Enforcement

Strategies for Improving the Solid Waste Permitting and Enforcement Programs

The BRRFOC and TROC believe that business and industry are a crucial source of future increases in recycling and re-use programs in Connecticut. Existing law, however, exempts those sources of solid waste from municipal control absent implementation of franchise territories. Existing legislation should be carefully reviewed and updated to impose reasonable requirements

on business and industry to re-use and recycle solid waste, and where possible, achieve consistency with US EPA and other New England state initiatives.

In accordance with existing State policy that the management of solid waste is an essential government function that should be closely managed and controlled by the State, the BRRFOC and TROC support permit requirements for transporters of solid waste. Recommendations regarding regulation of transporters, like any element of governmental management of solid waste, should be analyzed in accordance with constitutional requirements related to interstate commerce. The Solid Waste Management Plan for the state of New Jersey provides an example of an analysis of constitutional requirements and limitations as applied to that state's policies for the management of solid waste.

4.3.8 Objective 8. Funding

Funding Needs

The Proposed Plan should also recommend the expansion and funding of effective voluntary business compliance models like the Connecticut Business Environmental Council.

Strategies-Funding

Expand the Current \$1.50 fee on waste processed at Connecticut RRFs to all disposed solid waste, including all MSW, C&D debris, and over-sized MSW, whether disposed in-state or out-of-state

The need for and the use of the monies generated by the expansion of the fee should be discussed as well as the enforcement difficulties that may exist for capturing fees related to wastes disposed of out-of-state. The potential legal barriers to such taxation should also be included in the Proposed Plan.

CHAPTER 5 IMPLEMENTATION CONSIDERATIONS

5.2.3 Role of the Connecticut Resources Recovery Authority (CRRA)

Existing legislation affords broad authority to the CRRA that could be employed to achieve the goal of self-sufficiency and better statewide management of solid waste disposal. The Proposed Plan correctly acknowledges that now is the time to consider the proper role of CRRA. It should identify the suggested/legislative role of CRRA rather than suggest that a future discussion is warranted.

5.3.5 Bristol RRF

The expiration date of the contract with Covanta should be amended from 2015 to 2014.

Appendix D
CURRENT MSW WASTE DIVERSION PRACTICES

Commercial Material Flow

The discussion regarding the economics of incorporating commercial generators into recycling programs acknowledges that the cost savings associated with reducing tipping fees for solid waste is not presently a sufficient incentive to increase recycling. Further, haulers have no reason to provide financial incentives in their contracts with commercial generators to increase the amount of the waste that is diverted to recycling. The analysis should be reflected in the body of the Proposed Plan.

Appendix E
OPTIONS TO INCREASE WASTE DIVERSION

The Opportunities to Increase Waste Diversion

The five categories of waste diversion identified should be prioritized and evaluated pursuant to a cost-benefit analysis.

Appendix F
SOLID WASTE DISPOSAL OVERVIEW

The single paragraph beginning at the bottom of Page F-15 contains the only discussion regarding transfer stations in the plan. As noted above, the role of transfer stations in the solid waste management plan should be thoroughly considered in the Proposed Plan and appendices.

Appendix G
COST ANALYSIS OF OUT-OF-STATE DISPOSAL OPTIONS

The analysis contained in Appendix G is impressive and the conclusions appropriate. The analysis provides justification that the plan should endorse a policy of self-sufficiency for management of solid waste generated in the state.

The conclusions in Appendix G are not consistent with the statements contained in the general narrative of the plan. For example, the conclusion that disposal of solid waste at RRFs in Connecticut is more cost-effective than out-of-state disposal options is reached in the appendix but not reflected in the plan itself.

Appendix I
ENVIRONMENTAL IMPACT OF DISPOSAL OPTIONS

Like Appendix G, the conclusions of Appendix I regarding environmental impact supports a policy goal that all MSW generated in Connecticut should be managed and disposed of in Connecticut. For example, on Page I-21, the appendix concludes that disposal at an in-state RRF poses less risk of negative environmental impacts than landfills

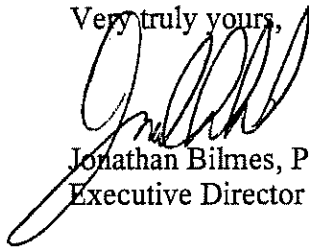
Michael Harder
Department of Environmental Protection
September 7, 2006
Page 17

located either in or outside of the state. That fact should be outlined in the body of the Proposed Plan.

III. CONCLUSION

The BRRFOC and TROC would again like to thank you for the hard work undertaken by you and your agency to establish the Proposed Plan and to implement the policy of stakeholder and public review and comment. We appreciate your careful consideration of our comments, concerns and recommendations in proceeding towards adoption of a final plan.

Very truly yours,

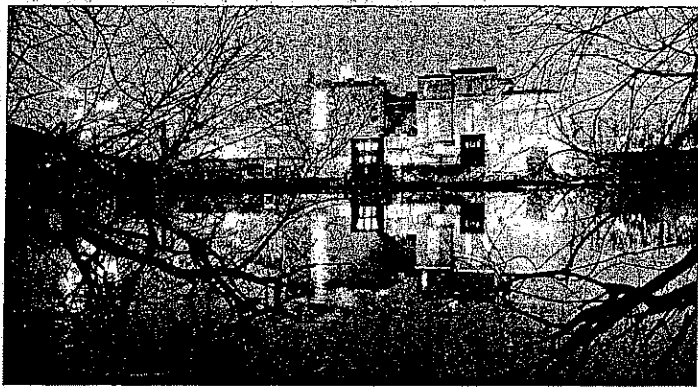


Jonathan Bilmes, P.E., Q.E.P.
Executive Director

JSB:kz

Enc.

cc: BRRFOC & TROC Member Towns and Chief Elected Officials



MICHAEL KODAS / THE HARTFORD COURANT

SIX REGIONAL TRASH-TO-ENERGY PLANTS turn most of the state's municipal solid waste into electricity. The Connecticut Resources Recovery Authority trash plant in Hartford's South Meadows shines out over the Connecticut River at night.

Don't Let Connecticut's Trash Plants Go Private

In 1998, the Connecticut General Assembly passed legislation deregulating the electric industry. While the move toward deregulation was motivated by good intentions—creating a more competitive business environment by giving consumers a choice of affordable electricity providers—virtually

JONATHAN BILMES

everyone acknowledges, in Connecticut and many other states, that deregulation is not working.

Electric rates have increased rapidly, and the prospects of continuing power shortages are all too real. As a result, legislators are scrambling to put the genie back into the bottle.

Unfortunately, a similar problem is looming for the state's trash disposal system.

Connecticut has established public policy that the management of solid waste, like the construction and maintenance of highways and the provision of fire and police services, is a fundamental governmental service and responsibility. Combustion of municipal solid waste was favored in order to minimize landfills and to generate needed electricity.

As a result, we have a waste-to-energy system that manages and safely disposes of 90-95 percent of the state's municipal solid waste that is not recycled. Quasi-public organizations like the Bristol Resource Recovery Facility Operating Committee were created in the 1980s to oversee and manage a system that is efficient, environmentally sound—the EPA notes that the nation's waste-to-energy plants produce electricity with less environmental impact than almost any other source—and a model of public-private partnerships.

Of great concern, however, is the fact that the cornerstones of Connecticut's waste-to-energy system—the six regional plants that safely turn more than 5,800 tons of trash each day into 194 megawatts of clean power—could end up without government oversight and subject to unfavorable market conditions. Sounds like electricity deregulation.

Why? Complex tax laws and other unique circumstances were in play when the waste-to-energy projects were financed. As a result, a number of the

state's trash plants operate under long-term contracts that call for the facilities to revert to 100 percent private ownership in the near future.

If nothing is done to prevent waste-to-energy facilities from reverting to total private ownership, within 10 years the waste-to-energy industry is likely to experience the same runaway costs that the state is dealing with now among electricity generators. Unforeseen market forces may adversely impact the profitability of privately owned solid waste management facilities and could cause facilities to close or reduce capacity.

Conversely, without the cost controls established by government operation and control of solid waste management, private market forces could cause dramatic cost increases like those experienced with electricity prices under deregulation. The supply and pricing problems Connecticut is experiencing in the energy field could be repeated in the solid waste industry.

Sound public policy led to Connecticut's commitment to resources recovery in the 1980s. Over the years, our waste-to-energy facilities have effectively and efficiently met an essential and important public health need through the safe handling and disposal of the state's solid waste. They have the potential capacity to handle all of the 400,000 tons of trash currently shipped out of state. Our trash plants produce clean, renewable, local electricity—enough power to save the equivalent of more than 2.6 million barrels of oil annually.

The Connecticut Department of Environmental Protection and other state policy-makers should do everything possible to ensure the continuation of a technology and system that has served Connecticut well for more than 20 years.

Let's not repeat the mistakes we have made in deregulating the electric industry. Our waste-to-energy system "ain't broke." The status quo works and needs to be preserved.

Jonathan Bilmes is the executive director of the Bristol Resources Recovery Facility Operating Committee.



Bristol Resource Recovery Facility Operating Committee

43 Enterprise Drive
Bristol, Connecticut 06010
www.brrfoc.org

(860) 585-0419
(860) 225-9811
Fax (860) 585-9875

Testimony of the Bristol Resource Recovery Facility Operating Committee at the 3rd Legislative Energy Summit August 10, 2006

Good afternoon Senator President Williams, House Speaker Amman, Legislative Leaders and Members of the Legislative Energy Summit Panel. My name is Jonathan S. Bilmes and I am the Executive Director of the Bristol Resource Recovery Facility Operating Committee. The organization is made up of 14 towns and cities in Connecticut representing over 10% of the state's population. We are concerned with the safe, environmental and cost-effective disposal of municipal solid waste and recyclables. A key part of our system is the 16MW waste-to-energy facility in Bristol.

As you consider additional energy legislation, I am here to emphasize that we are part of the solution to Connecticut's problem. By using existing, proven, environmentally beneficial technology, we can help Connecticut with renewable energy production as well as solid waste disposal, two pressing problems requiring legislative attention. As you move forward with the process, we ask that you consider the following facts:

- Existing Resource Recovery Facilities (RRFs) collectively provide vital trash disposal, recycling, resources recovery, and electricity generation to practically the entire State of Connecticut. According to DEP¹, 85% of the total MSW disposed of in the state (after recycling) was managed by the state's six Resource Recovery Facilities. RRFs service 140 towns and cities² and provide power for the equivalent of 240,000 households.
- These Facilities also collectively generate 2-5% of Connecticut's total generation resources. The municipal solid waste used by the Facilities to generate electricity is an indigenous, renewable fuel resource which is not subject to the supply disruptions and price fluctuations associated with fossil fuels such as oil and natural gas. It is estimated that the Facilities' generation of electricity from municipal solid waste saves over 2 million barrels of oil annually. The Facilities also provide geographic diversity to Connecticut's generation resources. Recent annual filings by the Connecticut Siting Council³ have noted the advantages of using municipal solid waste to generate electricity. Plants operate 365-days-a-year, 24-hours a day, typically at 90%-95% of installed capacity.

¹ Proposed Amendment to the State Solid Waste Management Plan, July, 2006, p. F-4.

² *ibid.*, p F-8.

³ The advantages of the use of municipal solid waste to generate electricity was recently noted by the Connecticut Siting Council in its recently - released 2005 -2014 Review of the Ten Year Forecast of Connecticut Loads and Resources, ("2005 CSC Review") wherein it stated that "[s]olid waste has the advantage of being a renewable, locally supplied fuel and it contributes to Connecticut's fuel diversity. It is not affected by market price volatility, supply disruptions - significant advantages over fossil fuels. In addition, the combustion of solid waste produces relatively low levels of greenhouse gas, and reduces the amount of space needed for landfills." 2005 CSC Review at page 11.

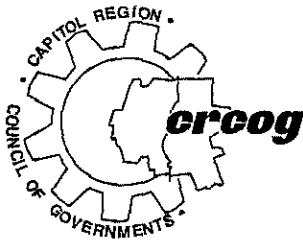
- Waste-to-energy is “clean, reliable, renewable” energy, according to the U.S. EPA. The Federal Power Act, the Public Utility Regulatory Policies Act, the Federal Energy Regulatory Commission regulations, and the Biomass Research and Development Act of 2000 all recognize waste-to-energy power as renewable biomass, as do fifteen states that have enacted electric restructuring laws. (*EPA Letter to Zannes 2/14/03, Ibid.; President George Bush’s 1992 National Energy Strategy, page 126; see also FERC regulations 18 CFR Ch.1, 4/96 Edition, Section 292.204*)
- The legislature fully debated the merits of waste to energy conversion when it classified this power as a Class II Renewable in 1998. Fifteen other states also define waste-to-energy as renewable power including California, Connecticut, Hawaii, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, Pennsylvania, Virginia, and Washington.
- Furthermore, as shown in a recent Department of Environmental Protection draft Solid Waste Management Plan, Connecticut faces a current and growing shortfall of disposal capacity for municipal solid waste. Therefore, additional trash – to – energy facilities will be needed in the future. DEP states, “it is good public policy to manage Connecticut’s waste within its borders⁴.”
- The present legal and regulatory framework for the Facilities is the product of decades of hard work by the legislature, administrative agencies, and a host of other public and private entities.
- The biomass content of waste-to-energy’s fuel, municipal solid waste, is about 75% on heat content basis. (*Decision Support Tool, U.S. Environmental Protection Agency, Research Triangle Park; see also www.rti.org/units/ese/p2/lca.cfm#life*)
- Turning garbage into energy makes “important contributions to the overall effort to achieve increased renewable energy use and the many associated positive environmental benefits,” according to the U.S. Department of Energy. (Letter to M. Zannes from David Garman, Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. DOE, 4/23/03)
- Expansion of RRFs will also help Connecticut meet its obligations under the RGGI. The use of waste-to-energy technology prevents the release of greenhouse gases in the form of carbon dioxide equivalents that otherwise would be released into the atmosphere, according to the U.S. Environmental Protection Agency’s Decision Support Tool program. Operation of waste-to-energy plants avoids the release of methane that otherwise would be emitted when trash decomposes, and the release of CO₂ that would be emitted from generating electricity from fossil fuels.

⁴ Proposed Amendment to the State Solid Waste Management Plan, July, 2006, p. 2-24.

For all of the above reasons, it makes perfectly good sense for the legislature to take steps to encourage additional RRFs. Some of the steps that can be taken:

- Require the utilities to continue to enter into long term contracts (e.g. ten years) at avoided costs to ensure price stability.
- Require the utilities and the DPUC to recognize the fact that our power can be committed to Connecticut electric customers for the long-term. This capacity value is not recognized in today's ISO markets.
- Encourage efforts to convert/retain ownership of the plants by the public sector, thereby ensuring that any electricity sold will be for the benefit of Connecticut citizens and ratepayers.
- Consider reclassifying Waste to Energy as a Class I renewable and/or limit Class II RPS compliance to facilities located in the state.
- Continue to require that the electric companies handle our power. Today, the electric company handles the bidding and settlement of our power in wholesale markets, dealing with the maze of ISO market rules. Because they are doing so for multiple transactions, they can maintain the expertise to do so efficiently. If each WTE facility must handle these transactions on its own, we will need to add staff or contract this function out to an outside expert. This function is best handled by our utilities.
- With regards to provisions in the Working Draft of AN ACT CONCERNING CONNECTICUT'S ENERGY FUTURE,
 - Section 59: Consider exempting all renewable energy projects from the net energy analysis.
 - Sections 62/63: Consider adding a section requiring DEP to expedite permitting for all renewable energy projects.

Thank you for your attention. I would be happy to answer any questions you might have.



Capitol Region Council of Governments

241 Main Street • Hartford • Connecticut • 06106

Telephone (860) 522-2217 • Fax (860) 724-1274

www.crocog.org

David K. Kilbon, Chairman

Lyle D. Wray, Executive Director

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SEP 07 2006

OFFICE OF BUREAU CHIEF
MATERIALS MANAGEMENT &
COMPLIANCE ASSURANCE

MEMBERS

September 6, 2006

- Andover
- Avon
- Bloomfield
- Bolton
- Canton
- East Granby
- East Hartford
- East Windsor
- Ellington
- Enfield
- Farmington
- Glastonbury
- Granby
- Hartford
- Hebron
- Manchester
- Marlborough
- Newington
- Rocky Hill
- Simsbury
- Somers
- South Windsor
- Suffield
- Tolland
- Vernon
- West Hartford
- Wethersfield
- Windsor
- Windsor Locks

Mr. Michael Harder
 Department of Environmental Protection, 4th Floor
 79 Elm Street
 Hartford, CT 06106

Dear Mr. Harder:

The Capitol Region Council of Governments commends the Department of Environmental Protection for its work in revising the State's Solid Waste Management Plan. Moreover, the Plan's emphasis on source reduction, re-use and recycling is very important to maintaining the health of Connecticut's natural resources and communities. Nevertheless, CROCOG has the following concerns with the proposed Solid Waste Management Plan:

- The Plan suggests that Connecticut continue to depend on out-of-state waste disposal. Heavy reliance on other states, whose policies and markets are out of Connecticut's control, presents potential problems in handling waste in the long-term. The State should establish some goals and objectives towards improving its self-reliance for waste disposal, especially of construction and demolition debris.
- The new Plan sets aggressive recycling goals; however, the State has not yet met the goals established in 1991. Further, The 2024 goals for Connecticut are less than some states are showing now (e.g. California recycled 52% in 2005--*LA Times*, August 25, 2006). The proposed strategies to achieve this new goal must be implemented and monitored. This entails devoting the appropriate resources towards the tasks. Expanded public education, support and enforcement will be key to actually achieving the goals set.
- While augmenting the mandatory recycling list by adding certain plastics and magazines is important, a statewide uniform recycling system that is clearly articulated would make recycling easier for residents. Inconsistencies in what municipalities collect for recycling causes confusion, making recycling more difficult for residents and lowering recycling rates. With a uniform system, outreach and education on the State or regional level would be easier. Also, labeling receptacles with recyclables lists could improve recycling rates in the State, again, by making it less confusing for residents.
- We concur that manufacturers also need to take greater responsibility for source reduction through environmentally responsible packaging, and for creating broader opportunities for recycling and reusing electronic wastes.
- The Plan does not consider the potential for new technologies in solid waste management such as plasma arc. The Plan should establish a willingness to explore new means of handling waste to strengthen Connecticut's solid waste management strategy.

Thank you for your consideration of these comments. We look forward to the opportunity of working with the State Department of Environmental Protection and our member municipalities to help meet our future solid waste management needs.

Sincerely,


 Lyle D. Wray, Ph.D.
 Executive Director

Exhibit 55

OFFICE OF THE
DEPARTMENT OF PUBLIC FACILITIES

999 BROAD STREET
BRIDGEPORT, CONNECTICUT 06604
TELEPHONE (203) 576-7130

JOHN F. COTTELL, JR.
Utility Manager



September 8, 2006

Tessa Gutowski
Dept. of Environmental Protection
Bureau of Waste Management
79 Elm Street
Hartford, CT 06106-5127

Dear Ms Gutowski,

In response to the proposed amendments to the Connecticut Solid Waste Management Plan, I have the following comments:

1. The deposit on bottles and cans should NOT be increased. We find that these items are currently removed from roadsides at the current return deposit.
2. Current unclaimed container deposits should be dedicated to funding recycling efforts of municipalities instead of being deposited into the general fund.
3. Current MSW Tax (Dioxin Tax) should NOT be used as increased funding for the DEP, but instead to funding recycling efforts.
4. There should not be any added increase in the MSW Tax.
5. The DEP needs to establish reuses for ash.
6. DEP needs to streamline permitting for recycling facilities.
7. A publicly controlled ash landfill needs to be developed in state that is centrally located to reduce air emissions and high cost of trucking to remote site.
8. Endorse legislation to reduce the size of packaging to that of what is contained. Many food containers are greatly larger than the amount of food it contains inside.

Thank you for your consideration.

Respectfully,

John F. Cottell Jr.
Utilities Manager

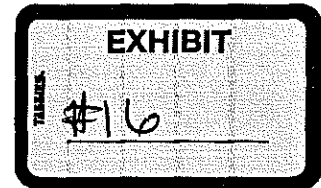
Cc: George Estrada, Director Public Facilities
Mark Anastasi, City Attorney



CITY OF HARTFORD

DEPARTMENT OF PUBLIC WORKS
525 MAIN STREET
HARTFORD, CONNECTICUT 06103

TELEPHONE: (860) 543-8660
FAX: (860) 722-6215



EDDIE A. PEREZ
MAYOR

BHUPEN N. PATEL
DIRECTOR

August 23, 2006

Mr. Michael Harder
Department of Environmental Protection
79 Elm Street, 4th Floor
Hartford, Ct 06106

RE: Proposed Amendment to
State of Connecticut Solid Waste Management Plan

The following are the City Of Hartford's formal comments on the Proposed Amendment to the Solid Waste Management Plan. These comments are being read aloud and also presented in writing at the Connecticut Department of Environmental Protection's public hearing on August 23rd, 2006. These comments are in relation to the Executive Summary (ES):

Page ES-10 "Funding": The City strongly concurs with the proposal for "Direct enforcement penalties (directed) to a special account for distribution to municipalities and regional authorities aimed as recycling; ..." .

Page ES-11 #2: The city strongly concurs with the proposal for "Increased funding sources such as expansion of the Solid Waste Assessment, capturing the unclaimed bottle and can deposits (escheats), use of penalty money for solid waste programs, etc., along with authority to pass adequate funding along to municipalities and regional entities; ..."

Page ES-1 #7: "Expansion of the bottle bill to include plastic water bottles, and an increase in the deposit to ten cents;..." The city agrees provided, however, that the additional income received from this is shared with the municipalities. Our experience in larger urban areas suggests that tip fee savings from recyclables at best breaks even with our recycling collection costs. State mandates on recycling enforcement will not work without the money to pay for them, therefore some teeth should be given to the enforcement program and some dollars given back to towns and cities for their local enforcement programs.

General: We also propose that the State look at plasma arc technology and other similar technologies as a future means for the disposal and/or reduction of solid waste. We suggest that DEP create an environment for experimentation, and financially support a prototype facility within the state so experience can be gained for future courses of action.

Sincerely


Bhupen Patel, Director of Public Works

Exhibit 22



CITY OF HARTFORD

DEPARTMENT OF PUBLIC WORKS
525 MAIN STREET
HARTFORD, CONNECTICUT 06103

TELEPHONE: (860) 543-8660
FAX: (860) 722-6215

EDDIE A. PEREZ
MAYOR

BHUPEN N. PATEL
DIRECTOR

August 23, 2006

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AUG 29 2006

Waste Management Bureau
Planning & Standards Division

Mr. Michael Harder
Department of Environmental Protection
79 Elm Street, 4th Floor
Hartford, Ct 06106

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State of Connecticut Solid Waste Management Plan

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Sincerely

Bhupen Patel, Director of Public Works



Exhibit 47

City of Middletown

PUBLIC WORKS DEPARTMENT

245 deKoven Drive, P.O. Box 1300, Middletown, CT 06457-1300

TEL: (860) 344-3407 RECYCLING: (860) 344-3526 FAX: (860) 344-3590

TDD: (860) 344-3521

September 7, 2006

RECEIVED
SEP 12 2006
Waste Management Bureau
Planning & Standards Division

Mr. Michael Harder
Hearing Officer
Bureau of Waste Management
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106

Re: 2006 DEP Proposed Amendment to the State of Connecticut Solid Waste Management Plan

Dear Mr. Harder:

Thank you for the opportunity to comment on the State's Draft Solid Waste Management Plan. I am writing as the Recycling Program Coordinator for the City of Middletown. I have been in this position for fifteen years.

I am pleased to be able to support many of the proposals in this plan. I am sure you are aware that state support for recycling and source reduction efforts has decreased significantly during the past ten years. New policies and programs must be implemented to reduce the ever-increasing amount of garbage being generated by Connecticut residents and businesses. I applaud the effort to reach a 49% recycling/diversion rate, but am concerned that more specific proposals are needed to accomplish this. Funding, staffing and resources must be committed to achieve this goal. The State must make recycling/source reduction/solid waste management a HIGH priority to follow these programs through.

As a recycling coordinator for a municipality, my comments are directed towards the recycling/source reduction portions of the plan.

1. We support the position of a state recycling coordinator AND state educator/resource person. We have been working without these positions for too long. The plan mentions a state coordinator, but there is too much work to be done for just one person. I would actually advocate for an entire team, but at the very least, we need one high level coordinator to advocate and guide the state program and one person to help educate and provide resources.
2. We support state funding for an educational program. Again, this has been lacking for too long and greatly enhances our municipal efforts when the state has the resources to work along with us. An outreach plan must be developed and coordinated with local municipalities, businesses, institutions and local media.
3. We support all the proposals regarding expansion of the bottle bill. Many of these materials are currently going into the garbage. There is no question that it will reduce the waste that needs to be thrown away and help alleviate transportation costs for municipalities. The unclaimed deposits must also be reclaimed by the state and used to improve the state program, as well as assist municipalities.
4. We STRONGLY support funding for a mandated state electronics program. The City of Middletown is currently recycling electronics and funding the program with a user fee. Considering the danger of disposing these materials and the quantity of electronics that need disposal, the state must step in and provide a stable funding base and program on a statewide basis. Our program is expensive for the residents who participate, but it does offer an option. However, it is clear, that we do not get 100% participation because of the cost.
5. The City of Middletown has been recycling plastic containers (#1 and #2), junk mail and magazines for over ten years. We have no problem if this was mandated.
6. We STRONGLY support staff and funding to increase the state's enforcement efforts. This is absolutely necessary to improve recycling in the commercial and institutional sectors.
7. Also, we see a need for improvement on small business recycling and hazardous waste disposal. Funding, staff, education and enforcement is needed on this level. I would like to see more specific proposals, such as incentive programs, on what would be promoted in this area. I would like to see a resurrection of the business recycling councils with adequate funding and staff to help improve efforts with businesses.
8. The City of Middletown has been piloting an institutional food waste composting program for three years. The State needs to encourage regional composting facilities in order to increase this sector of recycling. We support the proposal to increase recycling this portion of the waste stream, but funding and facilities will be needed.

9. In the plan, we did not see a specific proposal to reduce the amount and costs associated with bulk waste disposal. It seems that a state effort should be developed to create a program or incentives to recycle certain portions of the bulk waste stream in order to capture that material and reduce the amount of material being disposed. This is a huge amount of material and needs to be addressed more specifically.
10. Perhaps this will be addressed in another way, but the haulers play an important role in reducing the waste stream. Either more enforcement at the facilities and/or more incentives are necessary to get the haulers to comply and encourage customers to reduce.
11. In order for recycling to be successful, people, governments, businesses must purchase recycled products. The State should develop some sort of incentive program to encourage these entities to purchase recycling products and help build the markets.
12. In general, we support incentive programs to encourage residents and businesses to reduce and recycle more. This seems to be the best way get people to participate.

Thank you for the opportunity to comment on this plan. We are very supportive of this effort to increase recycling and source reduction in municipalities and throughout the state. We are pleased with the positive tone toward recycling and hope that DEP will work hard to do what it can to offer specific programs and allocate appropriate resources to achieve these goals.

If I can help in anyway, please feel free to contact me at 344-3526. Thank you.

Sincerely,

Kim O'Rourke
Recycling Coordinator


Public Works Director

August 23, 2006

Mr. Michael Harder
DEP Office of Planning and Program Development
4th Floor, 79 Elm St.
Hartford, CT 06106

Re: Proposed Amendment to the State Solid Waste Management Plan, July 2006

The Connecticut Audubon Society is pleased to submit comments in support of DEP's proposed amendment to the state's Solid Waste Management Plan. As one of the members of the External Stakeholders' group, we are cognizant of the diligent efforts made by the department to be open, inclusive, and comprehensive in drafting this document. We appreciate those efforts, as well as the level of research and planning that went into the plan.

We would specifically like to underscore the importance of the plan's proposal to update Connecticut's beverage container deposit legislation as a fiscally responsible means of significantly increasing recycling rates in Connecticut. Effective solid waste management is in itself sound public policy, but the implications for climate change that are influenced by our solid waste choices make it that much more imperative that we aggressively pursue options that maximize energy conservation and resource conservation, and minimize the emissions of greenhouse gases. According to a 1998 EPA report, producing one ton of aluminum cans from 100% virgin materials generated 5.39 metric tonnes of carbon equivalent (MTCE) while only 0.79 MTCE are generated using 100% recycled aluminum *. The environmental benefits of recycling are well-known and undisputed; the time to implement initiatives to increase recycling is long overdue. Given the international imperative to stem global warming we can no longer be complacent about beverage container redemption as too inconvenient.

One of the two statutory changes pertaining to increasing recycling efforts included in the new solid waste plan would update the Bottle Bill to include "at least" plastic water bottles, increase the deposit to ten cents, and use unclaimed deposits to support waste management programs. The other proposes adding PET plastic (#1) and HDPE plastic (#2) to the list of mandatory recyclables.

In 2002, The Container Recycling Institute estimated the number of #1 and #2 plastic non-carbonated beverage containers sold in Connecticut to be 378 million. Adding these additional items to the user-funded redemption recycling program will capture at least 70% of these containers at no cost to taxpayers. If the mandatory recycling proposal is successful but the bottle bill expansion is not, the additional burden to

finance the recycling of all of these additional containers would fall to already-strained municipal budgets.

Equally important to municipalities, improved recycling of more beverage containers outside the responsibility of municipal solid waste management will help the state's critical solid waste disposal capacity. The proposed amendment to the solid waste plan highlights the seriousness this situation with respect to not just tonnage capacity, but also the uncertainties associated with future ownership of existing trash-to-energy facilities whose contracts expire within the time frame of the plan. Private sector recycling through the deposit system helps capacity by keeping these materials out of incinerators.

Expanding the deposit law to non-carbonated beverage containers that are packaged in glass and metal containers would add an additional 36 million metal containers and 101 million glass bottles to the deposit system. (2002 CRI estimate). Once expansion is enacted, these containers that are currently recycled at taxpayers' expense through municipal programs would be covered under the privatized redemption recycling system instead. In addition to alleviating this burden on municipalities, more than twice as many containers would be recycled, because redemption rates for returnable containers are around 70% while curbside recycling rates are about 25% on average.

The plan proposes another effective and easily-implemented way to markedly improve recycling rates: increase the deposit from a nickel to a dime. In Michigan, where the refund value is ten cents, the redemption rate is around 95%. We support this proposal wholeheartedly as proven, effective, and of no cost to taxpayers.


We are strong supporters of changing the deposit legislation to explicitly permit the state treasurer to escheat unredeemed deposits to the state of Connecticut. Unredeemed deposits that go unclaimed by their rightful owners – the consumers who paid the deposits but failed to return their containers for refund -- should be considered abandoned property. These unclaimed assets, such as old bank accounts and insurance policies escheat to the state. Unclaimed deposits should also. California and Massachusetts have successfully captured these unclaimed deposits for years. Connecticut's abandoned deposits, assuming a 70% return rate, amount to approximately \$25 million per year, every year. This reliable funding source could go a long way toward helping municipalities fund recycling and other solid waste management policies recommended in the new plan.

The bottle bill has worked well for Connecticut but, like the state's Solid Waste Management Plan, it needs to be updated. If the law is expanded to include non-carbonated beverages, and if the refundable deposit is increased to a dime, the law can work even better for Connecticut. With more containers covered by the deposit and with a higher refund value, more bottles and cans will be recycled and fewer will end up in parks and streams and on beaches and roadsides.

California and Maine have updated their Bottle Bills to include other non-carbonated beverages. Hawaii's container deposit law, passed in 2002, also includes non-carbonated beverages. The neighboring states of Massachusetts and New York are currently considering updates to their laws. These two states followed Connecticut's lead more than 20 years ago, passing their Bottle Bills in 1981 and 1983 respectively. Connecticut can lead the way again.

The DEP's efforts to improve the most effective and comprehensive recycling and litter clean-up program in Connecticut and the nation are a crucial part of this newest amendment to the solid waste management plan.

RESPECTFULLY SUBMITTED,



Elizabeth McLaughlin, Director of Environmental Affairs
THE CONNECTICUT AUDUBON SOCIETY

"Greenhouse Gas Emissions from Management of Selected Material in Municipal Solid Waste, USEPA 530-R-98-013 Sept. 1998

U6-283
Kaliszewski
9-20-06

Connecticut Beer Wholesalers Association, Inc.

Exhibit 33

287 Capitol Avenue • Hartford, CT 06106
(860) 560-0000
Fax (860) 548-9984

Patrick J. Sullivan
Executive Director

August 23, 2006

RECEIVED

AUG 29 2006

DEPT. OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER

Commissioner Gina McCarthy
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106

Dear Commissioner McCarthy:

I am writing to you in response to your agency's Proposed Amendments to the Connecticut Solid Waste Management Plan – July 2006.

For the record, the Connecticut Beer Wholesalers Association (CBWA) and Coca Cola, Inc, are strongly opposed to any attempt to allow the State to take away or "escheat" unclaimed bottle deposits. The escheat of unclaimed deposits is nothing more than a hidden tax on consumers of the state. It would be unjust to double tax one of the only industries that is 100% recyclable and has participated in the bottle law for 26 years.

It is of the utmost importance that the department understands that unclaimed deposits are not a profit item for distributors. They only offset a small portion of the cost of implementing and maintaining the bottle bill and were promised to beverage distributors from the bottle bill's inception. Further more, studies have indicated that the collection of containers through the bottle bill process adds over 75 cents per case to the consumer cost. We collect 5 cents at the point of sale and return 6½ cents to the retailer when we pick up the empties.

I would also like to address the proposal to increase the deposit to 10 cents. It is estimated that a 10 cent deposit would result in a 25% reduction in sales. Couple that with black market returns from our neighboring states and our beverage industry in Connecticut would be devastated. Correspondingly, the state would lose tens of millions in excise tax revenue.

As you can see, the proposed amendments to Connecticut's Solid Waste Management Plan are clearly counterproductive. Connecticut is already at the competitive disadvantage versus our neighboring states. Rhode Island has no "bottle law", Massachusetts has no sales tax on beer and New York retailers routinely sell beer cheaper

at the retail level than our distributors can buy it from the breweries. Anything that increases the cost of beer here in Connecticut will drive more people across the borders and further reduce the sales and excise taxes that Connecticut collects.

For the reasons stated above, the Connecticut Beer Wholesalers Association and Coca Cola, Inc, strongly oppose the Proposed Amendments to Connecticut's Solid Waste Management Plan.

I would also like to make myself available to you or anyone in your department in order to discuss these issues in more depth.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Sullivan". The signature is fluid and cursive, with a large initial "P" and "S".

Patrick Sullivan
Connecticut Beer Wholesales Association.



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



79 ELM STREET HARTFORD, CT 06106-5127

PHONE: 860-424-3001

Gina McCarthy
Commissioner

September 8, 2006

Mr. Patrick Sullivan, Executive Director
Connecticut Beer Wholesalers Association, Inc.
287 Capitol Avenue
Hartford, CT 06106

Dear Mr. Sullivan:

Please be advised that I am in receipt of your letter dated August 23, 2006 providing comments regarding the Proposed Amendments to the State Solid Waste Management Plan. I have taken the liberty of forwarding your letter to Mr. Michael Harder who has been designated by me to be the Hearing Officer on this matter and requested that your letter be made part of the Public Hearing Record. Mr. Harder will be preparing a Report on the Hearings and Testimony Submitted on the Proposed Plan and will consider the record of the public hearing and the testimony submitted, including your letter. The Report will address all comments made and will be submitted to me for my review and approval. Subsequent to this Hearing Report, the Plan will be amended as appropriate and will be adopted under my authority.

If you have any questions concerning the public process or the Proposed Amendment to the Plan, please contact Robert Kaliszewski, Director, Office of Planning and Program Development, at 860-424-3003. Thank you for your submittal.

Yours truly,

for Gina McCarthy
Commissioner

Cc: Robert Kaliszewski, Director
Michael Harder, Hearing Officer

Exhibit 53

Connecticut Beer Wholesalers Association, Inc.

287 Capitol Avenue • Hartford, CT 06106
(860) 560-0000
Fax (860) 548-9984

Patrick J. Sullivan
Executive Director

RECEIVED

SEP 08 2006

Waste Management Bureau
Planning & Standards Division

August 23, 2006

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It is of the utmost importance that the department understands that unclaimed deposits are not a profit item for distributors. They only offset a small portion of the cost of implementing and maintaining the bottle bill and were promised to beverage distributors from the bottle bill's inception. Further more, studies have indicated that the collection of containers through the bottle bill process adds over 75 cents per case to the consumer cost. We collect 5 cents at the point of sale and return 6½ cents to the retailer when we pick up the empties.

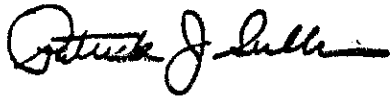
I would also like to address the proposal to increase the deposit to 10 cents. It is estimated that a 10 cent deposit would result in a 25% reduction in sales. Couple that with black market returns from our neighboring states and our beverage industry in Connecticut would be devastated. Correspondingly, the state would lose tens of millions in excise tax revenue.

As you can see, the proposed amendments to Connecticut's Solid Waste Management Plan are clearly counterproductive. Connecticut is already at the competitive disadvantage versus our neighboring states. Rhode Island has no "bottle law", Massachusetts has no sales tax on beer and New York retailers routinely sell beer cheaper at the retail level than our distributors can buy it from the breweries. Anything that increases the cost of beer here in Connecticut will drive more people across the borders and further reduce the sales and excise taxes that Connecticut collects.

For the reasons stated above, the Connecticut Beer Wholesalers Association and Coca Cola, Inc, strongly oppose the Proposed Amendments to Connecticut's Solid Waste Management Plan.

I would also like to make myself available to you or anyone in your department in order to discuss these issues in more depth.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick J. Sullivan". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke at the end.

Patrick Sullivan
Connecticut Beer Wholesales Association.



Connecticut **Business & Industry** Association

September 8, 2006

Mr. Michael Harder
Connecticut Department of Environmental Protection
Bureau of Materials Management and Compliance Assurance
Waste Engineering and Enforcement Division
79 Elm Street
Hartford, CT 06106-5127

RE: Proposed Amendments to the State Solid Waste Management Plan

Dear Mr. Harder:

On behalf of the Connecticut Business & Industry Association ("CBIA") and our member companies, thank you for this opportunity to provide comments on the Department of Environmental Protection's ("DEP") proposed amendments to the State Solid Waste Management Plan ("proposed amendments").

CBIA strongly supports the long-range vision for solid waste management contained in the proposed amendments and stated as:

"Shift away from 'throwaway society,' toward a system that promotes a reduction in the generation and toxicity of trash, and where wastes are treated as valuable raw materials and energy resources, rather than as useless garbage or trash; and

Manage wastes through a more holistic and comprehensive approach than today's system, resulting in the conservation of natural resources and the creation of less waste and less pollution, while supplying valuable raw materials to boost manufacturing economies."

This vision clearly recognizes the need to reduce waste generation but also to maximize the economic potential of wastes as, among other things, "valuable raw materials."

The vision also recognizes this is an issue that must be dealt with by what is currently a "throwaway society." It is that society as a whole that is creating the challenges, and it is that society that must make the public policy decisions and bear the costs of addressing these important issues. It is critical to the business community and to Connecticut's economic competitiveness that the burden, specifically the financial burden, not be directed to narrower constituencies. It is in this context that we are concerned with the sentiment contained in the recommendations that states, "while much of the burden of

accomplishing [the goals of the plan] will fall on the Department, a greater amount will necessarily be borne by municipalities and businesses.”

The plan includes a description of potential roles that different stakeholders may play in achieving the vision and goals of the plan. With respect to those listed for the business community, we believe the concepts are sound and that methods should be considered to educate and incent businesses to move further in those directions. However, we would discourage the use of mandates as a tool to advance these concepts.

Consistent with the vision stated in the plan and discussed above, CBIA believes that the DEP should be more aggressive in its efforts to develop and expand as broadly as possible, the opportunities for permitting the reuse of waste materials under its “beneficial reuse” program. Our understanding is that there are great opportunities to increase the role this program plays in achieving the State’s waste reduction goals but that the DEP has perhaps been overly-conservative in moving forward. There is also opportunity in this area with regards to the State’s remediation goals, specifically the opportunities for the reuse of contaminated soils. The business community stands ready to work with the DEP and provide whatever assistance we can in helping to expand this important program.

Finally, we agree with the proposed amendments that Connecticut needs to move forward on the issue of electronic wastes. In doing so, we urge the DEP to use care such that future initiatives do not negatively affect Connecticut’s competitiveness with respect to electronic manufacturers, distributors or retailers. Again, we would be happy to work with the DEP to help fashion an effective electronics recycling/disposal program that takes these concerns into account.

Thank you again for the opportunity to provide comment on the proposed amendments. If you have any questions on these comments, or if we can be of further assistance, please contact me directly at 860-244-1926.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Brown". The signature is fluid and cursive, with a large initial "E" and "B".

Eric J. Brown
Associate Counsel

September 5, 2006

Department of Environmental Protection
79 Elm St.
Hartford, CT 06106-5127

RECEIVED
SEP 07 2006
Waste Management Bureau
Planning & Standards Division

Dear Michael Harder:

On behalf of me and the CT Coalition of Environmental Justice located at 10 Jefferson St. I am submitting the following suggestions to improve the Waste Management Plan for Connecticut.

1. It is of paramount importance that the town laws and state laws concerning recycling be enforced. When I lived in an apartment complex in Massachusetts, residents did not recycle. There was a dumpster for everything. The landlord told me that he would not recycle unless he was forced to by law. Unfortunately a lot of people have that mentality. I currently live in an apartment complex in Manchester, CT. We have dumpsters for everyone to use, and some of the apartments have green recycle bins. A low percentage of residents recycle. I have often noticed recyclable materials in the dumpsters, especially the bulky cardboard. By state law this is suppose to be reported by the waste company picking up the garbage, or by CRRA. If it was being reported, I do not think that it would still be happening. The association recently changed waste service companies, and I spoke with the owner of the new company, Metro Enterprises. He said that he would look into the situation, and that it is in his best interest to increase the recycling. Companies that do increase recycling should be rewarded by the state. There are several impediments to increasing recycling in my complex, and probably many similar complexes around the state.
 - a. Only 30% of the owners live in the apartments. The association places the responsibility of educating tenants about recycling onto the landlords. Many tenants are likely not aware of the rules for recycling. Even among the residents that do recycle, I notice that some of them put inappropriate items in their recycling bin for pick-up. Many apartments do not have a

recycle bin because the previous tenant took it with them, and the tenant may not be aware of how to purchase one. There is an association newsletter that used to go out more regularly that would contain articles about apartment complex concerns. We have not received one in a while, but when I went to my first association meeting I offered to write an article about recycling for the newsletter. A board member encouraged me, and I wrote the article and submitted it, but have not seen the newsletter yet, though it was promised for mid July.

- b. There are no recycle containers set up beside the dumpster, even though I was told by Louise of the town's waste management division that apartment complexes are suppose to provide them. The association board members said that they chose the small bins over the large recycle containers due to aesthetics etc.
- c. On the surface it would seem that the rules for recycling are straightforward and simple. Unfortunately, it can be difficult to figure out what rules one should follow sometimes, and materials for recycling can change. I thought that I was suppose to follow the rules for the town of Manchester, and it was only recently that I even learned (through my volunteer service with CCEJ) that our recyclables are taken to CRRA, so we should follow their guidelines. There are some differences between Manchester and CRRA rules. For example, Manchester accepts old used car batteries for recycling, but CRRA does not. I recently received the rules for recycling that the association follows. But even these rules differed slightly from the rules of the previous waste management company servicing the complex. Now that more companies are trying to be environmentally conscious, more packaging is made from #1 and #2 plastic. The rule says that we can recycle containers that are more narrow at the top, and #1-2 plastic, so does this mean that I cannot recycle the #2 plastic flat lid that comes on my yogurt, or the #2 tub from my tofu that is slightly wider at the top? There are more and more containers being made from #1 and #2 plastic that do not conform to the rule. I was told by the

town of Manchester that batteries are not considered hazardous waste, and that I should throw them into the trash, and yet some stores collect these to be recycled, and I hear that some batteries contain toxic materials.

- d. Recycling could be increased statewide if the state offered an incentive program to residents. Create a competition for example. Cities and towns could be divided up and the sections pitted against one another to see who can recycle the most, or who can increase their percentage the most. The section that won would receive a tax break, money for bike paths, parks, etc.
2. There should be a strict grocery bag rule in stores. It is very frustrating for me when the store employee does not even ask me whether I want a bag or not. They automatically bag everyone's groceries. They do not even ask if you want paper or plastic, they just give you plastic. I take my own bags with me to use, unless I am only buying a couple of items, and then I carry them out. One time a young man bagged my item after I told him that I did not need a bag, and when I took the item out of the bag so that he could use it for another customer, he threw the bag away. That was the ultimate insult. The state could enforce the rule of store personnel asking whether a person wants a bag, and whether they want paper or plastic (or get rid of plastic altogether) by requiring that the store attach a sticker to the side of the cash register that has the phone number for a person to call to report if they were not asked. Similar to the "How is my driving, call 000-000-000" sticker on the back of vehicles. The state could fund cloth bag giveaways through stores.
3. Composting organic waste can save a good percentage of material from going into the landfill, and once turned into soil, can be used in the public parks, or to well for needed town funds. There are several home composting bins on the market today, for both houses and apartments. The state can provide incentives for people to compost. All of the public and private buildings in a town can be required to compost. The IKEA Company set up a pilot worm compost program that successfully composted the organic waste produced in their facility. This can be

used as a model for other buildings. You can find the article on the front page of the wormwoman.com website under IKEA Sets Up Vermicomposting Pilot.

- 4. The city of Chicago has been very successful at increasing their recycling. Many community organizations joined together to offer their help to promote a green city. There are many nonprofit organizations in CT. If they all banded together to work toward offering things like recycling education and hands-on support to apartment complexes to get the apartment complex recycling program started, then community members would be empowered, and the state could offer them support in terms of funding etc. All it takes is for a person to be shown how easy it is to recycle, and once they start, it becomes a habit that will stick with the. These community organizations are in direct contact with community members, so they are at an advantage.

Sincerely,

Jessica Tanner

Jessica Tanner

Resident of Manchester, CT

Exhibit 26



CONNECTICUT CONFERENCE OF MUNICIPALITIES

900 Chapel St., 9th Floor, New Haven, CT 06510-2807 • Phone (203) 498-3000 • Fax (203) 562-6314 • www.ccm-ct.org

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SEP 06 2006
Waste Management Bureau
Planning & Standards Division

Comments of the
CONNECTICUT CONFERENCE OF MUNICIPALITIES
To the
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Concerning the
PROPOSED STATE SOLID WASTE MANAGEMENT PLAN
August 29, 2006

The Connecticut Conference of Municipalities appreciates the opportunity to submit formal comments on the proposed 2006 amendments to the State Solid Waste Management Plan.

CCM commends DEP for the inclusive process it undertook in drafting this plan. The process included the key stakeholders in Connecticut's solid waste management system (including CCM) -- and the draft reflects many of the comments and observations made by the stakeholders during a series of meetings of the advisory group the Department formed for this purpose.

The proposed amendments put forth, perhaps for the first time, a coherent and comprehensive plan for solid waste management in Connecticut. This represents a significant step forward for DEP and the State.

The proposed plan has several positive aspects that deserve mention:

- ✓ It provides **comprehensive and extensive data** on Connecticut's solid waste management system -- how things are being handled at present, and what challenges lie ahead;
- ✓ It includes many positive recommendations for state agency and legislative action.

--For example, Strategy 1-6 recommends a strong state program to **create incentives** (including technical assistance and funding) to encourage municipalities to move to a Pay-As-You-Throw system. This strategy rightly avoids placing a mandate on municipalities. It allows local governments to make decisions that work best for their communities, yet encourages them to consider a P-A-Y-T system.

- ✓ Beyond that, **the proposed plan is clear that significant ongoing funding is essential** if municipalities and the State are to move forward to effectively solve disposal problems and improve recycling efforts. For example, the draft states on page ES 10 that **“without adequate funding many of the critical needs identified in the Plan will not be met.”** Section 4 of the proposed amendments is correct in identifying a “chronic lack of ongoing funding at the local, regional and State levels” as hampering the growth of recycling and composting.
- ✓ The plan would place considerable **additional responsibility on the DEP** itself. This recognizes the need for concerted State action to help Connecticut solve its solid waste problems, and it indicates DEP’s willingness to take on additional burdens to do what needs to be done.
- ✓ CCM also applauds the focus on **regional responses and solutions**. For example, Strategy 2-11 discusses the need for municipal and/or regional recycling coordinators as well as the Department’s intention to “seek funding to re-establish a program of innovation grants to municipalities and recycling regions.”

CCM has several suggestions and recommendations to improve the proposal:

- ✓ The Plan should **recommend that the State be prepared to issue general obligation bonds to pay for aspects of the program for which new sources of funding are not provided – including costs for local infrastructure and collection systems** (page ES-10 discusses the uses of bonding for certain things but does not specify that it should be available for local costs).

There is strong precedent for state financial support of local solid waste disposal efforts. When the State sought to encourage formation of resources recovery regions in the 1980s it provided a **tip fee subsidy** to municipalities that signed up with them. It also provided significant funds to **local recycling programs** when that mandate was enacted in the early 1990s.

Beyond that, the Plan proposes consideration of several **non-bonding sources of funding**. Although it is preferable to have permanent, dedicated sources of revenue for the solid waste system, the Plan should not be dependent on them alone. Many of the proposals have been pushed before – governors have supported some -- and they have still failed. Towns and cities should not be forced to add any new costs of the Plan onto the property tax simply because the State has not enacted a dedicated funding source. General obligation bonds are the best fail-safe in case other sources are not enacted.

- ✓ The section “Critical Issues for Decision Makers” should include **“enactment of new and ongoing funding sources for recycling and solid waste disposal” under the items that the General Assembly and Governor need to address.**

- ✓ The Plan should **not recommend a new mandate to add plastics (#1, #2) and magazines to the list of mandatory recyclables (page ES 11) unless and until funding is provided for additional municipal costs.** The Plan should state that clearly.
- ✓ If the goal is to increase funding for municipalities, **municipally paid waste disposal should be exempt from the present \$1.50 in the solid waste assessment – or any increase.**

It would be counterproductive to increase the assessment paid by municipalities from the present \$1.50 to fund programs, as is suggested in the Plan. Moreover, public hauling is the norm in larger urban areas – those that may most be in need of funding. Increasing the assessment on these communities will only shift money away from them to other purposes.

- ✓ The Plan makes good strides in recommending **regional solutions**, but should look to such solutions in more areas, for instance **in the area of enforcement.**

Towns and cities have an enormous stake in Connecticut's solid waste disposal system. CCM and local officials look forward to working with the Department and other stakeholders to create a program that is affordable, effective and dependable.

Thank you for your consideration.

##

For more information, please contact Gian-Carl Casa or Kachina Walsh-Weaver of CCM, at (203) 498-3000.

Exhibit 29



Connecticut Construction Industries Association, Inc.

912 SILAS DEANE HIGHWAY, WETHERSFIELD, CT 06109 Phone (860) 529-6855 / FAX (860) 563-0616
Web: <http://www.ctconstruction.org>

RECEIVED
SEP 06 2006
Waste Management Bureau
Planning & Standards Division

To: Mike Harder, CT DEP
From: Faith Gavin Kuhn, Connecticut Construction Industries Association - CCIA
Re: Comments on DEP's Proposed *Solid Waste Management Plan*
Date: September 1, 2006

CCIA appreciates the opportunity to comment on DEP's Proposed *Solid Waste Management Plan*.

CCIA is an association of associations representing the many facets and disciplines of the construction industry. The membership includes general contractors, subcontractors, equipment and material suppliers, engineers, architect, consultants, and other professionals allied with the state's construction industry. CCIA is the largest statewide construction association in Connecticut, with nearly 500 members. It is the leading example in the country where all sectors of the industry are represented.

CCIA's eight stand alone divisions are: the Connecticut Road Builders Association, the Associated General Contractors of Connecticut, the Utility Contractors Association of Connecticut, Connecticut Ready-Mixed Concrete Association, Heavy and Highway Division, In-Plant Operators Association, the Equipment Dealers Division, and AGC/CCIA Building Contractors Labor Division of Connecticut, Inc. CCIA also administers the Connecticut Ironworkers Employers Association.

Specific Comments:

Although our initial comments were addressed in the final draft, CCIA would like to reiterate our concerns and issues as follows:

1. Definitions of Construction Waste and Demolition Debris
Under CT General Statutes Section 22a-207, construction waste is a component of Municipal Solid Waste (MSW), while demolition debris is a component of the bulky waste stream under CT General Statutes 22a-209-1. However, in waste management practices, construction and demolition waste are managed along side oversized MSW. A comprehensive definition is needed so that it reflects CT's current waste management practices. A new definition, which requires legislative attention, should also be aligned with definitions of other states receiving our construction and demolition waste, since most of CT's waste is disposed of out-



of-state. In addition, CT construction waste and demolition debris waste regulations need to be aligned with the new definition.

2. Concrete Crushing – Local Inconsistencies

Apparently only few communities in Connecticut allow for small concrete crushing facilities on site. This allows a contractor to take unused concrete and crush it down to be reused. While recognizing this is a local zoning issue, regional sites around the state could be set up to accommodate and encourage concrete recycling.

In EPA's recent *Draft Construction and Demolition Debris Characterization Report* (August 2006), the agency estimates that concrete pavement recovery was assumed to be 70 percent.

3. Promoting Construction & Demolition Waste Recycling

The contractor should be financially encouraged to have the option of purchasing used or overstocked construction materials. This could be tax incentives, such as sales tax exclusions, when purchasing used or overstocked materials.

CCIA applauds the efforts of EPA's WasteWise program, in particular the Stowe Village project in Hartford. While financial incentives to recycle C&D material are significant. The educational outreach to the industry is just as important. The "how-to-dos" of C&D recycling and reuse could be effectively communicated with the industry, through written materials, informational workshops, and via DEP's web site. CCIA is ready to help gather and disseminate such information.

4. Asphalt Millings

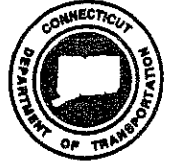
CCIA questioned the ownership of asphalt millings that could be reused again. While in some states the contractor has ownership, in CT ownership is designated in each specific contract. DEP's finding indicated that regardless of whether CONNDOT or the contractor owns the millings, the material is being reused. In fact, in EPA's recent *Draft Construction and Demolition Debris Characterization Report* (August 2006), the agency estimates that asphalt pavement recovery was assumed to be 90 percent.

Submitted by:

Faith Gavin Kuhn
CCIA, Director of Public Information
912 Silas Deane Hwy
Wethersfield, CT 06109
860-529-6855
faith@ctconstruction.org



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION



2800 BERLIN TURNPIKE, P.O. BOX 317546
NEWINGTON, CONNECTICUT 06131-7546

Phone:

Exhibit 34

September 7, 2006

Mr. Michael Harder
CT Department of Environmental Protection
Office of Planning and Program Development, 4th Floor
79 Elm Street
Hartford, CT 06106

Subject: Comments to the Connecticut Department of Environmental Protection's
(CTDEP) Proposed Amendment to the State Solid Waste Management Plan,
July 2006

Dear Mr. Harder,

The following are the Connecticut Department of Transportation's (CTDOT) comments to the CTDEP's Proposed Amendment to the State Solid Waste Management Plan, July 2006:

- Strategies for Other Types of Special Waste, Strategy 4-10:
 - Road Wastes (Street Sweepings and Catch Basin Cleanings):
A CTDEP Guideline for Street Sweepings and Catch Basin Cleanings currently exists. Requiring reuse of these materials through the General Permit Process would be both costly and time consuming.
 - Contaminated Soils
The State's Remediation Standard Regulations include requirements for the reuse of polluted soil and therefore development of a general permit would be redundant. Responsible parties already manage, handle and reuse contaminated soils in accordance with applicable regulations and CTDEP administered programs and any additional permitting requirements would be both costly and time consuming with no foreseeable benefits. Also, CTDEP is currently developing a "General Permit for Contaminated Soil and/or Sediment Management (Staging and Transfer)". Would this be a different general permit, than the one currently in development?
 - Preservative Treated Wood
The requirement for disposal in "lined landfills only" would require transportation and disposal of the material out-of-state given that there are no lined landfills in Connecticut. In addition, the materials will have to be source segregated on site which will increase demolition labor costs.

- Appendix H, Special Waste Management, Page H-17, 18: C&D MRF is a good idea, but wouldn't only non-painted wood, concrete, drywall, etc. materials be accepted?
- Section 4.3.3, Strategy 3-4, page 4-52: The processing of C&D waste on-site (prior to disposal) would add more time to the project and therefore costs would increase. Additional space would also be required to do this work, which may be difficult to obtain.
- General Comment under Section 4.3.4 Management of Special Wastes and Other Types of Solid Waste: Disposal of polluted and contaminated soils that come from roads and highways are governed by the Remediation Standard Regulations (RSRs). If RSR criteria limits were set higher (less stringent), more of the soils would be able to be reused on-site and/or more of this material would be able to be recycled instead of being treated/landfilled. Currently, most of our soils that cannot be reused on site must be disposed of at a landfill or treatment facility, because the RSRs regulate limits of contamination and they are directly related to the management of contaminated soils. Similarly, when buildings or structures are demolished, CTDOT collects samples of the building components, such as wallboard, painted wood and rubble, etc. to determine RCRA disposition. If the materials are non-hazardous, they may still be regulated by the RSRs; if RSR criteria is exceeded, then the materials cannot be reused or recycled and must be disposed of at a landfill.
- Lead based coated (painted) wood/brick/concrete, etc. has to be disposed of at a landfill since in-state VRFs do not accept coated materials.
- Are there any beneficial reuse facilities within CT which would allow the processing of certain types of solid waste with contaminants involved?
- The effect of implementing the source reduction/recycling philosophy will be a change in the program from building demolition to building deconstruction.
- The outlets for segregated/recycled C&D waste are limited and not widely known, as are the locations/costs of the volume reduction facilities (VRFs), and facilities for reuse of used building materials, oversized MSW, etc.
- CTDOT would consider collaboration with CTDEP on a pilot project scale to demonstrate the feasibility and economics of building deconstruction, source reduction, reuse, recycling of C&D and oversized MSW, along with environmental management of the hazardous building materials. See Strategy 4-1.

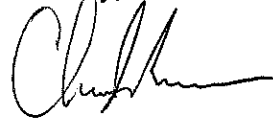
Mr. Michael Harder

-3-

September 7, 2006

Thank you for giving us the opportunity to comment on this proposed plan. If you or your staff has any questions, please contact myself at 594-3404 or Judith A. Nemecek at 594-2687.

Sincerely,



FOR Gregory M. Dorosh, P.E.
Principal Engineer
Environmental Compliance
CT Department of Transportation

RECEIVED

SEP 07 2006

**OFFICE OF BUREAU CHIEF
MATERIALS MANAGEMENT &
COMPLIANCE ASSURANCE**

**Comments on the
Proposed Amendment to the Solid Waste Management Plan**

**Submitted to the
Connecticut Department of Environmental Protection**

**By the
Connecticut Resources Recovery Authority**

August 21, 2006

STATE NAME & ADDRESS

Thank you for the opportunity to speak and provide testimony to the tonight regarding the proposed Amendment to the Solid Waste Management Plan. My name is Peter Egan and I am the Director of Environmental Affairs & Development for the Connecticut Resources Recovery Authority (CRRA).

By way of background, CRRA is a quasi-public entity created by the state in 1973 to provide a comprehensive solid waste management system and to modernize Connecticut's solid waste and recycling activities. CRRA's mission is to work for the best interests of the municipalities of the State of Connecticut in developing and implementing environmentally sound solutions and best practices for solid waste disposal and recycling management - And to deliver these services at as low a cost as possible. CRRA serves 118 cities and towns across the state and manages approximately two million tons of municipal solid waste each year, of which we divert for recycling approximately 130,000 tons of residential commingled containers and paper through the recycling programs we work with our member municipalities.

CRRA would like to thank DEP for undertaking the initiative to revise and update the Solid Waste Management Plan, and in particular for assembling the External Stakeholder Group and including CRRA in that group.

Thank you for recognizing CRRA's central role in the state's garbage and recycling system, both in Chapter 1 and Chapter 5 of the Plan, a role which has included not only the development and operation of recycling facilities, transfer stations, resource recovery facilities, and landfills, all of which are operated for public benefit, but which has also included the development of the trash museum in Hartford and the garbage museum in Stratford which promote source reduction and recycling through education of Connecticut Citizens, in particular Connecticut's children.

In my comments tonight I would like to touch on four key policy areas that the Plan addresses: Solid waste capacity assurance, public versus private control of the solid waste management infrastructure in the state, diversion and beneficial use of solid wastes, and funding. These are key themes that are woven throughout the plan, and they merit highlighting.

Regarding the Capacity Assurance Issue

CRRA believes the Plan takes too neutral a stance with regard to the question of solid waste capacity assurance for waste generated in the state of Connecticut, and in particular the question of in-state versus out-of-state capacity assurance.

Although DEP recognizes throughout the Plan that in-state capacity assurance is preferable to dependence on out-of-state options, the Plan does not make the next logical step and explicitly and unequivocally endorse the pursuit of installing additional landfill capacity and resource recovery facility capacity in Connecticut.

The Plan needs to provide a more critical analysis of the cost of, and access to, out-of-state disposal capacity in future years. The Plan does not adequately lay out a “contingency plan,” that could be implemented in a timely manner, to increase in-state capacity assurance in the event that the out-of-state capacity, which the plan indicates is currently available, becomes scarce or unavailable, or economically impractical.

The Plan needs to establish a goal for developing in-state capacity for MSW and C&D waste. Otherwise, Connecticut will be shipping 600,000 to 700,000 tons out of state each year, even with the 49 percent diversion rate - more if that rate is not achieved. For C&D waste, the capacity shortfall ranges from 800,000 to 1,200,000 tons per year depending on the diversion level achieved. Under this scenario, Connecticut generators will be beholden to the laws, regulations, and legislative bodies of other states, to unpredictable fuel and transportation costs, and generally, Connecticut will find itself with less control over its solid waste destiny.

Although the narrative in the Plan does indicate that DEP will *prioritize permit applications that address the current C&D waste/oversized MSW in-state disposal capacity needs*, the associated Strategy 3-2 falls short in explicitly stating that new C&D capacity is needed and that DEP encourages and will support applications for new disposal capacity in Connecticut. Strategy 3-2 as currently drafted simply recommends continued monitoring of the matter. CRRA recommends that Strategy 3-2 be revised to explicitly state that there is a need for both in-state C&D and MSW disposal capacity.

Moreover, it is also important that the Plan explicitly recognize the shortfall of in-state waste capacity for MSW, so that in the event an applicant advances a permit application to expand a resource recovery facility, the “Determination of Need” question is answered by the Plan. CRRA is concerned that recognition of a need for additional in-state MSW is not explicit enough in the Proposed Plan, and that a debate may ensue on whether additional in-state MSW capacity is needed in the event that an application for such is advanced.

Regarding the Public Ownership Issue

In the Executive Summary the third “*Major Recommendation*” highlighted by DEP regards the issue of public versus private ownership and control of solid waste disposal capacity in Connecticut.

Five of the state’s six waste to energy plants could be privately owned by 2015, and by the end of 2008 the only in-state ash residue landfill will be privately owned.

It is important that this potential shift in control is recognized. Control of the state’s waste-to-energy capacity by the private sector when the current project contracts come to an end during the next decade will impact capacity assurance for Connecticut’s solid waste generators. Private sector companies will be free to set tip fees as high as the market will allow, likely attracting waste from out-of-state. The Bridgeport facility is located only 60 miles from New York, and the Preston and Lisbon facilities are situated close to Rhode Island, and less than an hour’s drive from central Massachusetts.

There are lessons we can learn from electric deregulation. Restructuring was supposed to lead to a robust competitive marketplace in which new suppliers would come to Connecticut and keep power prices down. But that competition never materialized, power prices are now soaring, and some of the associated profits are flowing out of state. The way to prevent this from happening in the trash industry is to make sure the state has sufficient disposal capacity, owned and operated for the public benefit, dedicated to managing Connecticut's waste. Without that publicly controlled capacity, the private sector will be able to take trash from the highest bidder, whether the trash comes from New York or Massachusetts or Rhode Island. ^{of Connecticut.} We must ensure that Connecticut disposal capacity serves Connecticut.

Although the Plan recognizes CRRA's role, the Plan should be revised to more explicitly and clearly describe the benefits that such a quasi-public authority provides to the state, including a crucial and necessary economic balance to private sector control of the solid waste marketplace. At a minimum, the Plan should recommend to the legislature that it analyze this issue from a public policy standpoint and take a position on this important matter. If the consensus is in favor of capacity controlled for the public interest, the legislature should then direct DEP, with legislation, to assign priority to permitting initiatives advanced by organizations that serve the public interest, such as CRRA, including:

- Bulky C&D landfill controlled for public interest
- Ash-residue landfill capacity controlled for public interest
- Additional W-T-E capacity controlled for public interest
- Export capacity controlled for public interest

CRRA appreciates that the Plan highlights that the only in-state ash residue capacity after 2008 will be privately owned, and that this in-state monopoly may not serve the public interest. In a state that has made such a significant commitment to waste-to-energy, and the attendant necessity of ash disposal, continuing with only one ash landfill in the state does not serve the public interest. The potential consequence of this scenario is higher tip fees for Connecticut waste generators.

CRRA believes the Plan needs to take a clearer position with regard to the value and necessity of publicly controlled ash residue disposal capacity. CRRA is concerned that if it advances an application for an ash residue landfill to replace the Hartford Landfill, the Plan as currently drafted does not provide adequate support for this necessary public need.

Diversion

The plan sets a goal of a 49% diversion rate by calendar year 2024. This goal is laudable. It is also very aggressive.

CRRA does not believe the private sector alone, unless economic incentives are extremely robust, will achieve the diversion rate goals proposed in the Plan.

In fact, the incremental cost, if you will, of moving from a 30 percent to a 49 percent diversion rate will be significantly greater than the cost of achieving the first 30 percent.

CRRA suggests that the responsibility for successfully achieving the additional 19 percent beyond today's diversion rate must be a public responsibility, and that municipalities along with CRRA and regional authorities will be integral to making this level of diversion occur in an efficient and dependable manner. This means that success depends on the availability of a recycling

collection and processing infrastructure controlled for the public interest, and accordingly, depends in a large part on the capability of regional authorities such as CRRA.

The Plan as currently drafted does not adequately recognize this critical aspect of solid waste management in Connecticut. The Plan should be revised to explicitly recognize the importance of, and necessity for, recycling collection and processing infrastructure that is maintained for the public interest.

Here are several examples of these advantages:

- By not charging a tip fee on any recyclables, including commingled containers, such as occurs in CRRA's Mid-Connecticut and Bridgeport projects, participation by residents will increase. The private sector has not done this to date.
- CRRA has ability to aggregate recyclable waste streams, control large volumes, and obtain a better market price for delivering recycling feedstock to the processing market. CRRA has demonstrated this recently at its Mid-Connecticut recycling facility. The resultant increase in recyclable revenues flows back to the participating municipalities by lowering the MSW tip fees.
- The private sector has little if any incentive to encourage recycling across the board; the private sector will "cherry pick" those materials that have value in the commodities market, such as paper and cardboard, and ignore those materials that don't have such a value, such as commingled containers. Conversely, recycling facilities maintained for the public interest will not "cherry pick" the valuable recyclables and ignore those with less or no value, but will ensure that these materials are diverted.

Looking to the future and the 49 percent goal, increased diversion will require significant funding to implement. The Plan correctly recognizes this in the Executive Summary, which states on page ES-10: “*Without adequate funding, the goals of this plan will not be met.*” However, properly planned and implemented, costs can be controlled. Increased diversion for less money requires the following:

- A broad menu of mandatory recyclables;
- Larger storage containers for residential recyclables;
- Efficient collection equipment and services, implemented either by the public or under long-term competitively procured contracts;
- Large scale Materials Recycling Facilities that are efficient and economical, implemented under long-term service contracts, not short-term contracts;
- Significant revenue sharing back to municipalities to serve as an incentive; and
- Ongoing and strong public education and information programs and campaigns.

More responsibility and accountability over the collection and processing infrastructure by the municipalities will help assure that the required services are delivered with greater cost effectiveness so that costs to waste generators are minimized.

You will likely hear from cities and towns who fear this Plan will produce what they refer to as “unfunded mandates.” CRRA is sympathetic to concerns regarding unfunded mandates being forced on municipalities. However, there are ways to address these concerns and still increase the diversion rates and get the job done.

Metrics. Regarding how Connecticut moves from a 30 percent to a 49 percent diversion rate, the Plan is incomplete from a metrics standpoint. The Plan does not provide an adequate characterization of the recoverable components contained in Connecticut's 3.8 million tons per year MSW stream and its 1.0 million tons per year C&D stream. The Plan needs to identify, by percent weight of the MSW waste stream, where the additional 20% of diversion can and should come from, and establish a recommended priority. In order to identify where the biggest gains are for the dollar invested, additional research needs to be undertaken to determine - for example - whether immediate focus should be on glass, plastic, paper, compostable organics, metal, C&D components, wood waste, yard waste; and whether the focus should be on residential versus commercial sources; multi-unit urban or single family rural; improving rates of existing commodities or trying to introduce new commodities into existing programs; and single stream collection systems.

Regarding beneficial use of waste materials: The Plan should discuss the value of electricity generated from the state's resource recovery facilities. In addition to reducing the volume of MSW requiring land disposal by approximately 90%, these facilities use discarded trash as a fuel to generate electricity, replacing the precious fossil fuels that would otherwise be burned to generate the electricity that these facilities provide. In Strategy 1-1, the Plan advocates for "*beneficially using waste materials instead of other fuels to generate power.*" In fact, approximately 2.2 million tons per year of MSW is combusted at the six resource recovery facilities in the state, collectively providing a capacity of approximately 165 megawatts of electricity, or about 2% of the state's generating capacity. On an annual basis, these facilities provide the electric needs of approximately 150,000 households.

Trash is a renewable fuel resource that is indigenous to the state and is not subject to supply disruptions or price fluctuations often associated with fossil fuels such as oil and natural gas.

International market speculators cannot drive up the price of trash as so often occurs when there is a perceived production problem or political disruption in other parts of the world. Connecticut's six waste-to-energy facilities are located in different regions of the state – from Lisbon and Preston in the east, to Bridgeport in the southwest, to Bristol, Wallingford and Hartford in the central part of the state – thereby providing geographic diversity of generation, possibly helping to reduce congestion costs.

Although waste-to-energy is currently designated as Class 2 renewable energy, there is no market for this “class” of green power under Connecticut renewable energy portfolio standards. The Solid Waste Management Plan should emphasize that waste-to-energy plants beneficially use solid waste, and the Plan should strongly urge the legislature and the DPUC to consider either reclassifying the power produced at these facilities from its current designation a Class 2 renewable energy to a Class 1 renewable energy, for which a market does exist, or creating a market for Class 2 renewable energy similar to what has been created for Class 1 under Connecticut's Renewable Energy Portfolio Standards, properly recognizing waste-to-energy facilities for the “green power” that they provide.

The Proposed Amendment to the Plan is silent on this matter – it should not be.

Regarding Funding

The Executive Summary, on page ES-10, states the following:
“Without adequate funding, the goals of this plan will not be met.”

A funding mechanism needs to be structured to ensure that funds flow directly to the local and regional levels to provide support for diversion initiatives. The Plan should clearly advocate for the dedication of these funds to help municipalities with their trash and recycling needs. Unfunded mandates to achieve recycling goals will have little chance of success.

CRRA believes that it can effectively play a role to support diversion, and that it, too, should be a recipient of certain funds from the Solid Waste Fee, to support such activities as:

- Household hazardous waste collections
- Residential Electronics recycling services
- Recycling Education
- Anti-Litter Education

Education is considered one of the cornerstones of the Plan. We cannot count on the private sector to provide source reduction and recycling education. The Plan lists the outreach programs that have been implemented since 1991, and the status of these programs today. It is noteworthy that, of all the past initiatives that have been undertaken with regard to education of recycling and composting outreach programs, CRRA and SCRRA's garbage museums and education center are the only significant education outreach programs currently in play today.

The Plan should direct CRRA to undertake a feasibility study for composting commercially generated food waste, and provide funds from the Solid Waste Assessment for this study.

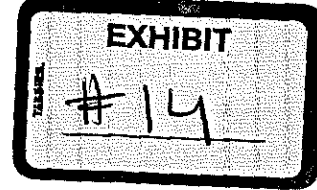
CRRA and others that process bottles and cans in Connecticut should be the recipients of funds generated from state mandated deposit legislation intended to recapture bottle deposit escheats. CRRA and others are recycling these items today (those that are not returned to redemption centers), and we should receive the associated escheat money.

Summary

In closing, CRRA looks forward to continuing its work and partnership with the DEP, the other regional solid waste authorities, municipalities, and the private sector on the recycling and solid waste management issues facing Connecticut.

I would be happy to try to answer any questions you may have.

Thank you.



**Comments on the
Proposed Amendment to the Solid Waste Management Plan**

**Submitted to the
Connecticut Department of Environmental Protection**

**By the
Connecticut Resources Recovery Authority**

**At Public Hearing
August 23, 2006**

STATE NAME & ADDRESS

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Although the Plan recognizes CRRA's role, the Plan should be revised to more explicitly and clearly describe the benefits that such a quasi-public authority provides to the state, including a crucial and necessary economic balance to private sector control of the solid waste marketplace. At a minimum, the Plan should recommend to the legislature that it analyze this issue from a public policy standpoint and take a position on this important matter. If the consensus is in favor of capacity controlled for the public interest, the legislature should then direct DEP, with legislation, to assign priority to permitting initiatives advanced by organizations that serve the public interest, such as CRRA, including:

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Diversification

The plan sets a goal of a 49% diversion rate by calendar year 2024. This goal is laudable. It is also very aggressive.

CRRA does not believe the private sector alone, unless economic incentives are extremely robust, will achieve the diversion rate goals proposed in the Plan.

In fact, the incremental cost, if you will, of moving from a 30 percent to a 49 percent diversion rate will be significantly greater than the cost of achieving the first 30 percent.

CRRA suggests that the responsibility for successfully achieving the additional 19 percent beyond today's diversion rate must be a public responsibility, and that municipalities along with CRRA and regional authorities will be integral to making this level of diversion occur in an efficient and dependable manner. This means that success depends on the availability of a recycling

collection and processing infrastructure controlled for the public interest, and accordingly, depends in a large part on the capability of regional authorities such as CRRA.

The Plan as currently drafted does not adequately recognize this critical aspect of solid waste management in Connecticut. The Plan should be revised to explicitly recognize the importance of, and necessity for, recycling collection and processing infrastructure that is maintained for the public interest.

Here are several examples of these advantages:

- By not charging a tip fee on any recyclables, including commingled containers, such as occurs in CRRA's Mid-Connecticut and Bridgeport projects, participation by residents will increase. The private sector has not done this to date.
- CRRA has ability to aggregate recyclable waste streams, control large volumes, and obtain a better market price for delivering recycling feedstock to the processing market. CRRA has demonstrated this recently at its Mid-Connecticut recycling facility. The resultant increase in recyclable revenues flows back to the participating municipalities by lowering the MSW tip fees.
- The private sector has little if any incentive to encourage recycling across the board; the private sector will "cherry pick" those materials that have value in the commodities market, such as paper and cardboard, and ignore those materials that don't have such a value, such as commingled containers. Conversely, recycling facilities maintained for the public interest will not "cherry pick" the valuable recyclables and ignore those with less or no value, but will ensure that these materials are diverted.

Looking to the future and the 49 percent goal, increased diversion will require significant funding to implement. The Plan correctly recognizes this in the Executive Summary, which states on page ES-10: “*Without adequate funding, the goals of this plan will not be met.*” However, properly planned and implemented, costs can be controlled. Increased diversion for less money requires the following:

- A broad menu of mandatory recyclables;
- Larger storage containers for residential recyclables;
- Efficient collection equipment and services, implemented either by the public or under long-term competitively procured contracts;
- Large scale Materials Recycling Facilities that are efficient and economical, implemented under long-term service contracts, not short-term contracts;
- Significant revenue sharing back to municipalities to serve as an incentive; and
- Ongoing and strong public education and information programs and campaigns.

More responsibility and accountability over the collection and processing infrastructure by the municipalities will help assure that the required services are delivered with greater cost effectiveness so that costs to waste generators are minimized.

You will likely hear from cities and towns who fear this Plan will produce what they refer to as “unfunded mandates.” CRRA is sympathetic to concerns regarding unfunded mandates being forced on municipalities. However, there are ways to address these concerns and still increase the diversion rates and get the job done.

Metrics. Regarding how Connecticut moves from a 30 percent to a 49 percent diversion rate, the Plan is incomplete from a metrics standpoint. The Plan does not provide an adequate characterization of the recoverable components contained in Connecticut's 3.8 million tons per year MSW stream and its 1.0 million tons per year C&D stream. The Plan needs to identify, by percent weight of the MSW waste stream, where the additional 20% of diversion can and should come from, and establish a recommended priority. In order to identify where the biggest gains are for the dollar invested, additional research needs to be undertaken to determine - for example - whether immediate focus should be on glass, plastic, paper, compostable organics, metal, C&D components, wood waste, yard waste; and whether the focus should be on residential versus commercial sources; multi-unit urban or single family rural; improving rates of existing commodities or trying to introduce new commodities into existing programs; and single stream collection systems.

Regarding beneficial use of waste materials: The Plan should discuss the value of electricity generated from the state's resource recovery facilities. In addition to reducing the volume of MSW requiring land disposal by approximately 90%, these facilities use discarded trash as a fuel to generate electricity, replacing the precious fossil fuels that would otherwise be burned to generate the electricity that these facilities provide. In Strategy 1-1, the Plan advocates for "*beneficially using waste materials instead of other fuels to generate power.*" In fact, approximately 2.2 million tons per year of MSW is combusted at the six resource recovery facilities in the state, collectively providing a capacity of approximately 165 megawatts of electricity, or about 2% of the state's generating capacity. On an annual basis, these facilities provide the electric needs of approximately 150,000 households.

Trash is a renewable fuel resource that is indigenous to the state and is not subject to supply disruptions or price fluctuations often associated with fossil fuels such as oil and natural gas.

International market speculators cannot drive up the price of trash as so often occurs when there is a perceived production problem or political disruption in other parts of the world. Connecticut's six waste-to-energy facilities are located in different regions of the state – from Lisbon and Preston in the east, to Bridgeport in the southwest, to Bristol, Wallingford and Hartford in the central part of the state – thereby providing geographic diversity of generation, possibly helping to reduce congestion costs.

Although waste-to-energy is currently designated as Class 2 renewable energy, there is no market for this “class” of green power under Connecticut renewable energy portfolio standards. The Solid Waste Management Plan should emphasize that waste-to-energy plants beneficially use solid waste, and the Plan should strongly urge the legislature and the DPUC to consider either reclassifying the power produced at these facilities from its current designation a Class 2 renewable energy to a Class 1 renewable energy, for which a market does exist, or, alternatively, creating a market for Class 2 renewable energy similar to what has been created for Class 1 under Connecticut's Renewable Energy Portfolio Standards. Doing so would properly recognize waste-to-energy facilities for the “green power” that they provide.

The Proposed Amendment to the Plan is silent on this matter – it should not be.

Regarding Funding

The Executive Summary, on page ES-10, states the following:
“Without adequate funding, the goals of this plan will not be met.”

A funding mechanism needs to be structured to ensure that funds flow directly to the local and regional levels to provide support for diversion initiatives. The Plan should clearly advocate for the dedication of these funds to help municipalities with their trash and recycling needs. Unfunded mandates to achieve recycling goals will have little chance of success.

CRRA believes that it can effectively play a role to support diversion, and that it, too, should be a recipient of certain funds from the Solid Waste Fee, to support such activities as:

- Household hazardous waste collections
- Residential Electronics recycling services
- Recycling Education
- Anti-Litter Education

Education is considered one of the cornerstones of the Plan. We cannot count on the private sector to provide source reduction and recycling education. The Plan lists the outreach programs that have been implemented since 1991, and the status of these programs today. It is noteworthy that, of all the past initiatives that have been undertaken with regard to education of recycling and composting outreach programs, CRRA and SCRRRA’s garbage museums and education center are the only significant education outreach programs currently in play today.

The Plan should direct CRRA to undertake a feasibility study for composting commercially generated food waste, and provide funds from the Solid Waste Assessment for this study.

CRRA and others that process bottles and cans in Connecticut should be the recipients of funds generated from state mandated deposit legislation intended to recapture bottle deposit escheats. CRRA and others are recycling these items today (those that are not returned to redemption centers), and we should receive the associated escheat money.

Summary

In closing, CRRA looks forward to continuing its work and partnership with the DEP, the other regional solid waste authorities, municipalities, and the private sector on the recycling and solid waste management issues facing Connecticut.

I would be happy to try to answer any questions you may have.

Thank you.

**Comments on the
Proposed Amendment to the Solid Waste Management Plan**

**Submitted to the
Connecticut Department of Environmental Protection**

**By the
Connecticut Resources Recovery Authority**

**At Public Hearing
August 29, 2006**

Thank you for the opportunity to speak and provide testimony tonight regarding the proposed Amendment to the Solid Waste Management Plan. My name is Peter Egan and I am the Director of Environmental Affairs & Development for the Connecticut Resources Recovery Authority (CRRA).

By way of background, CRRA is a quasi-public entity created by the state in 1973 to provide a comprehensive solid waste management system and to modernize Connecticut's solid waste and recycling activities. CRRA's mission is to work for the best interests of the municipalities of the State of Connecticut in developing and implementing environmentally sound solutions and best practices for solid waste disposal and recycling management - And to deliver these services at as low a cost as possible. CRRA serves 118 cities and towns across the state and manages approximately two million tons of municipal solid waste each year, of which we divert for recycling approximately 130,000 tons of residential commingled containers and paper through the recycling programs we work with our member municipalities.

CRRA would like to thank DEP for undertaking the initiative to revise and update the Solid Waste Management Plan, and in particular for assembling the External Stakeholder Group and including CRRA in that group.

Thank you for recognizing in the Plan CRRA's central role in the state's garbage and recycling system, a role which has included not only the development and operation of recycling facilities, transfer stations, resource recovery facilities, and landfills, all of which are operated for public benefit, but which has also included the development of the trash museum in Hartford and the garbage museum in Stratford which promote source reduction and recycling through education of Connecticut Citizens, in particular Connecticut's children.

In my comments tonight I would like to touch on four key policy areas that the Plan addresses: Solid waste capacity assurance, public versus private control of the solid waste management infrastructure in the state, diversion and beneficial use of solid wastes, and funding. These are key themes that are woven throughout the plan, and they merit highlighting.

Regarding the Capacity Assurance Issue

CRRA believes the Plan takes too neutral a stance with regard to the question of solid waste capacity assurance for waste generated in the state of Connecticut, and in particular the question of in-state versus out-of-state capacity assurance.

Although DEP recognizes throughout the Plan that in-state capacity assurance is preferable to dependence on out-of-state options, the Plan does not make the next logical step and explicitly and unequivocally endorse the pursuit of installing additional landfill capacity and resource recovery facility capacity in Connecticut.

The Plan needs to provide a more critical analysis of the cost of, and access to, out-of-state disposal capacity in future years. The Plan does not adequately lay out a “contingency plan,” that could be implemented in a timely manner, to increase in-state capacity assurance in the event that the out-of-state capacity, which the plan indicates is currently available, becomes scarce or unavailable, or economically impractical.

The Plan needs to establish a goal for developing in-state capacity for MSW and C&D waste. Otherwise, Connecticut will be shipping 600,000 to 700,000 tons of MSW out of state each year, even with the 49 percent diversion rate - more if that rate is not achieved. For C&D waste, the capacity shortfall ranges from 800,000 to 1,200,000 tons per year depending on the diversion level achieved. Under this scenario, Connecticut generators will be beholden to the laws, regulations, and legislative bodies of other states, to unpredictable fuel and transportation costs, and generally, Connecticut will find itself with less control over its solid waste destiny.

Although the narrative in the Plan does indicate that DEP will *prioritize permit applications that address the current C&D waste/oversized MSW in-state disposal capacity needs*, the associated Strategy 3-2 falls short in explicitly stating that new C&D capacity is needed and that DEP encourages and will support applications for new disposal capacity in Connecticut. Strategy 3-2 as currently drafted simply recommends continued monitoring of the matter. CRRA recommends that Strategy 3-2 be revised to explicitly state that there is a need for both in-state C&D and MSW disposal capacity.

Moreover, it is also important that the Plan explicitly recognize the shortfall of in-state waste capacity for MSW, so that in the event an applicant advances a permit application to expand a resource recovery facility, the “Determination of Need” question is answered by the Plan. CRRA is concerned that recognition of a need for additional in-state MSW is not explicit enough in the Proposed Plan, and that a debate may ensue on whether additional in-state MSW capacity is needed in the event that an application for such is advanced.

Regarding the Public Ownership Issue

The third “*Major Recommendation*” highlighted by DEP in the Executive Summary regards the issue of public versus private ownership and control of solid waste disposal capacity in Connecticut.

CRRA appreciates the discussion that this matter receives in Chapter 5, and encourages all interested parties to review this Chapter, and Appendix K.

Five of the state’s six waste to energy plants could be privately owned by 2015, and by the end of 2008 the only in-state ash residue landfill will be privately owned.

It is important that this potential shift in control is recognized. Control of the state’s waste-to-energy capacity by the private sector when the current project contracts come to an end during the next decade will impact capacity assurance for Connecticut’s solid waste generators. Private sector companies will be free to set tip fees as high as the market will allow, likely attracting waste from out-of-state. The Bridgeport facility is located only 60 miles from New York, and the Preston and Lisbon facilities are situated close to Rhode Island, and less than an hour’s drive from central Massachusetts.

There are lessons we can learn from electric deregulation. Restructuring was supposed to lead to a robust competitive marketplace in which new suppliers would come to Connecticut and keep power prices down. But that competition never materialized, power prices are now soaring, and some of the associated profits are flowing out of state. The way to prevent this from happening in the trash industry is to make sure the state has sufficient disposal capacity, owned and operated for the public benefit, dedicated to managing Connecticut's waste. Without that publicly controlled capacity, the private sector will be able to take trash from the highest bidder, whether the trash comes from New York or Massachusetts or Rhode Island. We must ensure that Connecticut disposal capacity serves Connecticut.

Although the Plan recognizes CRRA's role, the Plan should be revised to more explicitly and clearly describe the benefits that such a quasi-public authority provides to the state, including a crucial and necessary economic balance to private sector control of the solid waste marketplace. At a minimum, the Plan should clearly recommend to the legislature that it analyze this issue from a public policy standpoint and take a position on this important matter.

CRRA appreciates that the Plan highlights that the only in-state ash residue capacity after 2008 will be privately owned, and that this in-state monopoly may not serve the public interest. In a state that has made such a significant commitment to waste-to-energy, and the attendant necessity of ash disposal, continuing with only one ash landfill in the state does not serve the public interest. The potential consequence of this scenario is higher tip fees for Connecticut waste generators.

CRRA believes the Plan needs to take a clearer position with regard to the value and necessity of publicly controlled ash residue disposal capacity. CRRA is concerned that if it advances an

application for an ash residue landfill to replace the Hartford Landfill, the Plan as currently drafted does not provide adequate support for this necessary public need.

Diversion

The plan sets a goal of a 49% diversion rate by calendar year 2024. This goal is laudable. It is also very aggressive.

CRRA does not believe the private sector alone, unless economic incentives are extremely robust, will achieve the diversion rate goals proposed in the Plan.

In fact, the incremental cost, of moving from a 30 percent to a 49 percent diversion rate will be significantly greater than the cost of achieving the first 30 percent.

CRRA suggests that the responsibility for successfully achieving the additional 19 percent beyond today's diversion rate must be predominantly a public responsibility, and that municipalities along with CRRA and regional authorities will be integral to making this level of diversion occur in an efficient and dependable manner. This means that success depends on the availability of a recycling collection and processing infrastructure controlled for the public interest, and accordingly, depends in a large part on the capability of regional authorities such as CRRA.

The Plan as currently drafted does not adequately recognize this critical aspect of solid waste management in Connecticut. The Plan should be revised to explicitly recognize the importance of, and necessity for, recycling collection and processing infrastructure that is maintained for the public interest.

Here are several examples of these advantages:

- By not charging a tip fee on any recyclables, including commingled containers, such as occurs in CRRA's Mid-Connecticut and Bridgeport projects, participation by residents will increase. The private sector has not done this to date.
- CRRA has ability to aggregate recyclable waste streams, control large volumes, and obtain a better market price for delivering recycling feedstock to the processing market. CRRA has demonstrated this recently at its Mid-Connecticut recycling facility. The resultant increase in recyclable revenues flows back to the participating municipalities by lowering the MSW tip fees.
- The private sector has little if any incentive to encourage recycling across the board; the private sector will "cherry pick" those materials that have value in the commodities market, such as paper and cardboard, and ignore those materials that don't have such a value, such as commingled containers. Conversely, recycling facilities maintained for the public interest will not "cherry pick" the valuable recyclables and ignore those with less or no value, but will ensure that these materials are diverted.

More responsibility and accountability over the collection and processing infrastructure by the municipalities will help assure that the required services are delivered with greater cost effectiveness so that costs to waste generators are minimized.

You will likely hear from cities and towns who fear this Plan will produce what they refer to as "unfunded mandates." CRRA is sympathetic to concerns regarding unfunded mandates being forced on municipalities. However, there are ways to address these concerns and still increase the diversion rates and get the job done.

Regarding Recycling Metrics. The Plan is incomplete from a metrics standpoint. The Plan does not provide an adequate characterization of the recoverable components contained in Connecticut's 3.8 million tons per year MSW stream and its 1.0 million tons per year C&D stream. The Plan needs to identify, by percent weight of the MSW waste stream, where the additional 20% of diversion can and should come from, and establish a recommended priority. In order to identify where the biggest gains are for the dollar invested, additional research needs to be undertaken to determine - for example - whether immediate focus should be on glass, plastic, paper, compostable organics, metal, C&D components, wood waste, yard waste; and whether the focus should be on residential versus commercial sources; multi-unit urban or single family rural; improving rates of existing commodities or trying to introduce new commodities into existing programs; and single stream collection systems.

Regarding beneficial use of waste materials: The Plan should discuss the value of electricity generated from the state's resource recovery facilities. In addition to reducing the volume of MSW requiring land disposal by approximately 90%, these facilities use discarded trash as a fuel to generate electricity, replacing the precious fossil fuels that would otherwise be burned to generate the electricity that these facilities provide. In Strategy 1-1, the Plan advocates for "*beneficially using waste materials instead of other fuels to generate power.*" In fact, approximately 2.2 million tons per year of MSW is combusted at the six resource recovery facilities in the state, collectively providing a capacity of approximately 165 megawatts of electricity, or about 2% of the state's generating capacity. On an annual basis, these facilities provide the electric needs of approximately 150,000 households.

Trash is a renewable fuel resource that is indigenous to the state and is not subject to supply disruptions or price fluctuations often

associated with fossil fuels such as oil and natural gas. International market speculators cannot drive up the price of trash as so often occurs when there is a perceived production problem or political disruption in other parts of the world. Connecticut's six waste-to-energy facilities are located in different regions of the state – from Lisbon and Preston in the east, to Bridgeport in the southwest, to Bristol, Wallingford and Hartford in the central part of the state – thereby providing geographic diversity of generation, possibly helping to reduce congestion costs.

Although waste-to-energy is currently designated as Class 2 renewable energy, there is no market for this “class” of green power under Connecticut renewable energy portfolio standards. The Solid Waste Management Plan should emphasize that waste-to-energy plants beneficially use solid waste, and the Plan should strongly urge the legislature and the DPUC to consider either reclassifying the power produced at these facilities from its current designation a Class 2 renewable energy to a Class 1 renewable energy, for which a market does exist, or, alternatively, creating a market for Class 2 renewable energy similar to what has been created for Class 1 under Connecticut's Renewable Energy Portfolio Standards. Doing so would properly recognize waste-to-energy facilities for the “green power” that they provide.

The Proposed Amendment to the Plan is silent on this matter – it should not be.

Regarding Funding

The Executive Summary, on page ES-10, states the following:
“Without adequate funding, the goals of this plan will not be met.”

A funding mechanism needs to be structured to ensure that funds flow directly to the local and regional levels to provide support for diversion initiatives. The Plan should clearly advocate for the dedication of these funds to help municipalities with their trash and recycling needs. Unfunded mandates to achieve recycling goals will have little chance of success.

CRRA believes that it can effectively play a role to support diversion, and that it, too, should be a recipient of certain funds from the Solid Waste Fee, to support such activities as:

- Household hazardous waste collections
- Residential Electronics recycling services
- Recycling Education
- Anti-Litter Education

Education is considered one of the cornerstones of the Plan. We cannot count on the private sector to provide source reduction and recycling education. The Plan lists the outreach programs that have been implemented since 1991, and the status of these programs today. It is noteworthy that, of all the past initiatives that have been undertaken with regard to education of recycling and composting outreach programs, CRRA’s garbage museums and SCRRA’s education center are the only significant education outreach programs still in play today.

The Plan should direct CRRA to undertake a feasibility study for composting commercially generated food waste, and provide funds from the Solid Waste Assessment for this study.

CRRA and others that process bottles and cans in Connecticut should be the recipients of funds generated from state mandated deposit legislation intended to recapture bottle deposit escheats. CRRA and others are recycling these items today (those that are not returned to redemption centers), and we should receive the associated escheat money.

Summary

In closing, CRRA looks forward to continuing its work and partnership with the DEP, the other regional solid waste authorities, municipalities, and the private sector on the recycling and solid waste management issues facing Connecticut.

I would be happy to try to answer any questions you may have.

Thank you.



Exhibit 49

100 CONSTITUTION PLAZA • 6th FLOOR • HARTFORD • CONNECTICUT • 06103-1722 • TELEPHONE (860) 757-7700
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Via Hand Delivery

September 8, 2006

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SEP 08 2006

DEP-WASTE MANAGEMENT BUREAU
WASTE ENGINEERING & ENFORCEMENT

Time is 1:45 pm

TKO

Mr. Michael Harder, Hearing Officer
Bureau of Materials Management & Compliance Assurance
Connecticut Department of Environmental Protection
79 Elm Street
Hartford, Connecticut 06106

Re: Comments on the July 2006 Proposed Amendment to the State Solid Waste Management Plan

Dear Mr. Harder:

The Connecticut Resources Recovery Authority ("CRRA") appreciates the opportunity to provide comments on the Proposed Amendment to the State Solid Waste Management Plan dated July 2006 ("Plan").

CRRA appreciates the efforts the State of Connecticut Department of Environmental Protection ("DEP") has made to advance an update to the State Solid Waste Management Plan, and CRRA appreciates being included as part of the Solid Waste Management Plan External Stakeholders Group that has provided input to the Plan. CRRA feels there is much useful information in the Plan; however, we also feel there are sections of the plan that require revision, more emphasis, or more development, and our comments are primarily directed at these areas of the Plan.

Thank you for recognizing CRRA's central role in the State's garbage and recycling system, both in Chapter 1 and Chapter 5 of the Plan, a role which has included not only the development and operation of recycling facilities, transfer stations, resource recovery facilities, and landfills, all of which are operated for public benefit, but which has also included the development of the trash museum in Hartford and the garbage museum in Stratford, which promote source reduction and recycling through education of Connecticut citizens, in particular, Connecticut's children.

Although the Plan recognizes the contribution of CRRA in these two chapters, CRRA is disappointed that it and the other regional authorities are not recognized as key decision makers in the section to the Executive Summary entitled *Critical Issues for Decision*

Makers, on page E-11, and we request that our organizations be listed and recognized in this section.

There are four key policy areas that the Plan addresses: 1) solid waste capacity assurance, 2) public versus private control of the solid waste management infrastructure in the State, 3) diversion and beneficial use of solid wastes, and 4) funding. CRRA's comments are directed to these key areas.

1. Capacity Assurance

CRRA believes the Plan takes too neutral a stance with regard to the question of solid waste capacity assurance for waste generated in the State of Connecticut, and in particular, the question of in-State versus out-of-State capacity assurance. On the one hand, the Plan in several sections (e.g., page ES-8, 1-4) "*encourages such a policy of self-sufficiency...*" and states that "*CTDEP will use its authority to adhere to this policy...*" while in another section (page 4-42) the Plan states that: "*It is impossible to predict with certainty whether reasonably priced out-of-state options will remain available into the future. At the present time, despite the shortfall that exists, reliable and competitive options exist for disposal of all MSW generated in Connecticut.*"

Although DEP recognizes throughout the Plan that in-State capacity assurance is preferable to dependence on out-of-State options, the Plan does not include the next logical step and explicitly and unequivocally endorse the pursuit of installing additional landfill capacity and resource recovery facility capacity in Connecticut.

The Plan needs to provide a more critical analysis of the cost of, and access to, out-of-State disposal capacity in future years. The Plan does not adequately lay out a "contingency plan," that could be implemented in a timely manner, to increase in-State capacity assurance in the event that the out-of-State capacity, which the Plan indicates is currently available, becomes scarce or unavailable, or economically impractical.

The Plan needs to establish a goal for developing in-State capacity for MSW and C&D waste. As proposed, the Plan does not do so. Otherwise, Connecticut will be shipping 600,000 to 700,000 tons of MSW out of State each year, even with the projected 49 percent diversion rate - more if that rate is not achieved. For C&D waste, the capacity shortfall ranges from 800,000 to 1,200,000 tons per year depending on the diversion level achieved. Under this scenario, Connecticut generators will be beholden to the laws, regulations, and legislative bodies of other states, to unpredictable fuel and transportation costs, and generally, Connecticut will find itself with less control over its solid waste destiny.

Although the narrative in the Plan does indicate that DEP will “...*prioritize permit applications that address the current C&D waste/oversized MSW in-State disposal capacity needs*”, the associated Strategy 3-2 falls short in explicitly stating that new C&D capacity is needed and that DEP encourages and will support applications for new disposal capacity in Connecticut. Strategy 3-2, as currently drafted, simply recommends continued monitoring of the matter. As drafted, the strategy does not reflect the narrative in the Plan with regard to C&D waste. The Plan should explicitly state that it is appropriate that entities come forward with applications to install not only C&D landfill capacity, but also waste-to-energy capacity. **CRRA recommends that Strategy 3-2 be revised to explicitly state that there is a need for both in-State C&D and MSW disposal capacity, and that applications associated with such will be prioritized by DEP.** CRRA suggests that the Plan indicate that strong consideration should be given to adding capacity to existing resource recovery facilities versus siting greenfield facilities, provided that potential environmental justice issues are satisfactorily addressed.

Moreover, it is also important that the Plan explicitly recognize the shortfall of in-State waste capacity for MSW so that in the event an applicant advances a permit application to expand a resource recovery facility, the “Determination of Need” question, pursuant to CGS 22a-208d, is answered by the Plan. CRRA is concerned that recognition of a need for additional in-State MSW capacity is not explicit enough in the Proposed Plan, and that a debate may ensue as to whether additional in-State MSW capacity is needed in the event that an application for such is advanced.

CRRA would like to recommend that a technical correction be made to the Plan as it relates to in-State resource recovery facility capacity. Table 4-5 and Figure 4-2 use the *maximum permitted design capacity of the six resource recovery facilities in the State*. This equals a total capacity of 2,547,000 tons per year of available capacity. However, as shown on Table 4-2, the actual amount of MSW processed at the resource recovery facilities in-State is 2,200,000 tons. This represents a difference of approximately 350,000 tons, and while the information in the table and figure are correct, for sake of consistency and ease of understanding, the table and figure should be revised to reflect actual tons processed rather than processing design capacity. CRRA recommends that an additional line be added to Table 4-5 that shows actual MSW processed, and that Figure 4-2 show this same information.

2. Ownership and Control of Disposal Capacity

In the Executive Summary (page E-9), the third “*Major Recommendation*” highlighted by DEP addresses the issue of public versus private ownership and control of solid waste disposal capacity in Connecticut.

Five of the State's six waste-to-energy plants could be privately owned by 2015, and by the end of 2008, the only in-State ash residue landfill will be privately owned.

It is critically important that this potential shift in control is recognized. The Plan recognizes this, but should be revised to more strongly emphasize this matter. Control of the State's waste-to-energy capacity by the private sector when the current project contracts come to an end during the next decade will impact capacity assurance for Connecticut's solid waste generators. Private sector companies will be free to set tip fees as high as the market will allow, likely attracting waste from out of State. The Bridgeport facility is located only 60 miles from New York, and the Preston and Lisbon facilities are situated close to Rhode Island, and less than an hour's drive from central Massachusetts.

There are lessons we can learn from electric deregulation. Restructuring of the electric generation and delivery system was supposed to lead to a robust competitive marketplace in which new suppliers would come to Connecticut and keep power prices down. But that competition never materialized, power prices are now soaring, and some of the associated profits are flowing out of State. The way to prevent this from happening in the trash industry is to make sure the State has sufficient disposal capacity, owned and operated for the public benefit, dedicated to managing Connecticut's waste. Without that publicly controlled capacity, the private sector will be able to take trash from the highest bidder, whether the trash comes from New York, Massachusetts, Rhode Island, Connecticut, or elsewhere. We must ensure that Connecticut disposal capacity serves Connecticut.

Although the Plan recognizes CRRA's role, the Plan should be revised to more explicitly and clearly describe the benefits that such a quasi-public authority provides to the State, including a crucial and necessary economic balance to private sector control of the solid waste marketplace. At a minimum, the Plan should explicitly recommend to the legislature that it analyze this issue from a public policy standpoint and take a position on this important matter. CRRA requests that this recommendation be explicitly stated as a strategy, perhaps under Objective No. 3: Management of Solid Waste Requiring Disposal, or Objective No. 7, Permitting & Enforcement.

If the consensus is in favor of capacity controlled for the public interest, the legislature should then direct DEP, with legislation, to assign priority to permitting initiatives advanced by organizations that serve the public interest, such as CRRA, including permitting initiatives for:

- Bulky/C&D waste landfill controlled for public interest
- Ash-residue landfill capacity controlled for public interest
- Additional W-T-E capacity controlled for public interest
- Export capacity controlled for public interest

CRRA appreciates that the Plan highlights that the only in-State ash residue capacity after 2008 will be privately owned, and that the resultant in-State monopoly may not serve the public interest. In a state that has made such a significant commitment to waste-to-energy, and the attendant necessity of ash disposal, continuing with only one ash landfill in the State does not serve the public interest. The potential consequence of this scenario is higher tip fees for Connecticut waste generators.

CRRA recommends that the Plan take a clearer position with regard to the value and necessity of publicly controlled ash residue disposal capacity. CRRA is concerned that if it advances an application for an ash residue landfill to replace the Hartford Landfill, the Plan, as currently drafted, does not provide adequate support for this necessary public need.

3. Diversion and Beneficial Use

The Plan sets a goal of a 49% diversion rate by calendar year 2024. This goal is laudable. It is also aggressive.

CRRA does not believe the private sector alone, unless economic incentives are extremely robust, will achieve the diversion rate goals proposed in the Plan. In fact, CRRA believes the incremental cost of moving from a 30 percent to a 49 percent diversion rate will be significantly greater than the cost of achieving the first 30 percent.

CRRA suggests that the responsibility for successfully achieving the additional 19 percent beyond today's diversion rate will have to be predominantly a public responsibility, and that municipalities along with CRRA and regional authorities will be integral to making this level of diversion occur in an efficient and dependable manner. This means that success depends on the availability of a recycling collection and processing infrastructure controlled for the public interest, and accordingly, depends in a large part on the capability of regional authorities such as CRRA.

The Plan as currently drafted does not adequately recognize this critical aspect of solid waste management in Connecticut. The Plan should be revised to explicitly recognize the importance of, and necessity for, recycling collection and processing infrastructure that is maintained for the public interest.

Here are several examples of these advantages:

- Accepting at no charge recyclables, including commingled containers, such as occurs in CRRA's Mid-Connecticut and Bridgeport projects, encourages a greater participation by municipalities.

- CRRA has the ability to aggregate recyclable waste streams, control large volumes, and obtain a better market price for delivering recycling feedstock to the processing market. CRRA has demonstrated this recently at its Mid-Connecticut recycling facility. The resultant increase in guaranteed recyclables' revenues flows back to the participating municipalities by lowering the MSW tip fees.
- The private sector has little if any incentive to encourage recycling across the board; the private sector will "cherry pick" those materials that have value in the commodities market, such as paper and cardboard, and ignore those materials that don't have such a value, such as commingled containers. Conversely, recycling facilities maintained for the public interest will not "cherry pick" the valuable recyclables and ignore those with less or no value, but will ensure that these materials are diverted.

Looking to the future and the 49 percent goal, increased diversion will require significant funding to implement. The Plan correctly recognizes this in the Executive Summary, which states on page ES-10: "*Without adequate funding, the goals of this plan will not be met.*" However, properly planned and implemented, costs can be controlled. Increasing diversion while minimizing the necessary funding will require the following:

- A broad menu of mandatory recyclables;
- Larger storage containers for residential recyclables;
- Efficient collection equipment and services, implemented either by the public or under long-term competitively procured contracts;
- Large scale Materials Recycling Facilities that are efficient and economical, implemented under long-term service contracts, not short-term contracts;
- Significant revenue sharing back to municipalities to serve as an incentive; and
- Ongoing and strong public education and information programs and campaigns.

More responsibility and accountability over the collection and processing infrastructure by the municipalities will help assure that the required services are delivered with greater cost effectiveness so that costs to waste generators are minimized.

DEP will likely receive comments from cities and towns who are concerned that the Plan will produce what they refer to as "unfunded mandates." CRRA is sympathetic to concerns regarding unfunded mandates being forced on municipalities. In fact, establishment of unfunded mandates to achieve recycling goals will have little chance of success.

With regard to diversion metrics, and how Connecticut moves from a 30 percent to a 49 percent diversion rate, the Plan is incomplete. The Plan does not provide an adequate characterization of the recoverable components contained in Connecticut's 3.8 million tons per year MSW stream and its 1.0 million tons per year C&D waste stream. The Plan

needs to identify, by percent weight of the MSW waste stream, where the additional 19% of diversion can and should come from, and establish a recommended priority. In order to identify where the biggest gains are for the dollar invested, additional research needs to be undertaken to determine whether immediate focus should be on glass, plastic, paper, compostable organics, metal, C&D waste components, wood waste, or yard waste; and whether the emphasis should be on residential versus commercial sources; multi-unit urban or single family rural; improving rates of existing commodities or trying to introduce new commodities into existing programs; and/or single-stream collection systems.

Regarding beneficial use of waste materials: CRRRA strongly urges that the Plan discuss the value of electricity generated from the State's resource recovery facilities. In addition to reducing the volume of MSW requiring land disposal by approximately 90%, these facilities use discarded trash as a fuel to generate electricity, replacing the precious fossil fuels that would otherwise be burned to generate the electricity that these facilities provide. In Strategy 1-1, the Plan advocates for "*beneficially using waste materials instead of other fuels to generate power.*" In fact, approximately 2.2 million tons per year of MSW is combusted at the six resource recovery facilities in the State, collectively providing a capacity of approximately 165 megawatts of electricity, or about 2% of the State's generating capacity. On an annual basis, these facilities provide the electric needs of approximately 150,000 households.

If this waste were hauled out of State, in addition to losing the above energy benefit for in-State power generation, we would add to the demand of purchasing diesel fuel. For example, in hauling 250,000 tons of waste per year to a remote landfill in central Pennsylvania via transfer truck, it would add an annual demand of over 21,600 barrels of diesel fuel. However, this demand would be even larger when considering the yield of diesel fuel per barrel of crude oil is approximately 22%. Therefore, almost 100,000 barrels of crude oil would have to be produced or purchased for the refined diesel requirement.

Trash is a renewable fuel resource that is indigenous to the State and is not subject to supply disruptions or price fluctuations often associated with fossil fuels such as oil and natural gas. International market speculators cannot drive up the price of trash as so often occurs when there is a perceived production problem or political disruption in other parts of the world. Connecticut's six waste-to-energy facilities are located in different regions of the State – from Lisbon and Preston in the east, to Bridgeport in the southwest, to Bristol, Wallingford and Hartford in the central part of the State – thereby providing geographic diversity of generation, possibly helping to reduce congestion costs.

Although waste-to-energy is currently designated as Class 2 renewable energy under Connecticut Renewable Energy Portfolio Standards, there is no market for this class of green power. The Plan should much more clearly and strongly emphasize that waste-to-

energy plants beneficially use solid waste (they are *resource recovery* facilities), and the Plan should strongly urge the legislature and the DPUC to consider reclassifying the power produced at these facilities from its current designation as a Class 2 renewable energy to a Class 1 renewable energy, for which a market does exist, or, alternatively, creating a market for Class 2 renewable energy similar to what has been created for Class 1 under Connecticut's Renewable Energy Portfolio Standards. Doing so would properly recognize *resource recovery* facilities for the "green power" that they provide. The Plan as proposed is silent on this matter, and it should not be.

The Plan should direct CRRA to undertake a feasibility study for composting commercially generated food waste, and should direct that funds for this feasibility study be allocated from the Solid Waste Assessment for this study. As currently Proposed, the Plan appears incomplete on page 4-105 with regard to funding such an initiative.

4. Funding

The Executive Summary, on page ES-10, states the following: "*Without adequate funding, the goals of this plan will not be met.*"

A funding mechanism needs to be structured to ensure that funds flow directly to the local and regional levels to provide support for diversion initiatives. The Plan should clearly advocate for the dedication of these funds to help municipalities with their trash and recycling needs. Unfunded mandates to achieve recycling goals will have little chance of success.

CRRA believes that it can effectively play a role to support diversion, and that it, too, should be a recipient of certain funds from the Solid Waste Fee or other funding sources, to support such activities as:

- Household hazardous waste collections
- Residential electronics recycling services
- Recycling education
- Anti-Litter education

Education is considered one of the cornerstones of the Plan. The State cannot count on the private sector to provide source reduction and recycling education.

The section entitled Recycling/Composting Outreach Programs on page 4-21 and 4-22 list the outreach programs that have been implemented since 1991, and the status of these programs today. It is noteworthy that, of all the past initiatives that have been undertaken with regard to education of recycling and composting outreach programs, CRRA and

SCRRA's garbage museums and education center are the only significant education outreach programs active in the state today.

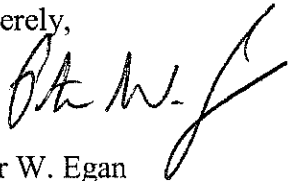
CRRA's role should be to serve as one of the conduits through which state funding is used to develop improved alternate resource recovery and recycling technologies. For example, and as stated earlier in CRRA's comments, the Plan should direct CRRA to undertake a feasibility study for composting commercially generated food waste, and provide funds from the Solid Waste Assessment or other funding source for this study. Again, the last bullet on page 4-105 of the Plan appears incomplete with regard to this matter.

CRRA and others that process bottles and cans in Connecticut should be the recipients of funds generated from state mandated deposit legislation intended to recapture bottle deposit escheats. CRRA and others are recycling these items today (those that are not returned to redemption centers), and we should receive the associated escheat money.

5. Summary

CRRA looks forward to continuing its partnership with DEP, the other regional solid waste authorities, municipalities, the private sector, and other stakeholders, in order to address the source reduction, recycling and other solid waste management challenges facing Connecticut.

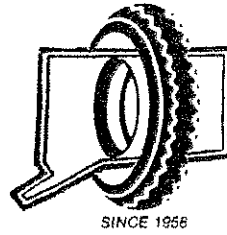
Sincerely,



Peter W. Egan
Director of Environmental Affairs & Development
Connecticut Resources Recovery Authority

C: Members of the External Stakeholders Working Committee
Tom Kirk, CRRA
File: CRRA Chrono

Connecticut Tire Dealers and Retreaders Association



8 September 2006

Ms Tess Gutowski
Department of Environmental Protection
79 Elm Street
Hartford CT 06106

Re: Licensing of Waste Tire Transporters

Dear Tess:

The Connecticut Tire Dealers and Retreaders Association would like the Department of Environmental Protection to consider licensing and registering all transporters of waste tires that do business in the State of Connecticut. This is the only way a tire dealer or retreader can be assured that their waste tires are being properly handled.

In our statement to DEP in 2005 we requested that anyone who collects from Connecticut businesses, municipalities or government agencies should be registered and regulated by the state of Connecticut. Most states require this for both in-state and out-of-state companies doing business in their states.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Lloyd R Evans Jr". The signature is written in black ink and is positioned above the printed name.

Lloyd R Evans Jr
Executive Director

COUNCIL ON ENVIRONMENTAL QUALITY



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Barbara C. Wagner

Wesley Winterbottom

Karl J. Wagener
Executive Director

TESTIMONY

DATE: August 23, 2006

TO: Department of Environmental Protection

FROM: Karl J. Wagener
Executive Director

SUBJECT: Proposed Amendment to the Solid Waste Management Plan.

The Council commends the Department of Environmental Protection (DEP) for its thorough analysis of Connecticut's solid waste dilemma, and offers the following recommendations.

The Council urges the DEP to make the plan more specific in identifying the most important actions that need to be taken, the costs of those actions, the legislation required, and a timetable. From our reading of the plan and our attendance at public information meetings, it is the Council's understanding that the Department will pursue various strategies as opportunities and resources allow. This overall approach could allow the state to drift further in the current direction, which is toward greater exporting of trash with negative environmental and economic consequences. The Council recommends that you estimate a realistic price tag for achieving the targeted diversion rate, recognizing that the money will not all be public funds. The Council also recognizes that the DEP does not control the flow of garbage; nonetheless, more forceful guidance might be necessary for anything positive to happen. If the DEP does not identify a clear path, no one will, and the same market forces will keep the state heading in the same undesirable direction.

Other specific recommendations are as follows:

- **Diversion rate:** The DEP should adopt the 61% diversion rate as the recommended overall strategy, and seek legislation to amend the relevant statutes. The Council recommends this goal because it is the diversion rate required to eliminate exports (assuming no new in-state disposal capacity). Exports have significant environmental and economic consequences (see below), and it seems unlikely that, twenty years from now, the price of petroleum and other energy supplies will favor long-distance hauling of waste. If the Department concludes that 61% diversion cannot be attained,

then the plan should be explicit as to what should be done with the excess waste (i.e., expansion of resource recovery capacity, new landfills, etc.)

- Rather than project how much MSW will be shipped out of state if the 61% diversion rate is not attained, the plan should establish the elimination of (net) exports as a firm goal. To the DEP's credit, the plan does emphasize Connecticut self-sufficiency, but it does not state how it will be achieved.
- **Environmental consequences of the status quo:** The plan should place more emphasis on the environmental consequences of the status quo. Appendix I includes some excellent information on diesel pollution, and this should be emphasized in the report.
- **Economic consequences of the status quo:** The plan should explain the economic consequences of shipping waste out of state. If Connecticut companies ship 1.6 million tons per year to other states, that will result in more than 100 million dollars being paid yearly by Connecticut residents to burn diesel fuel and put garbage in the ground. Ironically, Pennsylvania and possibly other states will capture a percentage of that for land conservation, which we desperately need here. It might cost as much or more to handle the waste in Connecticut, but any dollars spent here will have economic benefits.
- **Information on highway safety:** The plan should address safety. If there are data on hundreds of thousands of trucks hauling garbage westward on the interstates, there must be methods available to estimate safety consequences. Governor Rell has focused on the need to improve truck safety. It makes no sense to put thousands more on the road unnecessarily. Pennsylvania routinely inspects long-haul garbage hauling trucks. It should be easy to find out what the violation rate is for Connecticut-registered trucks. A quick review of the Pennsylvania DEP website shows that dozens of Connecticut-based trash-hauling trucks have had their permits revoked, though one cannot learn the reasons on the website.
- **Statistics on waste composition:** The plan should show where we can obtain the greatest reductions in the weight of our trash stream. To achieve reduction quickly, we should go after the heavier wastes. How much reduction can be achieved by diverting each specific type of waste? Example: The recommendation to expand the bottle bill to non-carbonated beverages, which is appropriate for numerous reasons, might not achieve a large-percentage reduction because of the low weight of the bottles. Could more be achieved with a dollar deposit on wine bottles? Comparisons of this sort would help everyone involved to establish immediate priorities.

- **Street sweepings:** The Council commends the DEP for including this as a waste that must be managed more effectively. However, the plan only commits the DEP to investigate options. There should be a commitment to solve this very real problem, with cost estimates and information as to how success will be measured.
- **Data Collection:** The Council commends the DEP for addressing the data collection and measurement issue, an essential component of any plan, and one with direct implications for the Council. The Council intends to report annually on the most appropriate indicators, but the data must be available. Too often, this is the part of plans that gets ignored or underfunded. The plan should commit the DEP to enhanced measurement. The DEP should estimate the resources it will need to effectively monitor the state's progress, and seek those funds.
- **Per-capita target:** The Council commends the DEP for specifying a long-term per-capita waste disposal target. The projected target for 2024 is 0.73 tons/person/year. (The 2005 rate is 0.76.) This is based in the 49% diversion rate. The Council recommends basing the target on the 61% diversion rate instead. If the job is made easy for people, they will do the job.

The Council reiterates the need to develop estimates of the cost of achieving the ultimate diversion rate, and to explain the urgent need for the recommended public expenditures. Even considering the huge problems of estimating costs, the plan could show what needs to be spent to accomplish certain goals. Surely, there are industry-wide averages of how much it costs to divert a ton of a particular type of waste. Putting a price tag on the necessary effort will make it more likely that the money can be found. The plan recommends capturing the unclaimed bottle deposits, an amount estimated to total millions of dollars annually. All efforts to capture those nickels have failed for ten years. Showing the urgent need for the funds might help to overcome resistance to their capture. Similarly, any appropriation or bonding will face severe competition at the General Assembly and the need for the funds must be described clearly. Nobody "wants" to spend scarce resources on waste management. The plan should explain why the money *must* be spent.

In summary, the plan does an excellent job describing the current situation, recent trends, and what could happen in the future. In the Council's view, it should more clearly describe the desired future with more firm steps for getting us there.

We would be happy to answer any questions you might have about these comments.



Covanta Southeastern Connecticut Company
A Covanta Energy Company
132 Military Highway
Preston, CT 06365

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Waste Management Bureau
Planning & Standards Division

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SEP 08 2006

DEP-WASTE ADMINISTRATION
WASTE ENGINEERING & ENFORCEMENT

September 8, 2006

Mr. Michael Harder
Department of Environmental Protection
4th Floor
79 Elm Street
Hartford, CT 06106

Re: Proposed Amendment to the State Solid Waste Management Plan
Comments of Covanta Energy Corporation

Dear Mr. Harder,

On behalf of Covanta Energy Corporation ("Covanta"), we offer the following comments on the proposed amendments to the State Solid Waste Management Plan (the "Plan"). Covanta is the owner and/or operator of four of Connecticut's six resource recovery facilities. Covanta also owns and operates 27 other resource recovery facilities in 14 other states. Covanta appreciates the time and attention to detail in the Plan, and is fully supportive of overall goals of adherence to the solid waste hierarchy and increased waste reduction and diversion. We offer the following comments pertaining to our areas of expertise.

Wallingford Resource Recovery Facility: The Plan's quantitative projections of the State's future municipal solid waste (MSW) disposal capacity assume that the Wallingford RRF will close after 2009, when the facility's energy contract and Covanta's operating agreement with CRRA expires. Some collateral comments and table footnotes, such as the one in Table 4-1, do note that "no decision has been made regarding the Wallingford RRF and it may remain open beyond FY 2009". Covanta Energy Corporation is actively discussing ownership of the Wallingford RRF post 2010 with our client, CRRA in accordance with the terms of the existing Service Agreement. As a result, Covanta believes that it is premature for the Plan to make decisions based on the Wallingford plant closing. For the avoidance of doubt, should CRRA not elect to purchase the facility at the end of the term, Covanta is currently prepared to continue to operate the facility at its current high standard on a merchant basis as was envisioned in the Service Agreement. This will maintain about 143,000 tons per year of MSW disposal capacity within the state. We recommend that the disposal capacity projections throughout the Plan be modified accordingly.

Public vs. Private Ownership: Section 2.4, Section 5.3 and Appendix K all speak to the possible future transfer of state RRF capacity to private companies. As a private owner and operator of resource recovery facilities nationwide, Covanta has a strong interest in this issue and experience that is unique to most of the Stakeholders identified



in Section 5.2 of the Plan. Covanta operates many facilities nationwide under service agreements similar to those in Connecticut. Covanta also owns and operates several “merchant” facilities or facilities where a portion of the capacity is merchant, and is therefore in the unique position of negotiating tipping fees on a contract by contract basis. We believe that Covanta and other private waste management companies in Connecticut have proven their commitment to customer service and the needs of Connecticut, and we are disappointed that the Plan implies that the eventual resolution of contracts as planned is an issue that must be resolved for the good of Connecticut. Although it is stated in the Executive Summary that “...this Plan does not advocate for or against private ownership...”, subsequent material in the Plan is not so noncommittal. Appendix K, in particular, contains speculative commentary from public entities that would have been more appropriate as comments on the Plan, not implicitly endorsed “facts” that are included in a reference Appendix.

In Appendix K, the BRRFOC and CRRA both comment that private owners of RRFs *could replace Connecticut MSW with out-of-state and/or merchant MSW*. That is theoretically true, but unlikely. Relatively long-term contracts with communities, based on market rates, are most desirable and will most likely remain the norm under private ownership. The facilities will continue to prefer a consistent and reliable supply of MSW, as the plan correctly points out on page G-27. Even if some facilities do change some of the sources of their waste, the market for MSW disposal capacity is robust and competitive in the Northeastern U.S. Disposal prices will always be competitive with other options available to Connecticut municipalities.

The Plan’s own economic analysis in Appendix G supports the fact that public or private ownership will make little difference in terms of disposal price. Page G-28 notes that the majority of in-state total system costs are about \$65 - \$75 per ton. After analyzing and accounting for out-of-state options, the Plan notes that the current market-based price for most of Connecticut is about \$65 - \$70 per ton. Even under public ownership, tipping fees for Connecticut municipalities are consistent with the current market rate. There is no reason to expect this to change under private ownership, since privately-held RRFs would not be able to increase tipping fees beyond the market rates. The competitiveness of private Connecticut RRFs for out-of-state MSW would also be negatively impacted by transportation costs for the out-of-state material. Furthermore, the Plan notes (correctly) that with payment of the financing bonds, Connecticut’s RRFs will be able to operate more cost effectively than today.

Overall, Covanta strongly recommends that further independent study be undertaken if the Plan recommends that the legislature or State agencies evaluate the benefits of public vs. private ownership of the State’s RRF infrastructure. The analysis should focus on the dynamics of the regional waste market and estimate what the true impacts of a competitive market on tipping fees would be.

In-State Capacity

Covanta believes that the Plan should commit to promote increased self-sufficiency and advocate for the construction of new in-state MSW disposal capacity, either privately owned or publicly owned. At a minimum, capacity for the projected minimum shortfall of 476,000 tons per year in 2024 (the 619,000 tons per year shortfall if 49% diversion is achieved, corrected for the fact that the Wallingford RRF will remain open) should be specifically supported. Such a strategy would accommodate the ambitious diversion goals of the Plan while acknowledging the need for increased disposal.

The list of advantages and disadvantages on page G-31 of the Plan makes a compelling case for increased in-state RRF capacity. The Plan identifies 11 advantages and 4 disadvantages. A key advantage is that it would help to “manage political, regulatory and economic risk”. As the Plan notes on page G-29, costs for out-of-state options are likely to increase beyond inflation for a variety of reasons, including *surcharges and regulations imposed by other state governments*. Connecticut should plan to maintain disposal options for state municipalities. The disadvantages listed are not insurmountable. It is true that new “greenfield” RRFs would be difficult to site, but expansions of existing facilities would likely be less difficult. Covanta is currently constructing expansions to its facilities in Florida. It is also not clear that new RRF capacity would be less cost effective in the short term, since long-term disposal contracts at market rates would probably be established to secure financing. Covanta also disagrees with the “disadvantage” of “more potential for negative impact with regard to emissions to the environment”. As the Plan describes in Appendix I and summarizes on page I-21, “disposal at in state RRFs poses less potential risk of negative environmental impacts than landfills located either in or outside of the State”. Finally, the listed disadvantage that increased RRF capacity would make disposal less flexible can be addressed by the amount of capacity sited. The Plan predicts a minimum capacity shortfall of 476,000 tons per year even when the main goals of diversion are achieved. By planning to this conservative estimate, excess capacity will not be built.

Appendix I: Environmental Impact

Appendix I accurately identifies RRFs as the environmentally preferable disposal solution for nonrecyclable MSW. Covanta offers the following minor comments on this section:

1. Page I-3: The Federal MACT regulations promulgated in December 1995 for large units were revised and updated in a final rule dated May 10, 2006. It is Covanta’s understanding that the Connecticut DEP is currently revising the implementing State regulations.
2. Page I-5, first full paragraph: All of the State’s RRFs combine the bottom and fly ash, not just some.

Solid Waste Advisory Committee

Covanta supports the establishment of a standing Solid Waste Advisory Committee of affected stakeholders, as described in Strategy 6-3 on page 4-94 of the Plan. Although the composition of this group is not yet determined, it is assumed that it will be similar to that of the External Stakeholders group that worked on the Plan. We request that Covanta be included in the future Advisory Committee, even though we were not included in the External Stakeholders group. As a premier owner / operator of waste-to-energy facilities in the U.S, with a large concentration of our facilities in the Northeast, we would bring a unique and helpful expertise of RRF technology and regional waste markets to the group.

Regulatory Issues

Page ES-9 and parts of Chapter 4 refer to a goal of streamlining permitting for beneficial use facilities such as recycling and composting facilities. Covanta supports this initiative. We also believe that RRFs are “beneficial use” facilities in that they convert nonrecyclable waste into electricity. The plan should also make note that permit application administration should be streamlined and expedited for changes that could make a RRF more efficient.

Covanta also requests that the Plan call for a clear definition of “waste processed” as used in the Plan in such places as Page 4-104 in reference to the \$1.50/ton waste assessment. This definition should be consistently applied across all state government agencies. In particular, Covanta has found that the Department of Revenue Services considers “waste processed” as waste weighed at a RRF scalehouse. This definition becomes problematic if waste is not combusted, but is instead subsequently transferred from the RRF to another location, where it is weighed again. It will become even more problematic if the \$1.50/ton assessment is applied to Connecticut transfer stations that transfer waste to out-of-state or in-state disposal locations. The definition of “waste processed” should not apply to waste that is transferred from the RRF. If the \$1.50 / ton assessment is expanded to other types of disposal or transfer facilities, or if it is applied to waste transferred out-of-state, the term should apply to the last Connecticut facility to handle the waste. For example, if a transfer station sends the waste to an out-of-state landfill, the fee applies to the transfer station, but if it sends the waste to a Connecticut RRF, the fee applies to the RRF.

Thank you again for this opportunity to comment. Covanta is proud to be a major part of the waste management system of Connecticut, and we look forward to continued service. If you have any questions regarding our comments, please contact me at 860-889-4900 x136.

Sincerely,



Derek Grasso

Regional Environmental Manager

cc: S. Diaz
C. Thibeault
F. Blaylock
G. Thein
T. Hoefler
J. Farren
C. Scott

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AUG 30 2006

August 22, 2006

Mr. Michael Harder
Office of Planning and Program Development
Department of Environmental Protection
79 Elm St.
Fourth Floor
Hartford, CT 06106

Waste Management Bureau
Planning & Standards Division

Dear Mr. Harder:

This is to convey my strong support for expanding Connecticut's Bottle Bill, under the DEP's amendment to the Solid Waste Management Plan. I'm in favor of updating the Bottle Bill in three ways, listed below in order of priority.

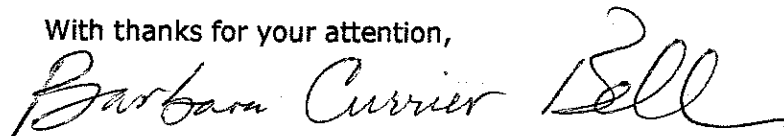
- a. include plastic water bottles, first of all, and, if possible, other plastic beverage bottles not currently included (e.g. "Gatorade", "Snapple", etc.);
- b. use unclaimed deposits to support recycling programs;
- c. increase the deposit to 10 cents.

My support is on environmental grounds. So as not to repeat arguments you've already heard, however, I'll take a different tack.

My daughter lives in Maine, and I visit her for several days about once every other month. Maine, as you know, has a bottle bill that covers plastic bottles for water and other beverages. I'm always struck by how clean the streets in Maine are compared to the streets in Connecticut. Someone might say that's because Maine is less densely populated than Connecticut, but coastal Maine is just as populated in the summer as Connecticut, and still the streets are cleaner. People in Maine are convinced their Bottle Bill deters litter, and I agree. Furthermore, Maine has entrepreneurs who, far from trying to impede any expansion of the Bottle Bill, are using it to provide jobs and profit. In many Maine towns, "redemption centers" can be seen prominently along the main highways. Some are Mom-and-Pop operations, efficient and clean, paying people for their recyclables and augmenting a small owner's income. An example is "Hillside Redemption" in Damariscotta. Others are run by non-profit groups to benefit otherwise jobless people. People donate their recyclables and can receive a donation receipt. An example is the redemption center in Camden, which is among the town's social outreach programs, and is staffed primarily by retarded people. In between these two extremes, I'm sure, are many business models. All of them demonstrate that a good Bottle Bill can contribute significantly to a state's economy.

Every year I'm surprised all over again when Connecticut legislators turn down the good arguments for an expanded Bottle Bill in favor of what seem to be very shaky arguments from lobbyists for grocery stores and beverage companies. Are labor unions also anti-Bottle-Bill? I'm delighted that a different avenue toward progress has now opened up in the form of the DEP's amendment to the Solid Waste Management Plan. Please "go for it." Help others understand that an expanded Bottle Bill would be good for Connecticut, both environmentally and economically. If skeptics need visible evidence, they can take a field trip Down East.

With thanks for your attention,



Barbara Currier Bell

Exhibit 44

BOARD:

Sally Davies, *Chairman*
Mary G. Hull, *Treasurer*
Leslie Yager, *Secretary*
Hermine Aborn
Georgia P. Ashforth
Marianne Badger
Joanne Clark
Philip Conelias
Nicole Crosby
Todd Kennedy
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Environmental Committee



**GREENWICH RECYCLING
ADVISORY BOARD**
Greenwich Town Hall
101 Field Point Road
Greenwich, CT 06830
(203) 869-6910

Barbara Norrgard
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Denise Savageau

September 6, 2006

Mr. Michael Harder
Connecticut Department of Environmental Protection
79 Elm Street - 4th floor
Hartford, CT 06106

RECEIVED
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Waste Management Bureau
Planning & Standards Division

Dear Mr. Harder,

Proposed Amendment to the State Solid Waste Management Plan- July 2006

I am writing on behalf of the Greenwich Recycling Advisory Board (GRAB), a volunteer group, which works in partnership with the Department of Public Works (DPW), to educate the community about recycling and to encourage and implement recycling initiatives.

GRAB is extremely encouraged by the DEP's comprehensive proposals to make serious changes in the management of the state's solid waste. GRAB believes the Statutory Changes as outlined in the Plan's Executive Summary are excellent recommendations. While all aspects of waste management are of interest to GRAB, we are mainly concerned with diverting waste, source reduction and expansion of recycling programs. In particular, we would earnestly support:

Establishing an e-waste recycling program. With technology evolving so rapidly, electronic waste is becoming a huge problem. Greenwich has run successful pilot programs, most recently collecting 10 tons in three weeks, and a permanent program is a goal we strongly advocate. The town facility receives daily enquiries about e-waste and the advent of HDTV will dramatically increase the number of televisions that are discarded.

/.....

Expanding the Bottle Bill. For 26 years the Bottle Bill has proved extremely effective in the reduction of litter and recovery of recyclable material. Connecticut residents now consume more than 220 million bottles of water a year and it is time for the bill to reflect this change in market conditions. We have repeatedly supported proposed legislation to include water bottles in the redemption program and have encouraged the community to advocate for this change.

Mandating the recycling of plastics #1 and #2 and magazines. Our town has been recycling plastics #1 and #2 since the inception of curbside pick-up. For communities not currently recycling these items, mandatory recycling will significantly reduce waste. Greenwich was the first town in Connecticut to mandate the collection of residential mixed paper, including magazines and junk mail. Not only does this successful program divert material from the waste stream, it also provides revenue for the town.

Establishing tax incentives to businesses. The commercial sector produces vast amounts of waste and is an area we constantly monitor and hope to improve. Any incentive to encourage businesses to adopt programs which will help the state achieve its waste diversion goals would seem to merit serious consideration.

GRAB agrees that recycling efforts need reinvigoration and works to create programs to stimulate awareness. With that in mind, we developed a series of light-hearted, eye-catching public service ads which, thanks to sponsors, continue to be printed in *The Greenwich Time*. We also received outstanding community support for our month-long sneaker collection as we diverted 2,600 lbs. of sneakers from the waste stream.

On behalf of GRAB, I applaud the DEP for its forward thinking on future management of the state's waste. The Plan is full of challenges, not the least of which is where legislative action is required. GRAB will continue to advocate for the above issues and, until such time as any or all of the Plan's amendments can be enacted, we shall strive to implement new recycling programs and encourage citizens to make a greater commitment to the environment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sally Davies".

Sally Davies
Chairman



HOUSATONIC
RESOURCES
RECOVERY
AUTHORITY
www.hrra.org

OKI Town Hall
162 Whisconier Road
Brookfield, CT 06804

☎ 203.775.6256 x324
☎ 203.740.9167
✉ info@hrra.org

RECEIVED

September 6, 2006

SEP 12 2006

Waste Management Bureau
Planning & Standards Division

Mr. Michael Harder
Department of Environmental Protection
4th Floor
79 Elm Street
Hartford, CT 06106

Re: Comments on Proposed Amendment to the State
Solid Waste Management Plan

Dear Mr. Harder:

We have reviewed the proposed amendment to the State Solid Waste Management Plan (SWMP) and attended one of the public informational meetings held by DEP on the plan. Congratulations on the completion of the plan and kudos for all the hard work that went into it and the collaborative process DEP has followed to reach this point.

In summary HRRA's comments on the draft plan earlier this year expressed:

- Strong support for the proposed education and outreach strategies
- Hope that the plan would recognize the diversity of existing practices in the state
- Support for out of state disposal options that are environmentally appropriate and cost effective
- Opposition to the expansion of the bottle bill
- Opposition to new mandates, especially those unfunded, for municipalities and regional authorities
- Support for more household hazardous waste disposal options
- Opposition to state hauler licensing
- Hope that municipal reporting requirements could be made less cumbersome

In the final proposed amendment, HRRA is pleased to see:

- Strong focus on recycling education and outreach strategies.
- Recognition of the diversity of existing practices in the state and the varying capacities of regional authorities to take on more responsibilities.
- Detailed analysis of the cost of out-of-state disposal options and the plan's recognition that those out-of-state options cannot be abandoned in the near future because of the lack of in-state alternatives.
- Recognition that unfunded mandates already burden municipalities and regional governmental agencies and proposed incentives for municipal participation, goals rather than mandates, financial and technical support for municipalities and regional

authorities to meet the recommended goals, and a vision of making municipalities partners in the solid waste reduction plan.

- Reduction in duplicative municipal reporting of data already required from another entity.

Funding Should Be Top Priority

What is clear is that the lack of funding and personnel at the state level in DEP as well as in municipalities and regional authorities has limited our ability to do the things we already know should be done to increase recycling rates, promote composting, and reduce the volume of solid waste produced in the state. HRRRA strongly supports efforts to create a consistent, sustainable, adequate funding stream for waste reduction and recycling efforts and the sharing of that funding stream across all levels of government. We understand and agree that if such funding and assistance materialize, municipalities and regional authorities should be expected to take on additional responsibilities for plan implementation and enforcement.

Comments by Strategy

1-4 –Easily understandable and readily available environmental purchasing program guidelines and product sources are needed for municipalities, businesses and institutions to use.

2-1- HRRRA continues to oppose including water bottles in the state deposit redemption law. Our opposition is based on the belief that it is more energy-efficient to capture water bottles in recycling programs than through deposit redemption, that recycling rather than redemption is easier for consumers and costs less for grocery stores and other redemption businesses, and finally that redemption businesses already get paid for their efforts and should not be entitled to keep the millions in escheats from consumers who do not return bottles. We also have a financial concern for the dollars that would be lost from our budget if water bottles are removed from our current recycling stream, dollars that now go to recycling education and household hazardous waste collection. If the escheats problem can finally be equitably resolved and adequate funding provided from other sources for recycling education and household hazardous waste, our opposition to this strategy would be lessened.

2-2 – HRRRA does not support adding any additional materials to the mandatory recycling list, including #1 and #2 plastics and magazines, even though these materials are already being recycled in the HRRRA region. Allowing municipalities and recycling regions to add materials to the recycling stream voluntarily has already shown results in CT and those results could be increased with funding incentives as proposed in other parts of the plan.

2-4 - HRRRA is pleased that the SWMP does not mandate adoption of PAYT systems by municipalities. Alternatively, we believe that the biggest strides in waste reduction will occur when costs are tied to the production of waste. A working group of haulers, both public and private, should be enlisted, and technical assistance provided, to help develop workable and cost-effective methods for haulers and municipalities to adopt PAYT.

2-5 – HRRRA strongly supports implementation assistance and development of educational materials for small businesses, property management companies, condo association boards, institutions and the like. These groups pose the greatest opportunity for increased recycling in our region.

2-7 – HRRRA would appreciate DEP assistance in working with haulers to increase recyclables delivered. Since state licensing of haulers is now under discussion, perhaps there should be lower licensing fees for haulers meeting certain recycling benchmarks.

2-11 – HRRRA welcomes a strategy to build local and regional capacity for implementing state recycling polices and programs and to provide innovation grants for local and regional agencies.

2-18 – We still get calls from homeowners looking for the free composting bins that were once available through DEP and would like to be able to again make such bins available to our residents. The composting and grasscycling videos on the DEP website should be available as podcasts for download.

Table 4-5 – We question why the 11 HRRRA communities are not counted in the number of municipalities contracted to a CT RRF since our contract with Wheelabrator (WES) requires that MSW from this region first be disposed of at either the Bridgeport or Lisbon facilities if space is available.

Objective 3 – HRRRA’s existing contract with WES allows for out of state MSW disposal if space is not available at in-state RRFs. Obviously the Authority would not want to see any barriers to out of state disposal that would conflict with our existing contractual obligations.

4-2 – We support the effort to clear up the conflicting definitions of C&D, bulky waste and oversized MSW so that everyone uses the same definition. Definitional issues pose a problem at transfer stations when the tipping fee for bulky waste and oversized MSW are different and when municipalities seek bids on disposal of these items.

4-8 – We have not experienced the same problems with options for recycling e-waste as other parts of the state. WeRecycle! offers an efficient and cost-effective program for municipalities who want to take advantage of it. Costs to consumers as well as to municipalities are minimal. Our experience has been that consumers are grateful to have a year-round, in-town disposal option, similar to waste oil, and have not balked at paying the minimal costs.

4-9 – Contrary to other parts of the state, the HRRRA region continues to struggle with household hazardous waste collection, finding it much more difficult and expensive to do locally than electronics. Even 2-3 events per community per year are not enough to meet the need. We support the development of consistent, close by, disposal options for household hazardous waste for all residents of the state. Paying minimal costs would incorporate a PAYT mentality for HHW, but the service can’t be priced to cover the entire cost and still be attractive to consumers.

4-10 – There is a need for a program to safely dispose of in-home needles and sharps in this region. A requirement for physicians' offices, clinics and hospitals to be required to accept used needles and sharps from their patients would be helpful.

5-1 and 5-2 and 5-3 – While we strongly support all these recycling education and outreach strategies, the time frame seems backwards. Implementing 5-1 and 5-2 prior to completing the research contemplated in 5-3 to determine what works to increase recycling could waste time and money. The assumption seems to be that if people know they are supposed to recycle and how to do it, they will recycle. We are not sure that analysis is correct. To change long standing behaviors and habits we need socially based research and pilot programs to determine what will produce the greatest change for the least money and effort. That should happen before the strategies outlined in 5-1 and 5-2.

6-1 – HRRRA particularly likes and supports the change from measuring recycling rates (which is always problematic) to setting per capita MSW minimization goals. The fact that HRRRA and state funding are tied in part to MSW tonnage, must be taken into account when developing a long-term, consistent funding stream along with MSW minimization goals.

6-2 – We support the elimination of duplicative reporting by both municipalities and solid waste facilities since the municipalities in our region get their numbers from those same solid waste facilities that have already reported to DEP. The data from any reporting required of haulers and/or solid waste facilities in the state should be made available on the DEP website for use by municipalities and regions if the requirement to report to municipalities is eliminated.

7-7 – HRRRA opposes the licensing of solid waste haulers under a model similar to the Westchester County licensing program because we believe it will raise prices for consumers, put some small haulers out of business, and thus decrease competition. Nonetheless, it appears that some form of licensing will be taken up by the legislature in the next session. If licensing is approved, we believe that DEP should be the licensing agency for the state and that the cost of licensing to haulers should be kept to an absolute minimum.

7-15 – There must be real incentives for municipalities and haulers to commence enforcing recycling in any substantive way. The lack of an ongoing recycling message to the public and the current lack of enforcement create fairness and equal protection issues for any municipality who steps up to the plate if others do not follow suit. For haulers, the competitive nature of the business makes enforcement against their best interests.

8-1 – We support the objective of increasing stable funding for state, regional and local governments for recycling with a significant portion of the funding going to regional and local agencies, including a portion of the escheats. Rather than being the last objective of the plan, funding should be the first objective.

All Hazard Preparedness

We find no mention in the SWMP of a statewide strategy for dealing with continuity of operation issues from natural or man-made disasters or the breakdown of significant

infrastructure in the solid waste system. HRRRA is working with member municipalities to insure that waste disposal is included in the all hazard planning now underway in communities throughout the state. What is the plan if a flu pandemic forces so many RRF, transfer station and other solid waste facility employees to stay away from work for several weeks that the facilities can no longer operate? What is the plan if one or more of the RRFs is blown up or has to go offline for a long period of time? Shouldn't there be some type of plan for sharing resources throughout the state during emergencies?

Public Ownership of Solid Waste Facilities

While HRRRA does not share the immediacy of the problem of other resources recovery authorities in the state who face a change in RRF ownership that could result in significantly higher disposal costs for the many municipalities they represent, we do support the cause. We believe there is a danger for the SWMP's ultimate implementation if a significant portion of the state's solid waste infrastructure is owned by one or two companies whose primary allegiance must be to their stockholders. There is an important place in Connecticut's solid waste management system for both public and private entities, but there is a danger for consumers and for the environment if the pendulum swings too far in either direction. We urge DEP to take on this issue sooner rather later and work with the stakeholders' group to reach a consensus on where the right balance is for Connecticut's residents.

Thank you for the opportunity to comment on the amendment to the SWMP. We look forward to the opportunity to be involved in the future in the stakeholder working group and in doing our part to implement the plan.

Sincerely,



Cheryl D. Reedy, Director

cc: HRRRA Members and Alternates
J. Bilmes, BRRFOC
T. Kirk, CRRA
C. J. May, CRC
V. Langone, WES
P. DiNardo, RTI
D. Dunleavy, RTI

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Waste Management Bureau
Planning & Standards Division



Hewlett-Packard Compan
8000 Foothills Blvd.
Mail Stop RN
Roseville, CA 95677
www.hp.com

Heather S. Bowman
Business Policy Manager
Americas Product Take Back
Hewlett Packard
916.785.2672 Tel
916.785.7192 Fax
heather.bowman@hp.com

September 8, 2006

Mr. Michael Harder
Hearing Officer
Connecticut Department of Environmental Protection
Bureau of Waste Management
4th Floor
79 Elm Street
Hartford, CT 05106

VIA: Facsimile and Overnight Delivery

Subject: Comments of Hewlett-Packard Company on Proposed Amendment to the State Solid Waste Management Plan (July 2006): Strategies for Electronic Wastes -- Strategy 4-8

Dear Mr. Harder

I am writing to provide you with the comments of Hewlett-Packard Company ("HP") on the State of Connecticut's Proposed Amendment to the State Solid Waste Management Plan (July 2006) ("Proposed Amendment"): Strategies for Electronic Wastes - Strategy 4-8 ("Proposed Electronic Waste Recycling Strategy"). HP appreciates the opportunity to provide comments on the Proposed Electronic Wastes Recycling Strategy.

HP's comments:

- Provide background information on HP's electronic device recycling experience and on HP's producer responsibility approach to the recycling of electronic devices; and
- Present HP's comments on the state's Proposed Electronic Waste Recycling Strategy: Strategy 4-8 (at 4-77 to 4-78).



A. HP Background Information

HP is a global technology solutions provider to consumers, businesses and institutions. HP's offerings span IT infrastructure, personal computing and access devices, global services and imaging and printing. In addition, HP is a leader in the recycling of electronic devices in the United States and globally. Before presenting HP's comments on Connecticut's Proposed Electronic Waste Recycling Strategy, we thought it would be helpful to provide background information on HP's extensive experience in electronic device recycling and on HP's producer responsibility approach for recycling electronic devices efficiently and effectively.

1. HP Involvement in Electronics Recycling

By way of background, HP has been involved in the operation of electronic device recycling facilities in the United States for the past 16 years. Noranda Recycling, HP's strategic partner, currently operates two state-of-the-art recycling facilities in the U.S., processing approximately 3.5 million pounds of electronic material per month. HP also offers our innovative "Planet Partners" program. This voluntary recycling program offers the public a convenient, environmentally sound hardware recycling solution for computer products. We accept both HP and other manufacturers' hardware products.

HP is actively engaged in shaping public policy on computer recycling throughout the U.S. and around the world. We have consistently encouraged a producer responsibility approach that involves consumers, governments, retailers and manufacturers in the electronic device recycling process. Based on our experience with electronics recycling programs around the world, we believe that a producer responsibility approach will result in a more effective, fair, and low cost solution for recycling electronic devices.

2. HP's Producer Responsibility Approach

Manufacturers can and should play a key role in the recycling of electronic devices. Specifically, manufacturers should be responsible for recycling their equivalent share of the electronic device waste stream. A manufacturer's equivalent share is based on that manufacturer's return share of consumer electronic devices returned by households for recycling. Electronic device recycling legislation should establish the responsibility of each manufacturer for its equivalent share of the electronic device waste stream and then provide manufacturers with flexibility to meet this responsibility cost effectively and efficiently. This can be accomplished by requiring each manufacturer: 1) to establish a take back program for the manufacturer's equivalent share, or 2) to pay the state an amount, determined by the state, for the costs of collecting, consolidating, and recycling the manufacturer's equivalent share.

This approach provides an incentive to each manufacturer to recycle its share of the electronic device waste stream, but provides assurance that the cost of recycling a manufacturer's share will be paid by the manufacturer if it does not recycle its equivalent share. Importantly, this option would not exclude collection options that a municipality might wish to implement, such as established collection days for local residents. Nor would it exclude other collection/recycling options



such as retailers offering collection as a one-time or regular event or manufacturer recycling services made available to households (i.e., individual consumers and home businesses), such as HP's Planet Partners return and recycling service (www.hp.com/recycle) and similar manufacturer promotions. HP's proposal provides the flexibility for all of these options – and more – to be implemented.

B. HP's Comments on Proposed Strategy 4-8 -- Seeking Legislation to Address the Recycling of Electronic Waste

1. HP Supports Basing Electronic Waste Recycling Legislation on a Producer Responsibility Model

HP is pleased that the Department of Environmental Protection ("DEP") supports a producer responsibility approach to the recycling of electronic waste. As emphasized above, HP supports a producer responsibility approach. In DEP's brief description of its electronic waste recycling strategy, DEP highlights a key element of its proposal: manufacturers should be able to participate in the electronic waste recycling program by "directly collecting and recycling" electronic waste or by paying a fee to the state for the manufacturer's share. HP supports this approach, although, as underscored below, HP disagrees with the basis upon which DEP determines the manufacturer's "share" or fee.

2. Manufacturer Responsibility Should be Allocated on the Basis of Return Share, Not Market Share

HP disagrees with DEP's basis for determining the amount of electronic waste that a manufacturer is obligated to collect and recycle and the amount of the fee that the manufacturer pays the state for the manufacturer's collection and recycling obligation. The Proposed Electronic Waste Recycling Strategy states that "[m]anufacturers should support such a system proportionate to *their market share of electronic products sold* in Connecticut or by directly collecting and recycling and [sic] equivalent amount." Proposed Amendment at 4-77 (emphasis added). For the reasons discussed below, electronic waste recycling legislation should be based on assigning a manufacturer's collection and recycling responsibility in accordance with its return share of covered electronic products, not its market share.

a. A Recycling Program is Properly Based on Returned Electronic Products, Not Electronic Product Sales

The electronic products that are recycled each year are the products that are *returned for recycling*, not the products that are *sold* to consumers. Thus, the electronic products that are relevant to determining manufacturer recycling responsibilities are the returned products. The weight of electronic products sold by a manufacturer in a given year bears no relationship to the weight of that manufacturer's products discarded by consumers and returned for recycling. For instance, an existing, viable manufacturer that no longer makes computer monitors would have no current sales, but many thousands of that manufacturer's previously produced monitors could be returned for recycling. Why should that manufacturer have no financial responsibility for recycling its returned monitors? Why should other manufacturers have to pay to recycle that manufacturer's returned monitors?



A manufacturer should be responsible for its share of electronic products that are returned for recycling.

b. A Market Share System is Unfair to New Market Entrants

If a newly formed company begins to manufacture and sell computer monitors in the state, its monitors likely will not be discarded for years. Why should this new company in its first year of operation have to pay for the recycling of electronic products produced many years ago by other manufacturers that are still in business? The appropriate time for that new manufacturer to pay for recycling is when its electronic products are returned for recycling. To ensure that a state knows which manufacturers are selling electronic products in the state (at least some of which products are likely to be returned for recycling in the state) and that manufacturer involvement in a state electronic product recycling system is comprehensive, new market entrants should be required to register with the state and pay a registration fee.

c. A Market Share System Depends on Data that Most Manufacturers Do Not Have and Have No Feasible Way to Obtain

The market share approach depends on the total number of each manufacturer's sales of covered electronic products *in the state*. Electronic products are sold to consumers through many different means - by individual brick and mortar retailers that receive electronic products from third-party distributors; by "big box" retailers that receive electronic products from internal distributors; by internet and catalogue sellers located out-of-state and in-state; by direct sales by manufacturers; and by other means. These means of distribution and sales are varied and complex. Most manufacturers do not receive information from distributors or retailers about the amount of sales of their products by state. Moreover, because multiple parties may be in the distribution chain between a manufacturer and the ultimate retailer, many manufacturers have no feasible way of obtaining the required data on their in-state sales of covered electronic products.

The experience of Washington State is particularly instructive. In 2006 Washington State enacted the "Electronic Product Recycling Act" (SB 6428, Chapter 183, Laws of 2006). (The codified version of this act at Rev. Code Wash. Chapter 70.95N is attached as Exhibit A.) The Washington State Department of Ecology ("Ecology Department") is now in the process of implementing this law. The law requires use of market shares to allocate responsibility for registration fees, but requires use of return shares for the much more important allocation of producer responsibility for collection, transportation and recycling of covered electronic products.

The Ecology Department has encountered significant problems with implementing the market share approach to determine market shares for registration fees. The Department sent out a survey questionnaire that requested each manufacturer to provide information about the amount of its sales of covered electronic products in the state. The Ecology Department learned that manufacturers do not know this information. As the Electronics Industry Alliance ("EIA") underscored in a May 24, 2006, letter to the Department:



We thought you would be interested in a bill titled the "Manufacturer Return Share Electronic Equipment Recycling Act of 2006" (AB 11330) that was recently introduced in the New York Assembly. (The bill is attached as Exhibit B.) This bill is modeled on the Washington State statute and on HP's producer responsibility approach, but is a shorter bill than the Washington State statute. Among the relevant provisions of AB 11330 are the following: (i) a manufacturer's collection and recycling responsibility is based on its *return share* of covered electronic devices returned for recycling by covered entities in the state; (ii) the New York State Department of Environmental Conservation is responsible for administering the bill; and (iii) a manufacturer receives credits if it collects and recycles more than its return share and is required to pay to the state an additional collection/recycling fee if it recycles less than its return share.

f. Conclusion

In sum, a manufacturer's electronic products collection and recycling responsibilities should be based on the manufacturer's return share of covered electronic products, not its market share.

3. Establishing a New State Authority to Provide Program Oversight Is Duplicative and Unnecessary

In its Proposed Electronic Waste Recycling Strategy, DEP states that it will seek legislative authority to establish an "electronic products recycling authority" to provide "oversight" of the electronic products recycling program with responsibilities that would include "assessing and collecting fees from manufacturers." Proposed Amendment at 4-77. This brief description provides no detail about the structure, governance, size, administrative and enforcement responsibilities, and other elements of the proposed authority. HP's experience with electronic products recycling and with electronic products recycling programs and proposals in other states demonstrates that the most efficient and effective approach for state oversight is to rely on existing state agencies.

HP's producer responsibility approach to electronic products recycling is designed to minimize government responsibilities to those necessary for implementing the recycling program and to rely on existing agencies that already have the requisite expertise and experience to perform necessary functions, such as assessing and collecting fees, reviewing proposed plans, and enforcing statutory requirements. Creating a new agency or "authority" is, therefore, unnecessary and adds costs. Appropriate government oversight of a new electronic product recycling program can be provided most efficiently and effectively by existing state agencies.

Because the Proposed Electronic Waste Recycling Strategy does not state whether the proposed new "authority" would be a new state agency or, possibly, a public corporation, HP underscores that creation of a public corporation would pose even more serious problems than creation of a new state agency. For example, having a public corporation assess fees poses substantial legal and policy problems, including concerns related to accountability, legality, expertise, conflicts of interest, and efficiency. Because we do not know if DEP is contemplating the creation of a public corporation, we will not provide further discussion of HP's concerns with



such an approach. If DEP is contemplating creating a public corporation, however, HP would appreciate the opportunity to provide DEP with detailed comments on that proposal.

4. Scope

a. The Scope of the Type of Electronic Products Covered by the Legislation Should Be Limited.

Although Strategy 4-8 does not identify the scope of the electronic products to be covered by the proposed legislation, the Proposed Amendment, at 4-64, states that "[e]lectronic waste includes computers, printers, televisions, VCRs, telephones and other discarded electronic equipment." For the reasons discussed below, the scope of covered electronic products for the Connecticut electronic product recycling program should be limited to computer display devices and televisions.

Given the complexity and expense of implementing an electronic product recycling system, a recycling solution should begin with an easily identifiable and manageable set of products. An electronic products recycling program should start with a focused scope of products and adopt a "walk before you run" approach. This approach would enable Connecticut and all stakeholders to acquire expertise and develop an efficient recycling infrastructure for these products before considering the inclusion of other products. In addition certain computer display devices and televisions contain cathode ray tubes (CRTs). CRTs that have significant quantities of lead could, if improperly disposed, cause harm to the environment.

b. Only Electronic Products Generated by Households Should Be Included.

The scope of any proposed legislation should be limited to electronic products generated by households. Recycling opportunities are limited for households (i.e., individual consumers and home businesses). A recycling solution should ensure that households are able to find and utilize conveniently options to recycle covered electronic products.

In contrast, electronic product recycling opportunities are broadly available for businesses and other large entities. As the Proposed Amendment notes, at 4-64: "large businesses generally hire computer recyclers directly or lease computers, which may include end of life management." In addition, recycling services are often incorporated into a business customer's purchase of new equipment. HP provides recycling solutions to business entities as a routine customer service and to attract new customers, and HP competes with other producers and third-party recyclers to provide recycling services. Other leading IT producers do the same. In addition, businesses and other large entities are subject to legal obligations to manage these electronic products, and waste management is an ordinary cost of doing business. In sum, the competitive marketplace should not be disrupted, and producers of covered electronic products should not be compelled to subsidize the recycling and waste management costs of businesses and institutional entities.

C. Conclusion



HP supports DEP's proposal that electronic waste recycling legislation should be based on a producer responsibility model. HP disagrees with DEP's proposal to base a manufacturer's collection and recycling responsibility on its market share of electronic products sold in the state. For the reasons discussed above, a manufacturer's collection and recycling responsibility should be based on its return share of electronic products returned for recycling from covered entities in the state. The return share system allocates recycling responsibilities appropriately and fairly. HP also disagrees with DEP's proposal to establish a new electronic products recycling authority to assess and collect fees from manufacturers. For the reasons discussed above, existing state agencies that already have the necessary expertise and ability should be used to manage the state's proposed electronic waste recycling program. This would increase efficiency and effectiveness and achieve results in a less costly manner. Finally, the scope of any proposed legislation should be limited to computer display devices and televisions and to electronic waste from households.

We look forward to working with DEP to develop an effective and efficient electronic waste recycling program for Connecticut. We also look forward to an opportunity to meet with you to discuss our approach and our ideas for electronics recycling for Connecticut.

Sincerely,

Heather S. Bowman


Attachments

c.c. w/o attachments:
Carlos Cardoso, HP
David Issacs, HP

Comments of Hewlett-Packard -- Exhibit A

"Electronic Product Recycling Act" (SB 6428, Chapter 183, Laws of 2006), as codified in the Revised Code of Washington

Chapter 70.95N RCW Electronic product recycling

Chapter Listing

RCW Sections

- 70.95N.010 Findings.
- 70.95N.020 Definitions.
- 70.95N.030 Manufacturer participation.
- 70.95N.040 Manufacturer registration.
- 70.95N.050 Independent plan requirements.
- 70.95N.060 Standard, independent plan requirements -- Fees to be set by the department -- Acceptance or rejection by department.
- 70.95N.070 Plan updates -- Revised plan.
- 70.95N.080 Independent plan participants changing to standard plan.
- 70.95N.090 Collection services.
- 70.95N.100 Successor duties.
- 70.95N.110 Covered electronic sampling.
- 70.95N.120 Promotion of covered product recycling.
- 70.95N.130 Electronic products recycling account.
- 70.95N.140 Annual reports.
- 70.95N.150 Nonprofit charitable organizations -- Report.
- 70.95N.160 Electronic products for sale must include manufacturer's brand.
- 70.95N.170 Sale of covered electronic products.
- 70.95N.180 Department web site.
- 70.95N.190 Return share calculation.
- 70.95N.200 Equivalent share calculation -- Notice to manufacturers -- Billing parties that do not meet their plan's equivalent share -- Payments to parties that exceed their plan's equivalent share -- Nonprofit charitable organizations.
- 70.95N.210 Preliminary return share -- Notice -- Challenges -- Final return share.
- 70.95N.220 Covered electronic products collected during a program year -- Payment per pound under, over equivalent share.
- 70.95N.230 Rules -- Fees -- Reports.
- 70.95N.240 Collector, transporter, processor registration.
- 70.95N.250 Processors to comply with performance standards for environmentally sound management -- Rules.
- 70.95N.260 Selling covered electronic products without participating in an approved plan prohibited -- Written warning -- Penalty -- Failure to comply with manufacturer registration requirements.
- 70.95N.270 Reports.

- 70.95N.280 Materials management and financing authority.
- 70.95N.290 Board of directors of the authority.
- 70.95N.300 Manufacturers to pay their apportioned share of administrative and operational costs -- Performance bonds -- Dispute arbitration.
- 70.95N.310 Authority use of funds.
- 70.95N.320 General operating plan.
- 70.95N.330 Authority employees -- Initial staff support -- Authority powers.
- 70.95N.340 Federal preemption.
- 70.95N.900 Construction -- 2006 c 183.
- 70.95N.901 Severability -- 2006 c 183.
- 70.95N.902 Effective date -- 2006 c 183.

70.95N.010
Findings.

The legislature finds that a convenient, safe, and environmentally sound system for the collection, transportation, and recycling of covered electronic products must be established. The legislature further finds that the system must encourage the design of electronic products that are less toxic and more recyclable. The legislature further finds that the responsibility for this system must be shared among all stakeholders, with manufacturers financing the collection, transportation, and recycling system.

[2006 c 183 § 1.]

70.95N.020
Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Authority" means the Washington materials management and financing authority created under RCW 70.95N.280.
- (2) "Authorized party" means a manufacturer who submits an individual independent plan or the entity authorized to submit an independent plan for more than one manufacturer.
- (3) "Board" means the board of directors of the Washington materials management and financing authority created under RCW 70.95N.290.
- (4) "Collector" means an entity licensed to do business in the state that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets minimum standards that may be developed by the department.
- (5) "Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, and recycling services, in whole or in part, that will be provided to the citizens of the state within service areas as described in the approved standard plan.
- (6) "Covered electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally, a desktop computer, a laptop or a portable computer, or a

cathode ray tube or flat panel television having a viewable area greater than four inches when measured diagonally that has been used in the state by any covered entity regardless of original point of purchase. "Covered electronic product" does not include: (a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft; (b) monitoring and control instruments or systems; (c) medical devices; (d) products including materials intended for use as ingredients in those products as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-serum-toxin act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts; (e) equipment used in the delivery of patient care in a health care setting; (f) a computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or (g) hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

(7) "Covered entity" means any household, charity, school district, small business, or small government located in Washington state.

(8) "Curbside service" means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

(9) "Department" means the department of ecology.

(10) "Electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or a portable computer; or a cathode ray tube or flat screen television having a viewable area greater than four inches when measured diagonally.

(11) "Equivalent share" means the weight in pounds of covered electronic products identified for an individual manufacturer under this chapter as determined by the department under RCW 70.95N.200.

(12) "Household" means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

(13) "Independent plan" means a plan for the collection, transportation, and recycling of unwanted covered electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

(14) "Manufacturer" means any person, in business or no longer in business but having a successor in interest, who, irrespective of the selling technique used, including by means of distance or remote sale:

(a) Manufactures or has manufactured a covered electronic product under its own brand names for sale in or into this state;

(b) Assembles or has assembled a covered electronic product that uses parts manufactured by others for sale in or into this state under the assembler's brand names;

(c) Resells or has resold in or into this state under its own brand names a covered electronic product produced by other suppliers, including retail establishments that sell covered electronic products under their own brand names;

(d) Manufactures or manufactured a cobranded product for sale in or into this state that carries the name of both the manufacturer and a retailer;

(e) Imports or has imported a covered electronic product into the United States that is sold in or into this state. However, if the imported covered electronic product is manufactured by any person with a presence in the United States meeting the criteria of manufacturer under (a) through (d) of this subsection, that person is the manufacturer. For purposes of this subsection, "presence" means any person that performs activities conducted under the standards established for interstate commerce under the commerce clause of the United States Constitution; or

(f) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (e) of this subsection, and elects to register in lieu of the importer as the manufacturer for those products.

(15) "New entrant" means: (a) A manufacturer of televisions that have been sold in the state for less than ten years; or (b) a manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in the state for less than five years. However, a manufacturer of both televisions and computers or a

manufacturer of both televisions and computer monitors that is deemed a new entrant under either only (a) or (b) of this subsection is not considered a new entrant for purposes of this chapter.

(16) "Orphan product" means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest.

(17) "Plan's equivalent share" means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

(18) "Plan's return share" means the sum of the return shares of each manufacturer participating in that plan.

(19) "Premium service" means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households. "Premium service" does not include curbside service.

(20) "Processor" means an entity engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and prepare those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter and by the department. A processor may also salvage parts to be used in new products.

(21) "Product type" means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

(22) "Program" means the collection, transportation, and recycling activities conducted to implement an independent plan or the standard plan.

(23) "Program year" means each full calendar year after the program has been initiated.

(24) "Recycling" means transforming or remanufacturing unwanted electronic products, components, and byproducts into usable or marketable materials for use other than landfill disposal or incineration. "Recycling" does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and byproducts with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

(25) "Retailer" means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

(26) "Return share" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by the department under RCW 70.95N.190.

(27) "Reuse" means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used for the same purpose for which it was originally purchased.

(28) "Small business" means a business employing less than fifty people.

(29) "Small government" means a city in the state with a population less than fifty thousand, a county in the state with a population less than one hundred twenty-five thousand, and special purpose districts in the state.

(30) "Standard plan" means the plan for the collection, transportation, and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

(31) "Transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

(32) "Unwanted electronic product" means a covered electronic product that has been discarded or is intended to be discarded by its owner.

(33) "White box manufacturer" means a person who manufactured unbranded covered electronic products offered

for sale in the state within ten years prior to a program year for televisions or within five years prior to a program year for desktop computers, laptop or portable computers, or computer monitors.

[2006 c 183 § 2.]

70.95N.030

Manufacturer participation.

(1) A manufacturer must participate in an independent plan or the standard plan to implement and finance the collection, transportation, and recycling of covered electronic products.

(2) An independent plan or the standard plan must be implemented and fully operational no later than January 1, 2009.

(3) The manufacturers participating in an approved plan are responsible for covering all administrative and operational costs associated with the collection, transportation, and recycling of their plan's equivalent share of covered electronic products. If costs are passed on to consumers, it must be done without any fees at the time the unwanted electronic product is delivered or collected for recycling. However, this does not prohibit collectors providing premium or curbside services from charging customers a fee for the additional collection cost of providing this service, when funding for collection provided by an independent plan or the standard plan does not fully cover the cost of that service.

(4) Nothing in this chapter changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste in the state of Washington, including curbside collection of residential recyclable materials, nor does this chapter change or limit the authority of a city or town to provide such service itself or by contract pursuant to RCW 81.77.020.

(5) Manufacturers are encouraged to collaborate with electronic product retailers, certificated waste haulers, processors, recyclers, charities, and local governments within the state in the development and implementation of their plans.

[2006 c 183 § 3.]

70.95N.040

Manufacturer registration.

(1) By January 1, 2007, and annually thereafter, each manufacturer must register with the department.

(2) A manufacturer must submit to the department with each registration or annual renewal a fee to cover the administrative costs of this chapter as determined by the department under RCW 70.95N.230.

(3) The department shall review the registration or renewal application and notify the manufacturer if their registration does not meet the requirements of this section. Within thirty days of receipt of such a notification from the department, the manufacturer must file with the department a revised registration addressing the requirements noted by the department.

(4) The registration must include the following information:

(a) The name and contact information of the manufacturer submitting the registration;

(b) The manufacturer's brand names of covered electronic products, including all brand names sold in the state in

the past, all brand names currently being sold in the state, and all brand names for which the manufacturer has legal responsibility under RCW 70.95N.100;

(c) The method or methods of sale used in the state; and

(d) Whether the registrant will be participating in the standard plan or submitting an independent plan to the department for approval.

(5) The registrant shall submit any changes to the information provided in the registration to the department within fourteen days of such change.

(6) The department shall identify, using all reasonable means, manufacturers that are in business or that are no longer in business but that have a successor in interest by examining best available return share data and other pertinent data. The department shall notify manufacturers that have been identified and for whom an address has been found of the requirements of this chapter, including registration and plan requirements under this section and RCW 70.95N.050.

[2006 c 183 § 4.]

70.95N.050

Independent plan requirements.

(1) A manufacturer must participate in the standard plan administered by the authority, unless the manufacturer obtains department approval for an independent plan for the collection, transportation, and recycling of unwanted electronic products.

(2) An independent plan may be submitted by an individual manufacturer or by a group of manufacturers, provided that:

(a) Each independent plan represents at least a five percent return share of covered electronic products; and

(b) No manufacturer may participate in an independent plan if it is a new entrant or a white box manufacturer.

(3) An individual manufacturer submitting an independent plan to the department is responsible for collecting, transporting, and recycling its equivalent share of covered electronic products.

(4)(a) Manufacturers collectively submitting an independent plan are responsible for collecting, transporting, and recycling the sum of the equivalent shares of each participating manufacturer.

(b) Each group of manufacturers submitting an independent plan must designate a party authorized to file the plan with the department on their behalf. A letter of certification from each of the manufacturers designating the authorized party must be submitted to the department together with the plan.

(5) Each manufacturer in the standard plan or in an independent plan retains responsibility and liability under this chapter in the event that the plan fails to meet the manufacturer's obligations under this chapter.

[2006 c 183 § 5.]

70.95N.060

Standard, independent plan requirements — Fees to be set by the department — Acceptance or rejection by department.

(1) All initial independent plans and the initial standard plan required under RCW 70.95N.050 must be submitted to the department by February 1, 2008. The department shall review each independent plan and the standard plan.

(2) The authority submitting the standard plan and each authorized party submitting an independent plan to the department must pay a fee to the department to cover the costs of administering and implementing this chapter. The department shall set the fees as described under RCW 70.95N.230.

(3) The fees in subsection (2) of this section apply to the initial plan submission and plan updates and revisions required in RCW 70.95N.070.

(4) Within ninety days after receipt of a plan, the department shall determine whether the plan complies with this chapter. If the plan is approved, the department shall send a letter of approval. If a plan is rejected, the department shall provide the reasons for rejecting the plan to the authority or authorized party. The authority or authorized party must submit a new plan within sixty days after receipt of the letter of disapproval.

(5) An independent plan and the standard plan must contain the following elements:

(a) Contact information for the authority or authorized party and a comprehensive list of all manufacturers participating in the plan and their contact information;

(b) A description of the collection, transportation, and recycling systems and service providers used, including a description of how the authority or authorized party will:

(i) Seek to use businesses within the state, including retailers, charities, processors, and collection and transportation services;

(ii) Fairly compensate collectors for providing collection services; and

(iii) Fairly compensate processors for providing processing services;

(c) The method or methods for the reasonably convenient collection of all product types of covered electronic products in rural and urban areas throughout the state, including how the plan will provide for collection services in each county of the state and for a minimum of one collection site or alternate collection service for each city or town with a population greater than ten thousand. A collection site for a county may be the same as a collection site for a city or town in the county;

(d) A description of how the plan will provide service to small businesses, small governments, charities, and school districts in Washington;

(e) The processes and methods used to recycle covered electronic products including a description of the processing that will be used and the facility location;

(f) Documentation of audits of each processor used in the plan and compliance with processing standards established under RCW 70.95N.250 and *section 26 of this act;

(g) A description of the accounting and reporting systems that will be employed to track progress toward the plan's equivalent share;

(h) A timeline describing start-up, implementation, and progress towards milestones with anticipated results;

(i) A public information campaign to inform consumers about how to recycle their covered electronic products at the end of the product's life; and

(j) A description of how manufacturers participating in the plan will communicate and work with processors utilized by that plan to promote and encourage design of electronic products and their components for recycling.

(6) The standard plan shall address how it will incorporate and fairly compensate registered collectors providing curbside or premium services such that they are not compensated at a lower rate for collection costs than the compensation offered other collectors providing drop-off collection sites in that geographic area.

(7) All transporters, collectors, and processors used to fulfill the requirements of this section must be registered as described in RCW 70.95N.240.

[2006 c 183 § 6.]

Notes:

***Reviser's note:** Section 26 of this act was vetoed by the governor.

70.95N.070

Plan updates — Revised plan.

(1) An independent plan and the standard plan must be updated at least every five years and as required in (a) and (b) of this subsection.

(a) If the program fails to provide service in each county in the state or meet other plan requirements, the authority or authorized party shall submit to the department within sixty days of failing to provide service an updated plan addressing how the program will be adjusted to meet the program geographic coverage and collection service requirements established in RCW 70.95N.090.

(b) The authority or authorized party shall notify the department of any modification to the plan. If the department determines that the authority or authorized party has significantly modified the program described in the plan, the authority or authorized party shall submit a revised plan describing the changes to the department within sixty days of notification by the department.

(2) Within sixty days after receipt of a revised plan, the department shall determine whether the revised plan complies with this chapter. If the revised plan is approved, the department shall send a letter of approval. If the revised plan is rejected, the department shall provide the reasons for rejecting the plan to the authority or authorized party. The authority or authorized party must submit a new plan revision within sixty days after receipt of the letter of disapproval.

(3) The authority or authorized parties may buy and sell collected covered electronic products with other programs without submitting a plan revision for review.

[2006 c 183 § 7.]

70.95N.080

Independent plan participants changing to standard plan.

(1) A manufacturer participating in an independent plan may join the standard plan by notifying the authority and the department of its intention at least five months prior to the start of the next program year.

(2) Manufacturers may not change from one plan to another plan during a program year.

(3) A manufacturer participating in the standard plan wishing to implement or participate in an independent plan may do so by complying with rules adopted by the department under RCW 70.95N.230.

[2006 c 183 § 8.]

70.95N.090

Collection services.

(1) A program must provide collection services for covered electronic products of all product types that are reasonably convenient and available to all citizens of the state residing within its geographic boundaries, including both rural and urban areas. Each program must provide collection service in every county of the state. A program may provide collection services jointly with another plan or plans.

(a) For any city or town with a population of greater than ten thousand, each program shall provide a minimum of one collection site or alternate collection service described in subsection (3) of this section or a combination of sites and alternate service that together provide at least one collection opportunity for all product types. A collection site for a county may be the same as a collection site for a city or town in the county.

(b) Collection sites may include electronics recyclers and repair shops, recyclers of other commodities, reuse organizations, charities, retailers, government recycling sites, or other suitable locations.

(c) Collection sites must be staffed, open to the public at a frequency adequate to meet the needs of the area being served, and on an on-going basis.

(2) A program may limit the number of covered electronic products or covered electronic products by product type accepted per customer per day or per delivery at a collection site or service. All covered entities may use a collection site as long as the covered entities adhere to any restrictions established in the plans.

(3) A program may provide collection services in forms different than collection sites, such as curbside services, if those alternate services provide equal or better convenience to citizens and equal or increased recovery of unwanted covered electronic products.

(4) For rural areas without commercial centers or areas with widely dispersed population, a program may provide collection at the nearest commercial centers or solid waste sites, collection events, mail-back systems, or a combination of these options.

(5) For small businesses, small governments, charities, and school districts that may have large quantities of covered electronic products that cannot be handled at collection sites or curbside services, a program may provide alternate services. At a minimum, a program must provide for processing of these large quantities of covered electronic products at no charge to the small businesses, small governments, charities, and school districts.

[2006 c 183 § 9.]

70.95N.100

Successor duties.

Any person acquiring a manufacturer, or who has acquired a manufacturer, shall have all responsibility for the acquired company's covered electronic products, including covered electronic products manufactured prior to July 1, 2006, unless that responsibility remains with another entity per the purchase agreement and the acquiring manufacturer provides the department with a letter from the other entity accepting responsibility for the covered electronic products. Cobranding manufacturers may negotiate with retailers for responsibility for those products and must notify the department of the results of their negotiations.

[2006 c 183 § 10.]

70.95N.110

Covered electronic sampling.

(1) An independent plan and the standard plan must implement and finance an auditable, statistically significant sampling of covered electronic products entering its program every program year. The information collected must include a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, the total weight of the sample by product type, and any additional information needed to assign return share.

(2) The sampling must be conducted in the presence of the department or a third-party organization approved by the department. The department may, at its discretion, audit the methodology and the results.

(3) After the fifth program year, the department may reassess the sampling required in this section. The department may adjust the frequency at which manufacturers must implement the sampling or may adjust the frequency at which manufacturers must provide certain information from the sampling. Prior to making any changes, the department shall notify the public, including all registered manufacturers, and provide a comment period. The department shall notify all registered manufacturers of any such changes.

[2006 c 183 § 11.]

70.95N.120

Promotion of covered product recycling.

(1) An independent plan and the standard plan must inform covered entities about where and how to reuse and recycle their covered electronic products at the end of the product's life, including providing a web site or a toll-free telephone number that gives information about the recycling program in sufficient detail to educate covered entities regarding how to return their covered electronic products for recycling.

(2) The department shall promote covered electronic product recycling by:

- (a) Posting information describing where to recycle unwanted covered electronic products on its web site;
- (b) Providing information about recycling covered electronic products through a toll-free telephone service; and
- (c) Developing and providing artwork for use in flyers and signage to retailers upon request.

(3) Local governments shall promote covered electronic product recycling, including listings of local collection sites and services, through existing educational methods typically used by each local government.

(4) A retailer who sells new covered electronic products shall provide information to consumers describing where and how to recycle covered electronic products and opportunities and locations for the convenient collection or return of the products. This requirement can be fulfilled by providing the department's toll-free telephone number and web site. Remote sellers may include the information in a visible location on their web site as fulfillment of this requirement.

(5) Manufacturers, state government, local governments, retailers, and collection sites and services shall collaborate in the development and implementation of the public information campaign.

[2006 c 183 § 12.]

70.95N.130

Electronic products recycling account.

(1) The electronic products recycling account is created in the custody of the state treasurer. All payments resulting from plans not reaching their equivalent share, as described in RCW 70.95N.220, shall be deposited into the account. Any moneys collected for manufacturer registration fees, fees associated with reviewing and approving plans and plan revisions, and penalties levied under this chapter shall be deposited into the account.

(2) Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(3) Moneys in the account may be used solely by the department for the purposes of fulfilling department responsibilities specified in this chapter and for expenditures to the authority and authorized parties resulting from plans exceeding their equivalent share, as described in RCW 70.95N.220. Funds in the account may not be diverted for any purpose or activity other than those specified in this section.

[2006 c 183 § 13.]

70.95N.140

Annual reports.

(1) By March 1st of the second program year and each program year thereafter, the authority and each authorized party shall file with the department an annual report for the preceding program year.

(2) The annual report must include the following information:

(a) The total weight in pounds of covered electronic products collected and recycled, by county, during the preceding program year including documentation verifying collection and processing of that material. The total weight in pounds includes orphan products. The report must also indicate and document the weight in pounds received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan. The report must document the weight in pounds that were received in large quantities from small businesses, small governments, charities and school districts as described in RCW 70.95N.090(5);

(b) The collection services provided in each county and for each city with a population over ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(c) A list of processors used, the weight of covered electronic products processed by each direct processor, and a description of the processes and methods used to recycle the covered electronic products including a description of the processing and facility locations. The report must also include a list of subcontractors who further processed or recycled unwanted covered electronic products, electronic components, or electronic scrap described in *section 26(1) of this act, including facility locations;

(d) Other documentation as established under *section 26(3) of this act;

(e) Educational and promotional efforts that were undertaken;

(f) The results of sampling and sorting as required in RCW 70.95N.110, including a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, and the total weight of the sample by product type;

(g) The list of manufacturers that are participating in the standard plan; and

(h) Any other information deemed necessary by the department.

(3) The department shall review each report within ninety days of its submission and shall notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program.

(4) All reports submitted to the department must be available to the general public through the internet. Proprietary information submitted to the department under this chapter is exempt from public disclosure under RCW 42.56.270.

[2006 c 183 § 14.]

Notes:

*Reviser's note: Section 26 of this act was vetoed by the governor.

70.95N.150

Nonprofit charitable organizations — Report.

Nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale and that are used by a plan to collect covered electronic products shall file a report with the department by March 1st of the second program year and each program year thereafter. The report must indicate and document the weight of covered electronic products sent for recycling during the previous program year attributed to each plan that the charitable organization is participating in.

[2006 c 183 § 15.]

70.95N.160

Electronic products for sale must include manufacturer's brand.

(1) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in the state unless the electronic product is labeled with the manufacturer's brand. The label must be permanently affixed and readily visible.

(2) In-state retailers in possession of unlabeled products on January 1, 2007, may exhaust their stock through sales to the public.

[2006 c 183 § 16.]

70.95N.170

Sale of covered electronic products.

No person may sell or offer for sale a covered electronic product to any person in this state unless the manufacturer of the covered electronic product has filed a registration with the department under RCW 70.95N.040 and is participating in an approved plan under RCW 70.95N.050. A person that sells or offers for sale a covered electronic product in the state shall consult the department's web site for lists of manufacturers with registrations and approved plans prior to selling a covered electronic product in the state. A person is considered to have complied with this

section if on the date the product was ordered from the manufacturer or its agent, the manufacturer was listed as having registered and having an approved plan on the department's web site.

[2006 c 183 § 17.]

70.95N.180
Department web site.

(1) The department shall maintain on its web site the following information:

(a) The names of the manufacturers and the manufacturer's brands that are registered with the department under RCW 70.95N.040;

(b) The names of the manufacturers and the manufacturer's brands that are participating in an approved plan under RCW 70.95N.050;

(c) The names and addresses of the collectors and transporters that are listed in registrations filed with the department under RCW 70.95N.240;

(d) The names and addresses of the processors used to fulfill the requirements of the plans;

(e) Return and equivalent shares for all manufacturers.

(2) The department shall update this web site information promptly upon receipt of a registration or a report.

[2006 c 183 § 18.]

70.95N.190
Return share calculation.

(1) The department shall determine the return share for each manufacturer in the standard plan or an independent plan by dividing the weight of covered electronic products identified for each manufacturer by the total weight of covered electronic products identified for all manufacturers in the standard plan or an independent plan, then multiplying the quotient by one hundred:

(2) For the first program year, the department shall determine the return share for such manufacturers using all reasonable means and based on best available information regarding return share data from other states and other pertinent data.

(3) For the second and each subsequent program year, the department shall determine the return share for such manufacturers using all reasonable means and based on the most recent sampling of covered electronic products conducted in the state under RCW 70.95N.110.

[2006 c 183 § 19.]

70.95N.200

Equivalent share calculation — Notice to manufacturers — Billing parties that do not meet their plan's equivalent share — Payments to parties that exceed their plan's equivalent share — Nonprofit charitable organizations.

(1) The department shall determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the total weight in pounds of covered electronic products collected for that program year, allowing as needed for the additional credit authorized in subsection (3) of this section.

(2)(a) By June 1st of each program year, the department shall notify each manufacturer of the manufacturer's equivalent share of covered electronic products to be applied to the previous program year. The department shall also notify each manufacturer of how its equivalent share was determined.

(b) By June 1st of each program year, the department shall bill any authorized party or authority that has not attained its plan's equivalent share as determined under RCW 70.95N.220. The authorized party or authority shall remit payment to the department within sixty days from the billing date.

(c) By September 1st of each program year, the department shall pay any authorized party or authority that exceeded its plan's equivalent share.

(3) Plans that utilize the collection services of nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale must be given an additional five percent credit to be applied toward a plan's equivalent share for pounds that are received for recycling from those organizations. The department may adjust the percentage of credit annually.

[2006 c 183 § 20.]

70.95N.210

Preliminary return share — Notice — Challenges — Final return share.

(1) By June 1, 2007, the department shall notify each manufacturer of its preliminary return share of covered electronic products for the first program year.

(2) Preliminary return share of covered electronic products must be announced annually by June 1st of each program year for the next program year.

(3) Manufacturers may challenge the preliminary return share by written petition to the department. The petition must be received by the department within thirty days of the date of publication of the preliminary return shares.

(4) The petition must contain a detailed explanation of the grounds for the challenge, an alternative calculation, and the basis for such a calculation, documentary evidence supporting the challenge, and complete contact information for requests for additional information or clarification.

(5) Sixty days after the publication of the preliminary return share, the department shall make a final decision on return share, having fully taken into consideration any and all challenges to its preliminary calculations.

(6) A written record of challenges received and a summary of the bases for the challenges, as well as the department's response, must be published at the same time as the publication of the final return share.

(7) By August 1, 2007, the department shall publish the final return shares for the first program year. By August 1st of each program year, the department shall publish the final return shares for use in the coming program year.

[2006 c 183 § 21.]

70.95N.220

Covered electronic products collected during a program year — Payment per pound under, over equivalent share.

(1) For an independent plan and the standard plan, if the total weight in pounds of covered electronic products collected during a program year is less than the plan's equivalent share of covered electronic products for that year, then the authority or authorized party shall submit to the department a payment equal to the weight in pounds of the deficit multiplied by the reasonable collection, transportation, and recycling cost for covered electronic products and an administrative fee. Moneys collected by the department must be deposited in the electronic products recycling account.

(2) For an independent plan and the standard plan, if the total weight in pounds of covered electronic products collected during a program year is more than the plan's equivalent share of covered electronic products for that year, then the department shall submit to the authority or authorized party, a payment equal to the weight in pounds of the surplus multiplied by the reasonable collection, transportation, and recycling cost for covered electronic products.

(3) For purposes of this section, the initial reasonable collection, transportation, and recycling cost for covered electronic products is forty-five cents per pound and the administrative fee is five cents per pound.

(4) The department may annually adjust the reasonable collection, transportation, and recycling cost for covered electronic products and the administrative fee described in this section. Prior to making any changes in the fees described in this section, the department shall notify the public, including all registered manufacturers, and provide a comment period. The department shall notify all registered manufacturers of any changes to the reasonable collection, transportation, and recycling cost or the administrative fee by January 1st of the program year in which the change is to take place.

[2006 c 183 § 22.]

70.95N.230

Rules — Fees — Reports.

(1) The department shall adopt rules to determine the process for manufacturers to change plans under RCW 70.95N.080.

(2) The department shall establish annual registration and plan review fees for administering this chapter. An initial fee schedule must be established by rule and be adjusted no more often than once every two years. All fees charged must be based on factors relating to administering this chapter and be based on a sliding scale that is representative of annual sales of covered electronic products in the state. Fees must be established in amounts to fully recover and not to exceed expenses incurred by the department to implement this chapter.

(3) The department shall establish an annual process for local governments and local communities to report their satisfaction with the services provided by plans under this chapter. This information must be used by the department in reviewing plan updates and revisions.

(4) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

[2006 c 183 § 23.]

70.95N.240

Collector, transporter, processor registration.

(1) Each collector and transporter of covered electronic products in the state must register annually with the department. The registration must include all identification requirements for licensure in the state and the geographic area of the state that they serve. The department shall develop a single form for registration of both collectors and transporters.

(2) Each processor of covered electronic products utilized by an independent or standard plan must register annually with the department. The registration must include identification information and documentation of any necessary operating permits issued by state or local authorities.

[2006 c 183 § 24.]

70.95N.250

Processors to comply with performance standards for environmentally sound management — Rules.

(1) The authority and each authorized party shall ensure that each processor used directly by the authority or the authorized party to fulfill the requirements of their respective standard plan or independent plan has provided the authority or the authorized party a written statement that the processor will comply with the requirements of this section and *section 26 of this act.

(2) The department shall establish by rule performance standards for environmentally sound management for processors directly used to fulfill the requirements of an independent plan or the standard plan. Performance standards may include financial assurance to ensure proper closure of facilities consistent with environmental standards.

(3) The department shall establish by rule guidelines regarding nonrecycled residual that may be properly disposed after covered electronic products have been processed.

(4) The department may audit processors that are utilized to fulfill the requirements of an independent plan or the standard plan.

(5) No plan or program required under this chapter may include the use of federal or state prison labor for processing.

[2006 c 183 § 25.]

Notes:

*Reviser's note: Section 26 of this act was vetoed by the governor.

70.95N.260

Selling covered electronic products without participating in an approved plan prohibited — Written warning — Penalty — Failure to comply with manufacturer registration requirements.

(1) No manufacturer may sell or offer for sale a covered electronic product in or into the state unless the manufacturer of the covered electronic product is participating in an approved plan. The department shall send a written warning to

a manufacturer that does not have an approved plan or is not participating in an approved plan as required under RCW 70.95N.050. The written warning must inform the manufacturer that it must participate in an approved plan within thirty days of the notice. Any violation after the initial written warning shall be assessed a penalty of up to ten thousand dollars for each violation.

(2) If the authority or any authorized party fails to implement their approved plan, the department must assess a penalty of up to five thousand dollars for the first violation along with notification that the authority or authorized party must implement its plan within thirty days of the violation. After thirty days, the authority or any authorized party failing to implement their approved plan must be assessed a penalty of up to ten thousand dollars for the second and each subsequent violation.

(3) Any person that does not comply with manufacturer registration requirements under RCW 70.95N.040, education and outreach requirements under RCW 70.95N.120, reporting requirements under RCW 70.95N.140, labeling requirements under RCW 70.95N.160, retailer responsibility requirements under RCW 70.95N.170, collector or transporter registration requirements under RCW 70.95N.240, or requirements under RCW 70.95N.250 and *section 26 of this act, must first receive a written warning including a copy of the requirements under this chapter and thirty days to correct the violation. After thirty days, a person must be assessed a penalty of up to one thousand dollars for the first violation and up to two thousand dollars for the second and each subsequent violation.

(4) All penalties levied under this section must be deposited into the electronic products recycling account created under RCW 70.95N.130.

(5) The department shall enforce this section.

[2006 c 183 § 27.]

Notes:

*Reviser's note: Section 26 of this act was vetoed by the governor.

70.95N.270
Reports.

(1) By December 31, 2012, the department shall provide a report to the appropriate committees of the legislature that includes the following information:

(a) For each of the preceding program years, the weight of covered electronic products recycled in the state by plan, by county, and in total;

(b) The performance of each plan in meeting its equivalent share, and payments received from and disbursed to each plan from the electronic products recycling account;

(c) A description of the various collection programs used to collect covered electronic products in the state;

(d) An evaluation of how the pounds per capita recycled of covered electronic products in the state compares to programs in other states;

(e) Comments received from local governments and local communities regarding satisfaction with the program, including accessibility and convenience of services provided by the plans;

(f) Recommendations on how to improve the statewide collection, transportation, and recycling system for convenient, safe, and environmentally sound recycling of electronic products; and

(g) An analysis of whether and in what amounts unwanted electronic products and electronic components and electronic scrap exported from Washington have been exported to countries that are not members of the organization for economic cooperation and development or the European union, and recommendations for addressing such

exports.

(2) By April 1, 2010, the department shall provide a report to the appropriate committees of the legislature regarding the amount of orphan products collected as a percent of the total amount of covered electronic products collected. If the orphan products collected exceed ten percent of the total amount of covered electronic products collected, the department shall report to the appropriate committees of the legislature within ninety days describing the orphan products collected and include recommendations for decreasing the amount of orphan products or alternative methods for financing the collection, transportation, and recycling of orphan products.

[2006 c 183 § 28.]

70.95N.280

Materials management and financing authority.

(1) The Washington materials management and financing authority is established as a public body corporate and politic, constituting an instrumentality of the state of Washington exercising essential governmental functions.

(2) The authority shall plan and implement a collection, transportation, and recycling program for manufacturers that have registered with the department their intent to participate in the standard program as required under RCW 70.95N.040.

(3) Membership in the authority is comprised of registered participating manufacturers. Any registered manufacturer who does not qualify or is not approved to submit an independent plan, or whose independent plan has not been approved by the department, is a member of the authority. All new entrants and white box manufacturers are also members of the authority.

(4) The authority shall act as a business management organization on behalf of the citizens of the state to manage financial resources and contract for services for collection, transportation, and recycling of covered electronic products.

(5) The authority's standard plan is responsible for collecting, transporting, and recycling the sum of the equivalent shares of each participating manufacturer.

(6) The authority shall accept into the standard program covered electronic products from any registered collector who meets the requirements of this chapter. The authority shall compensate registered collectors for the reasonable costs associated with collection, but is not required to compensate nor restricted from compensating the additional collection costs resulting from the additional convenience offered to customers through premium and curbside services.

(7) The authority shall accept and utilize in the standard program any registered processor meeting the requirements of this chapter and any requirements described in the authority's operating plan or through contractual arrangements. Processors utilized by the standard plan shall provide documentation to the authority at least annually regarding how they are meeting the requirements in RCW 70.95N.250 and *section 26 of this act, including enough detail to allow the standard plan to meet its reporting requirements in RCW 70.95N.140(2) (c) and (d), and must submit to audits conducted by or for the authority. The authority shall compensate such processors for the reasonable costs, as determined by the authority, associated with processing unwanted electronic products. Such processors must demonstrate that the unwanted electronic products have been received from registered collectors or transporters, and provide other documentation as may be required by the authority.

(8) Except as specifically allowed in this chapter, the authority shall operate without using state funds or lending the credit of the state or local governments.

(9) The authority shall develop innovative approaches to improve materials management efficiency in order to ensure and increase the use of secondary material resources within the economy.

[2006 c 183 § 29.]

Notes:

***Reviser's note:** Section 26 of this act was vetoed by the governor.

70.95N.290

Board of directors of the authority.

(1)(a) The authority is governed by a board of directors. The board of directors is comprised of eleven participating manufacturers, appointed by the director of the department. Five board positions are reserved for representatives of the top ten brand owners by return share of covered electronic products, and six board positions are reserved for representatives of other brands, including at least one board position reserved for a manufacturer who is also a retailer selling their own private label. The return share of covered electronic products used to determine the top ten brand owners for purposes of electing the board must be determined by the department by January 1, 2007.

(b) The board must have representation from both television and computer manufacturers.

(2) The board shall select from its membership the chair of the board and such other officers as it deems appropriate.

(3) A majority of the board constitutes a quorum.

(4) The directors of the department of community, trade, and economic development and the department of ecology, and the state treasurer serve as ex officio members. The state agency directors and the state treasurer serving in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Ex officio designations must be made in writing and communicated to the authority director.

(5) The board shall create its own bylaws in accordance with the laws of the state of Washington.

(6) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty after notice and a public hearing, unless the notice and hearing are expressly waived in writing by the affected member.

(7) The members of the board serve without compensation but are entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter.

[2006 c 183 § 30.]

70.95N.300

Manufacturers to pay their apportioned share of administrative and operational costs — Performance bonds — Dispute arbitration.

(1) Manufacturers participating in the standard plan shall pay the authority to cover all administrative and operational costs associated with the collection, transportation, and recycling of covered electronic products within the state of Washington incurred by the standard program operated by the authority to meet the standard plan's equivalent share obligation as described in RCW 70.95N.280(5).

(2) The authority shall assess charges on each manufacturer participating in the standard plan and collect funds from each participating manufacturer for the manufacturer's portion of the costs in subsection (1) of this section. Such apportionment shall be based on return share, market share, any combination of return share and market share, or any other equitable method. The authority's apportionment of costs to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported

outside the state. Charges assessed under this section must not be formulated in such a way as to create incentives to divert imported electronic products to ports or distribution centers in other states. The authority shall adjust the charges to manufacturers participating in the standard plan as necessary in order to ensure that all costs associated with the identified activities are covered.

(3) The authority may require financial assurances or performance bonds for manufacturers participating in the standard plan, including but not limited to new entrants and white box manufacturers, when determining equitable methods for apportioning costs to ensure that the long-term costs for collecting, transporting, and recycling of a covered electronic product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

(4) Nothing in this section authorizes the authority to assess fees or levy taxes directly on the sale or possession of electronic products.

(5) If a manufacturer has not met its financial obligations as determined by the authority under this section, the authority shall notify the department that the manufacturer is no longer participating in the standard plan.

(6) The authority shall submit its plan for assessing charges and apportioning cost on manufacturers participating in the standard plan to the department for review and approval along with the standard plan as provided in RCW 70.95N.060.

(7)(a) Any manufacturer participating in the standard plan may appeal an assessment of charges or apportionment of costs levied by the authority under this section by written petition to the director of the department. The director of the department or the director's designee shall review all appeals within timelines established by the department and shall reverse any assessments of charges or apportionment of costs if the director finds that the authority's assessments or apportionment of costs was an arbitrary administrative decision, an abuse of administrative discretion, or is not an equitable assessment or apportionment of costs. The director shall make a fair and impartial decision based on sound data. If the director of the department reverses an assessment of charges, the authority must redetermine the assessment or apportionment of costs.

(b) Disputes regarding a final decision made by the director or director's designee may be challenged through arbitration. The director shall appoint one member to serve on the arbitration panel and the challenging party shall appoint one other. These two persons shall choose a third person to serve. If the two persons cannot agree on a third person, the presiding judge of the Thurston county superior court shall choose a third person. The decision of the arbitration panel shall be final and binding, subject to review by the superior court solely upon the question of whether the decision of the panel was arbitrary or capricious.

[2006 c 183 § 31.]

70.95N.310

Authority use of funds.

(1) The authority shall use any funds legally available to it for any purpose specifically authorized by this chapter to:

(a) Contract and pay for collecting, transporting, and recycling of covered electronic products and education and other services as identified in the standard plan;

(b) Pay for the expenses of the authority including, but not limited to, salaries, benefits, operating costs and consumable supplies, equipment, office space, and other expenses related to the costs associated with operating the authority;

(c) Pay into the electronic products recycling account amounts billed by the department to the authority for any deficit in reaching the standard plan's equivalent share as required under RCW 70.95N.220; and

(d) Pay the department for the fees for submitting the standard plan and any plan revisions.

(2) If practicable, the authority shall avoid creating new infrastructure already available through private industry in

the state.

(3) The authority may not receive an appropriation of state funds, other than:

(a) Funds that may be provided as a one-time loan to cover administrative costs associated with start-up of the authority, such as electing the board of directors and conducting the public hearing for the operating plan, provided that no appropriated funds may be used to pay for collection, transportation, or recycling services; and

(b) Funds received from the department from the electronic products recycling account for exceeding the standard plan's equivalent share.

(4) The authority may receive additional sources of funding that do not obligate the state to secure debt.

(5) All funds collected by the authority under this chapter, including interest, dividends, and other profits, are and must remain under the complete control of the authority and its board of directors, be fully available to achieve the intent of this chapter, and be used for the sole purpose of achieving the intent of this chapter.

[2006 c 183 § 32.]

70.95N.320

General operating plan.

(1) The board shall adopt a general operating plan of procedures for the authority. The board shall also adopt operating procedures for collecting funds from participating covered electronic manufacturers and for providing funding for contracted services. These operating procedures must be adopted by resolution prior to the authority operating the applicable programs.

(2) The general operating plan must include, but is not limited to: (a) Appropriate minimum reserve requirements to secure the authority's financial stability; (b) appropriate standards for contracting for services; and (c) standards for service.

(3) The board shall conduct at least one public hearing on the general operating plan prior to its adoption. The authority shall provide and make public a written response to all comments received by the public.

(4) The general operating plan must be adopted by resolution of the board. The board may periodically update the general operating plan as necessary, but must update the plan no less than once every four years. The general operating plan or updated plan must include a report on authority activities conducted since the commencement of authority operation or since the last reported general operating plan, whichever is more recent, including a statement of results achieved under the purposes of this chapter and the general operating plan. Upon adoption, the authority shall conduct its programs in observance of the objectives established in the general operating plan.

[2006 c 183 § 33.]

70.95N.330

Authority employees — Initial staff support — Authority powers.

(1) The authority shall employ a chief executive officer, appointed by the board, and a chief financial officer, as well as professional, technical, and support staff, appointed by the chief executive officer, necessary to carry out its duties.

(2) Employees of the authority are not classified employees of the state. Employees of the authority are exempt from state service rules and may receive compensation only from the authority at rates competitive with state service.

(3) The authority may retain its own legal counsel.

(4) The departments of ecology and community, trade, and economic development shall provide staff to assist in the creation of the authority. If requested by the authority, the departments of ecology and community, trade, and economic development shall also provide start-up support staff to the authority for its first twelve months of operation, or part thereof, to assist in the quick establishment of the authority. Staff expenses must be paid through funds collected by the authority and must be reimbursed to the departments from the authority's financial resources within the first twenty-four months of operation.

(5) In addition to accomplishing the activities specifically authorized in this chapter, the authority may:

(a) Maintain an office or offices;

(b) Make and execute all manner of contracts, agreements, and instruments and financing documents with public and private parties as the authority deems necessary, useful, or convenient to accomplish its purposes;

(c) Make expenditures as appropriate for paying the administrative costs and expenses of the authority in carrying out the provisions of this chapter;

(d) Give assistance to private and public bodies contracted to provide collection, transportation, and recycling services by providing information, guidelines, forms, and procedures for implementing their programs;

(e) Delegate, through contract, any of its powers and duties if consistent with the purposes of this chapter; and

(f) Exercise any other power the authority deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter.

[2006 c 183 § 34.]

70.95N.340
Federal preemption.

This chapter is void if a federal law, or a combination of federal laws, takes effect that establishes a national program for the collection and recycling of covered electronic products that substantially meets the intent of this chapter, including the creation of a financing mechanism for collection, transportation, and recycling of all covered electronic products from households, small businesses, school districts, small governments, and charities in the United States.

[2006 c 183 § 35.]

70.95N.900
Construction — 2006 c 183.

This act must be liberally construed to carry out its purposes and objectives.

[2006 c 183 § 38.]

70.95N.901

Severability — 2006 c 183.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2006 c 183 § 39.]

70.95N.902

Effective date — 2006 c 183.

This act takes effect July 1, 2006.

[2006 c 183 § 40.]

Comments of Hewlett-Packard -- Exhibit B

"Manufacturer Return Share Electronic Equipment Recycling Act of 2006" (AB 11330)

STATE OF NEW YORK

11330--A

IN ASSEMBLY

May 11, 2006

Introduced by M. of A. COLTON, GRANNIS, LAFAYETTE, FIELDS, MAISEL --
Multi-Sponsored by -- M. of A. BRENNAN, COOK, GLICK, JACOBS, LAVELLE,
SWEENEY -- read once and referred to the Committee on Environmental
Conservation -- committee discharged, bill amended, ordered reprinted
as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to
manufacturers responsibility for electronic equipment recovery and
recycling; and to amend the state finance law, in relation to estab-
lishing the electronic equipment recycling account within the environ-
mental protection fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Legislative intent. The purpose of this act shall be to
2 establish a comprehensive electronic equipment recycling system financed
3 by manufacturers of electronic equipment, based on their return share of
4 such electronic equipment. The purpose of this recycling system is to
5 ensure the safe and environmentally sound management of electronic
6 devices and components; encourage the design of electronic devices and
7 components that are less toxic and more recyclable; and to promote the
8 development of a regional infrastructure for collection and recycling of
9 end-of-life electronics.
- 10 S 2. Short title. This act shall be known and may be cited as the
11 "manufacturer return share electronic equipment recycling act of 2006".
- 12 S 3. Article 27 of the environmental conservation law is amended by
13 adding a new title 23 to read as follows:
- 14 TITLE 23
15 ELECTRONIC EQUIPMENT RECYCLING
- 16 SECTION 27-2301. DEFINITIONS.
17 27-2303. SCOPE OF PRODUCTS.
18 27-2305. SALES PROHIBITION.
19 27-2307. LABELING REQUIREMENT.
20 27-2309. MANUFACTURER RESPONSIBILITY.
21 27-2311. SAMPLING AND REPORTING.
22 27-2313. RETAILER RESPONSIBILITY.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
{ } is old law to be omitted.

LBD15708-07-6

1 27-2315. DEPARTMENT RESPONSIBILITY.
2 27-2317. FEES FOR THE COLLECTION OR RECYCLING OF COVERED ELEC-
3 TRONIC DEVICES.
4 27-2319. CONTRACTS FOR COLLECTION, TRANSPORTATION AND RECYCLING
5 OF COVERED ELECTRONIC DEVICES.
6 27-2321. ENVIRONMENTALLY SOUND MANAGEMENT REQUIREMENTS.
7 27-2323. DISPOSAL BAN.
8 27-2325. ENFORCEMENT.
9 27-2327. REGULATORY AUTHORITY.
10 27-2329. DISPOSITION OF FEES AND PENALTIES.
11 27-2331. FINANCIAL AND PROPRIETARY INFORMATION.
12 27-2333. FEDERAL PREEMPTION.
13 27-2335. SEVERABILITY.

14 S 27-2301. DEFINITIONS.
15 AS USED IN THIS TITLE:
16 1. "COVERED ENTITY" MEANS ANY HOUSEHOLD, SCHOOL DISTRICT, NOT-FOR-PRO-
17 FIT CORPORATION OR SMALL BUSINESS.
18 2. "COVERED ELECTRONIC DEVICE" (A) MEANS A DESKTOP OR LAPTOP COMPUTER,
19 COMPUTER MONITOR, PORTABLE COMPUTER, CATHODE RAY TUBE OR FLATPANEL BASED
20 TELEVISION WITH A SCREEN SIZE GREATER THAN FOUR INCHES MEASURED DIAGO-
21 NALLY; AND
22 (B) SHALL NOT INCLUDE:
23 (I) A COVERED ELECTRONIC DEVICE THAT IS A PART OF A MOTOR VEHICLE OR
24 ANY COMPONENT PART OF A MOTOR VEHICLE ASSEMBLED BY OR FOR A VEHICLE
25 MANUFACTURER OR FRANCHISED DEALER, INCLUDING REPLACEMENT PARTS FOR USE
26 IN A MOTOR VEHICLE;
27 (II) A COVERED ELECTRONIC DEVICE THAT IS FUNCTIONALLY OR PHYSICALLY A
28 PART OF A LARGER PIECE OF EQUIPMENT DESIGNED AND INTENDED FOR USE IN AN
29 INDUSTRIAL, COMMERCIAL OR MEDICAL SETTING, INCLUDING DIAGNOSTIC, MONI-
30 TORING OR CONTROL EQUIPMENT;
31 (III) A COVERED ELECTRONIC DEVICE THAT IS CONTAINED WITHIN A CLOTHES
32 WASHER, CLOTHES DRYER, REFRIGERATOR, REFRIGERATOR AND FREEZER, MICROWAVE
33 OVEN, CONVENTIONAL OVEN OR RANGE, DISHWASHER, ROOM AIR CONDITIONER,
34 DEHUMIDIFIER, OR AIR PURIFIER; OR
35 (IV) A TELEPHONE OF ANY TYPE, UNLESS IT CONTAINS A VIDEO DISPLAY AREA
36 GREATER THAN FOUR INCHES, MEASURED DIAGONALLY.
37 3. "HOUSEHOLD" MEANS AN OCCUPANT OF A SINGLE DETACHED DWELLING UNIT OR
38 A SINGLE UNIT OF A MULTIPLE DWELLING UNIT WHO HAS USED A COVERED ELEC-
39 TRONIC DEVICE AT A DWELLING UNIT PRIMARILY FOR PERSONAL OR HOME BUSINESS
40 USE.
41 4. "MANUFACTURER" MEANS ANY PERSON WHO, IRRESPECTIVE OF THE SELLING
42 TECHNIQUE USED, INCLUDING BY MEANS OF REMOTE SALE:
43 (A) MANUFACTURES OR MANUFACTURED COVERED ELECTRONIC DEVICES UNDER ITS
44 OWN BRAND FOR SALE;
45 (B) MANUFACTURES OR MANUFACTURED COVERED ELECTRONIC DEVICES FOR SALE
46 IN THIS STATE WITHOUT AFFIXING A BRAND;
47 (C) RESELLS OR RESOLD IN THIS STATE COVERED ELECTRONIC DEVICES
48 PRODUCED BY OTHER SUPPLIERS UNDER ITS OWN BRAND OR LABEL;
49 (D) IMPORTS OR EXPORTS OR IMPORTED OR EXPORTED COVERED ELECTRONIC
50 DEVICES INTO THE UNITED STATES. HOWEVER, IF A COMPANY FROM WHOM AN
51 IMPORTER PURCHASES THE MERCHANDISE HAS A PRESENCE IN THE UNITED STATES
52 AND/OR ASSETS, THAT COMPANY SHALL BE DEEMED TO BE THE MANUFACTURER; OR
53 (E) MANUFACTURES OR MANUFACTURED COVERED ELECTRONIC DEVICES, SUPPLIES
54 OR SUPPLIED THEM TO ANY PERSON OR PERSONS WITHIN A DISTRIBUTION NETWORK
55 THAT INCLUDES WHOLESALERS OR RETAILERS IN THIS STATE, AND BENEFITS OR

1 BENEFITED FROM THE SALE OF THOSE COVERED ELECTRONIC DEVICES THROUGH THAT
2 DISTRIBUTION NETWORK.

3 5. "MANUFACTURER'S BRANDS" MEANS A MANUFACTURER'S NAME, BRAND NAME OR
4 BRAND LABEL, AND ALL MANUFACTURER'S NAMES, BRAND NAMES AND BRAND LABELS
5 FOR WHICH THE MANUFACTURER HAS LEGAL RESPONSIBILITY, INCLUDING THOSE
6 NAMES, BRAND NAMES, AND BRAND LABELS OF COMPANIES THAT HAVE BEEN
7 ACQUIRED BY THE MANUFACTURER.

8 6. "NOT-FOR-PROFIT CORPORATION" MEANS A NOT-FOR-PROFIT CORPORATION
9 EXEMPT FROM TAXATION UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE
10 CODE.

11 7. "ORPHAN DEVICE" MEANS A COVERED ELECTRONIC DEVICE WHOSE MANUFACTUR-
12 ER CANNOT BE IDENTIFIED OR FOR WHICH THE MANUFACTURER IS NO LONGER IN
13 BUSINESS AND HAS NO SUCCESSOR IN INTEREST.

14 8. "PERSON" MEANS ANY INDIVIDUAL, BUSINESS ENTITY, PARTNERSHIP, LIMIT-
15 ED LIABILITY COMPANY, CORPORATION, NOT-FOR-PROFIT CORPORATION, ASSOCI-
16 ATION, GOVERNMENTAL ENTITY, PUBLIC BENEFIT CORPORATION OR PUBLIC AUTHOR-
17 ITY.

18 9. "PREMIUM SERVICE" MEANS SERVICE SUCH AS AT-LOCATION SYSTEM UPGRADE
19 SERVICES PROVIDED TO COVERED ENTITIES AND AT-HOME PICKUP SERVICES
20 OFFERED TO HOUSEHOLDS. "PREMIUM SERVICE" DOES NOT INCLUDE CURBSIDE
21 SERVICE.

22 10. "PROGRAM YEAR" MEANS A FULL CALENDAR YEAR BEGINNING ON OR AFTER
23 JANUARY FIRST, TWO THOUSAND EIGHT.

24 11. "RECYCLING" MEANS TRANSFORMING OR REMANUFACTURING UNWANTED ELEC-
25 TRONIC PRODUCTS, COMPONENTS, AND BYPRODUCTS INTO USABLE OR MARKETABLE
26 MATERIALS FOR USE OTHER THAN LANDFILL DISPOSAL OR INCINERATION. "RECYCL-
27 ING" DOES NOT INCLUDE ENERGY RECOVERY OR ENERGY GENERATION BY MEANS OF
28 COMBUSTING UNWANTED ELECTRONIC PRODUCTS, COMPONENTS, AND BYPRODUCTS WITH
29 OR WITHOUT OTHER WASTE. SMELTING OF ELECTRONIC MATERIALS TO RECOVER
30 METALS FOR REUSE IN CONFORMANCE WITH ALL APPLICABLE LAWS AND REGULATIONS
31 IS NOT CONSIDERED DISPOSAL OR ENERGY RECOVERY.

32 12. "RETAIL SALES" MEANS SALES OF PRODUCTS THROUGH SALES OUTLETS, VIA
33 THE INTERNET, MAIL ORDER OR ANY OTHER MEANS, WHETHER OR NOT THE SELLER
34 HAS A PHYSICAL PRESENCE IN THIS STATE.

35 13. "RETAILER" MEANS A PERSON WHO OWNS OR OPERATES A BUSINESS THAT
36 SELLS NEW COVERED ELECTRONIC DEVICES INCLUDING SALES OUTLETS, CATALOGS
37 OR THE INTERNET, WHETHER OR NOT THE SELLER HAS A PHYSICAL PRESENCE IN
38 THIS STATE, TO A COVERED ENTITY.

39 14. "RETURN SHARE" MEANS THE PERCENTAGE OF COVERED ELECTRONIC DEVICES
40 FOR WHICH AN INDIVIDUAL MANUFACTURER IS RESPONSIBLE TO COLLECT, TRANS-
41 PORT AND RECYCLE.

42 15. "RETURN SHARE IN WEIGHT" MEANS THE TOTAL WEIGHT OF COVERED ELEC-
43 TRONIC DEVICES FOR WHICH A MANUFACTURER IS RESPONSIBLE TO COLLECT,
44 TRANSPORT AND RECYCLE.

45 16. "SELL" OR "SALE" MEANS ANY TRANSFER FOR CONSIDERATION OF TITLE
46 INCLUDING, BUT NOT LIMITED TO, TRANSACTIONS CONDUCTED THROUGH SALES
47 OUTLETS, CATALOGS OR THE INTERNET, OR ANY OTHER, SIMILAR ELECTRONIC
48 MEANS, AND EXCLUDING LEASES.

49 17. "SMALL BUSINESS" MEANS A BUSINESS THAT EMPLOYS TEN OR LESS INDI-
50 VIDUALS.

51 S 27-2303. SCOPE OF PRODUCTS.

52 1. THE PROVISIONS OF THIS TITLE SHALL APPLY TO COVERED ELECTRONIC
53 DEVICES USED BY COVERED ENTITIES IN THIS STATE.

54 2. THE COMMISSIONER MAY ANNUALLY MAKE RECOMMENDATIONS TO THE LEGISLA-
55 TURE AND THE GOVERNOR TO EXTEND THE PROVISIONS OF THIS TITLE TO OTHER
56 COVERED ELECTRONIC DEVICES.

1 S 27-2305. SALES PROHIBITION.

2 1. NO MANUFACTURER SHALL SELL OR OFFER FOR SALE A COVERED ELECTRONIC
3 DEVICE IN THIS STATE UNLESS THE MANUFACTURER HAS FILED A REGISTRATION
4 WITH THE DEPARTMENT.

5 2. NO RETAILER SHALL OFFER FOR SALE ANY NEW COVERED ELECTRONIC DEVICE
6 FROM A MANUFACTURER WHO HAS NOT FILED A REGISTRATION WITH THE DEPART-
7 MENT. THE DEPARTMENT SHALL MAINTAIN AND DISSEMINATE A LIST OF EACH
8 MANUFACTURER REGISTERED, AND A LIST OF MANUFACTURER'S BRANDS AS REPORTED
9 IN THE MANUFACTURER'S REGISTRATION. SUCH LIST SHALL BE POSTED ON THE
10 DEPARTMENT WEBSITE AND SHALL BE UPDATED ON A MONTHLY BASIS. EVERY
11 PERSON WHO SELLS OR BRINGS INTO THIS STATE FOR SALE ANY COVERED ELEC-
12 TRONIC DEVICE, SHALL REVIEW SUCH LIST PRIOR TO SELLING A COVERED ELEC-
13 TRONIC DEVICE IN THIS STATE. A PERSON IS CONSIDERED TO HAVE COMPLIED
14 WITH THIS SUBDIVISION IF, ON THE DATE A COVERED ELECTRONIC DEVICE WAS
15 ORDERED, THE MANUFACTURER WAS INCLUDED ON THE LIST MAINTAINED BY THE
16 DEPARTMENT ON ITS WEBSITE AS HAVING REGISTERED.

17 S 27-2307. LABELING REQUIREMENT.

18 NO MANUFACTURER OR RETAILER SHALL SELL OR OFFER FOR SALE ANY COVERED
19 ELECTRONIC DEVICE IN THIS STATE UNLESS THE COVERED ELECTRONIC DEVICE IS
20 LABELED WITH THE MANUFACTURER'S BRAND, AND SUCH LABEL IS PERMANENTLY
21 AFFIXED AND READILY VISIBLE.

22 S 27-2309. MANUFACTURER RESPONSIBILITY.

23 1. BY JANUARY FIRST, TWO THOUSAND SEVEN, EACH MANUFACTURER OF COVERED
24 ELECTRONIC DEVICES OFFERED FOR SALE IN THIS STATE SHALL REGISTER ANNUAL-
25 LY WITH THE DEPARTMENT AND PAY A REGISTRATION FEE OF FIVE THOUSAND
26 DOLLARS. THEREAFTER, IF A MANUFACTURER HAS NOT PREVIOUSLY FILED A
27 REGISTRATION, THE MANUFACTURER SHALL FILE A REGISTRATION WITH THE
28 DEPARTMENT PRIOR TO ANY OFFER FOR SALE OF THE MANUFACTURER'S COVERED
29 ELECTRONIC DEVICES IN THE STATE. ANY MANUFACTURER TO WHOM THE DEPARTMENT
30 PROVIDES NOTIFICATION OF A RETURN SHARE AND RETURN SHARE BY WEIGHT
31 PURSUANT TO SUBDIVISION 3 OF SECTION 27-2315 OF THIS TITLE AND WHO HAS
32 NOT PREVIOUSLY FILED A REGISTRATION SHALL FILE A REGISTRATION WITH THE
33 DEPARTMENT WITHIN THIRTY DAYS OF RECEIVING SUCH NOTIFICATION. EACH
34 MANUFACTURER WHO IS REGISTERED SHALL SUBMIT AN ANNUAL RENEWAL OF ITS
35 REGISTRATION TO THE DEPARTMENT BY JANUARY FIRST. THE REGISTRATION AND
36 ALL RENEWALS SHALL INCLUDE A LIST OF THE MANUFACTURER'S BRANDS OF
37 COVERED ELECTRONIC DEVICES, INCLUDING ALL BRANDS SOLD IN THE STATE, ALL
38 BRANDS BEING SOLD IN THE STATE, AND ALL BRANDS FOR WHICH THE MANUFACTUR-
39 ER HAS LEGAL RESPONSIBILITY PURSUANT TO SUBDIVISION THIRTEEN OF THIS
40 SECTION.

41 2. MANUFACTURERS SHALL BE RESPONSIBLE FOR THE COLLECTION, TRANSPORTA-
42 TION AND RECYCLING OF THEIR RETURN SHARE IN WEIGHT OF COVERED ELECTRONIC
43 DEVICES, AS DETERMINED BY THE DEPARTMENT.

44 3. EACH MANUFACTURER OF COVERED ELECTRONIC DEVICES SHALL:

45 (A) SUBMIT AN ADDITIONAL FEE TO THE DEPARTMENT BASED ON ITS SHARE OF
46 RETURNED COVERED ELECTRONIC DEVICES, WHICH SHALL BE CALCULATED BY MULTI-
47 PLYING THE MANUFACTURER'S RETURN SHARE IN WEIGHT OF COLLECTED COVERED
48 ELECTRONIC DEVICES BY FIFTY CENTS PER POUND OR SUCH OTHER COST PER POUND
49 AS DETERMINED BY THE DEPARTMENT PURSUANT TO SECTION 27-2315 OF THIS
50 TITLE; OR

51 (B) SUBMIT A PLAN FOR THE FIRST PROGRAM YEAR AND ANNUALLY THEREAFTER
52 TO THE DEPARTMENT TO ESTABLISH, FINANCE, CONDUCT AND MANAGE A PROGRAM
53 FOR THE COLLECTION, TRANSPORTATION AND RECYCLING OF ITS RETURN SHARE IN
54 WEIGHT OF COVERED ELECTRONIC DEVICES, PROVIDED THAT THE PLAN REPRESENTS
55 AT LEAST FIVE PERCENT OF THE TOTAL COVERED ELECTRONIC DEVICES EXPECTED
56 TO BE COLLECTED ANNUALLY IN THE STATE, AND PROVIDED THAT THE PLAN

1 PROVIDES COLLECTION SERVICES FOR COVERED ELECTRONIC DEVICES THAT ARE
2 REASONABLY CONVENIENT AND AVAILABLE TO ALL COVERED ENTITIES OF THE STATE
3 RESIDING WITHIN ITS GEOGRAPHIC BOUNDARIES, INCLUDING BOTH RURAL AND
4 URBAN AREAS.

5 4. MANUFACTURER COLLECTION SERVICES MAY INCLUDE ELECTRONIC RECYCLERS
6 AND REPAIR SHOPS, RECYCLERS OF OTHER COMMODITIES, REUSE ORGANIZATIONS,
7 NOT-FOR-PROFIT CORPORATIONS, RETAILERS, GOVERNMENT RECYCLING SITES OR
8 ANY OTHER SUITABLE LOCATIONS. THE PLANS MAY CONSIDER WHERE POSSIBLE THE
9 USE OF THE EXISTING COLLECTION AND CONSOLIDATION INFRASTRUCTURES FOR
10 HANDLING COVERED ELECTRONIC DEVICES TO THE EXTENT THAT SUCH INFRASTRUC-
11 TURE IS REASONABLY ACCESSIBLE AND COMPLIES WITH THE ENVIRONMENTALLY
12 SOUND MANAGEMENT REQUIREMENTS OF THIS TITLE.

13 5. MANUFACTURER PLANS MAY ESTABLISH REASONABLE LIMITS ON THE NUMBER OF
14 COVERED ELECTRONIC DEVICES BY PRODUCT TYPE ACCEPTED PER HOUSEHOLD PER
15 DAY OR PER DELIVERY AT A COLLECTION SITE OR SERVICE. FOR PURPOSES OF
16 THIS TITLE AND NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN
17 THIS TITLE, THE COLLECTION OF NOT MORE THAN TEN COVERED ELECTRONIC
18 DEVICES PER DAY FROM ANY PERSON IN ACCORDANCE WITH THE MANUFACTURER'S
19 PLAN SHALL BE DEEMED TO BE THE COLLECTION OF A COVERED ELECTRONIC DEVICE
20 FROM A HOUSEHOLD. ALL HOUSEHOLDS MAY USE A COLLECTION SITE AS LONG AS
21 THE HOUSEHOLDS ADHERE TO ANY RESTRICTIONS ESTABLISHED IN THE PLANS.

22 6. MANUFACTURER PLANS MAY SPECIFY LOCATIONS WHERE SMALL BUSINESSES,
23 NOT-FOR-PROFIT CORPORATIONS AND SCHOOL DISTRICTS MAY DELIVER COVERED
24 ELECTRONIC DEVICES FOR RECYCLING AT NO CHARGE.

25 7. A GROUP OF MANUFACTURERS JOINTLY SUBMITTING A PLAN SHALL COLLECT,
26 TRANSPORT AND RECYCLE THE SUM OF THE OBLIGATIONS OF EACH PARTICIPATING
27 MANUFACTURER.

28 8. EACH PLAN REQUIRED BY THIS SECTION SHALL BE FILED WITH A MANUFAC-
29 Turer's ANNUAL REGISTRATION SUBMITTED TO THE DEPARTMENT BY JANUARY
30 FIRST, TWO THOUSAND SEVEN. A MANUFACTURER WHO SUBMITS ITS INITIAL REGIS-
31 TRATION TO THE DEPARTMENT AFTER JANUARY FIRST, TWO THOUSAND SEVEN MUST
32 FULFILL THIS REQUIREMENT WITHIN THIRTY DAYS OF PUBLICATION BY THE
33 DEPARTMENT OF THAT MANUFACTURER'S RETURN SHARE IN WEIGHT. EACH PLAN
34 SHALL INCLUDE:

35 (A) METHODS THAT WILL BE USED TO COLLECT THE COVERED ELECTRONIC
36 DEVICES INCLUDING THE NAME AND LOCATIONS OF PROPOSED COLLECTION AND
37 CONSOLIDATION POINTS;

38 (B) THE PROCESSES AND METHODS THAT WILL BE USED TO RECYCLE RECOVERED
39 COVERED ELECTRONIC DEVICES INCLUDING A DESCRIPTION OF THE PROCESSING
40 THAT WILL BE USED AND THE NAME AND LOCATION OF FACILITIES TO BE UTILIZED
41 DIRECTLY BY THE MANUFACTURER;

42 (C) A COPY OF THE CERTIFICATION SUBMITTED TO THE MANUFACTURER PURSUANT
43 TO SUBDIVISION 5 OF SECTION 27-2321 OF THIS TITLE BY EACH PROCESSOR
44 DIRECTLY UTILIZED BY THE MANUFACTURER IN ITS PLAN;

45 (D) MEANS THAT WILL BE UTILIZED TO PUBLICIZE THE COLLECTION OPPORTU-
46 NITIES; AND

47 (E) THE INTENTION OF THE MANUFACTURER TO FULFILL ITS OBLIGATIONS
48 THROUGH OPERATION OF ITS OWN PLAN, EITHER INDIVIDUALLY OR IN PARTNERSHIP
49 WITH OTHER MANUFACTURERS.

50 9. THE DEPARTMENT SHALL REVIEW EACH PLAN AND WITHIN SIXTY DAYS OF
51 RECEIPT OF SUCH PLAN, SHALL DETERMINE WHETHER THE PLAN COMPLIES WITH THE
52 PROVISIONS OF THIS TITLE. IF THE PLAN IS APPROVED, THE DEPARTMENT SHALL
53 NOTIFY THE MANUFACTURER. IF THE PLAN IS REJECTED, THE DEPARTMENT SHALL
54 NOTIFY THE MANUFACTURER AND PROVIDE THE REASONS FOR THE PLAN'S
55 REJECTION.

1 UPON APPROVAL OF A PLAN BY THE DEPARTMENT, THE MANUFACTURER'S PAYMENT
2 OF THE ANNUAL FEE BASED ON RETURN SHARE SHALL BE WAIVED.

3 10. IF A MANUFACTURER FAILS TO COMPLY WITH ALL THE TERMS AND CONDI-
4 TIONS OF ITS APPROVED PLAN, IT SHALL BE REQUIRED TO SUBMIT TO THE
5 DEPARTMENT A PAYMENT TO COVER THE COST OF COLLECTING, TRANSPORTING AND
6 RECYCLING THE UNMET PORTION OF ITS OBLIGATION. SUCH PAYMENT SHALL BE
7 EQUAL TO THE QUANTITY OF THE OUTSTANDING PORTION, IN POUNDS, MULTIPLIED
8 BY FIFTY CENTS, OR THE COST PER POUND AS DETERMINED BY THE DEPARTMENT
9 PURSUANT TO SUBDIVISION 10 OF SECTION 27-2315 OF THIS TITLE.

10 11. MANUFACTURERS THAT COLLECT, TRANSPORT AND RECYCLE IN EXCESS OF
11 THEIR OBLIGATION UNDER THEIR APPROVED PLAN MAY SELL CREDITS TO ANOTHER
12 MANUFACTURER OR APPLY SUCH EXCESS TO THE FOLLOWING CALENDAR YEAR'S RECY-
13 CLING OBLIGATION.

14 12. PRIOR TO JUNE FIRST, TWO THOUSAND SEVEN AND PERIODICALLY THEREAFT-
15 ER, THE DEPARTMENT SHALL IDENTIFY, USING ALL REASONABLE MEANS, MANUFAC-
16 TURERS THAT ARE IN BUSINESS OR THAT ARE NO LONGER IN BUSINESS BUT THAT
17 HAVE A SUCCESSOR IN INTEREST AND BRANDS FOR WHICH A MANUFACTURER IS
18 RESPONSIBLE, BY EXAMINING BEST AVAILABLE RETURN SHARE DATA AND OTHER
19 PERTINENT DATA. UNLESS THE MANUFACTURER HAS REGISTERED WITH THE DEPART-
20 MENT, THE DEPARTMENT SHALL NOTIFY MANUFACTURERS THAT HAVE BEEN IDENTI-
21 FIED AND FOR WHOM AN ADDRESS HAS BEEN FOUND OF THE REQUIREMENTS OF THIS
22 TITLE, INCLUDING REGISTRATION AND PLAN REQUIREMENTS UNDER THIS SECTION.

23 13. ANY PERSON ACQUIRING A MANUFACTURER, OR WHO HAS ACQUIRED A
24 MANUFACTURER SHALL HAVE ALL RESPONSIBILITY FOR THE ACQUIRED COMPANY'S
25 COVERED ELECTRONIC DEVICES, INCLUDING COVERED ELECTRONIC DEVICES MANU-
26 FACTURED PRIOR TO THE EFFECTIVE DATE OF THIS TITLE, UNLESS THAT RESPON-
27 SIBILITY REMAINS WITH ANOTHER ENTITY PER THE PURCHASE AGREEMENT AND THE
28 ACQUIRING MANUFACTURER PROVIDES THE DEPARTMENT WITH A LETTER FROM THE
29 OTHER ENTITY ACCEPTING RESPONSIBILITY FOR THE COVERED ELECTRONIC
30 DEVICES.

31 S 27-2311. SAMPLING AND REPORTING.

32 1. THE DEPARTMENT SHALL BE RESPONSIBLE FOR THE CONDUCT OF AN AUDITA-
33 BLE, STATISTICALLY SIGNIFICANT SAMPLING OF COVERED ELECTRONIC DEVICES
34 RECOVERED EVERY YEAR, FOR THOSE MANUFACTURERS WHO ELECT NOT TO CONDUCT
35 THEIR OWN COLLECTION, TRANSPORTATION AND RECYCLING PROGRAM. THE SAMPLING
36 INFORMATION COLLECTED SHALL INCLUDE:

37 (A) A LIST OF THE BRAND NAMES OF COVERED ELECTRONIC DEVICES, INCLUDING
38 ORPHAN DEVICES;

39 (B) THE NUMBER OF COVERED ELECTRONIC DEVICES, INCLUDING ORPHAN
40 DEVICES;

41 (C) THE WEIGHT OF COVERED ELECTRONIC DEVICES THAT ARE IDENTIFIED FOR
42 EACH BRAND NAME OR FOR ORPHAN DEVICES;

43 (D) THE TOTAL WEIGHT OF THE SAMPLE; AND

44 (E) ANY OTHER ADDITIONAL INFORMATION NEEDED TO ASSIGN RETURN SHARE.

45 2. THE SAMPLING SHALL BE CONDUCTED IN ACCORDANCE WITH A PROCEDURE
46 ESTABLISHED BY THE DEPARTMENT AND MAY BE CONDUCTED BY A THIRD-PARTY
47 ORGANIZATION INCLUDING THE RECYCLER, TO BE DETERMINED BY THE DEPARTMENT.
48 THE DEPARTMENT MAY, AT ITS DISCRETION BE PRESENT AT THE SAMPLING, AND
49 MAY AUDIT THE METHODOLOGY AND THE RESULTS OF A THIRD-PARTY ORGANIZATION.
50 THE COSTS ASSOCIATED WITH THE SAMPLING SHALL BE RECOVERED FROM THE ELEC-
51 TRONIC EQUIPMENT RECYCLING ACCOUNT OF THE ENVIRONMENTAL PROTECTION FUND
52 ESTABLISHED BY SECTION NINETY-TWO-S OF THE STATE FINANCE LAW.

53 3. IF A MANUFACTURER CONDUCTS ITS OWN COLLECTION PLAN OF COVERED ELEC-
54 TRONIC DEVICES, THE MANUFACTURER SHALL ANNUALLY REPORT TO THE DEPARTMENT
55 ON OR BEFORE JANUARY THIRTIETH, BEGINNING THE SECOND PROGRAM YEAR:

1 (A) THE RESULTS OF AUDITABLE, STATISTICALLY SIGNIFICANT SAMPLING OF
2 THE COVERED ELECTRONIC DEVICES COLLECTED DURING THE PREVIOUS CALENDAR
3 YEAR. THE INFORMATION REPORTED SHALL INCLUDE A LIST OF BRAND NAMES OF
4 THE COVERED ELECTRONIC DEVICES; THE WEIGHT OF COVERED ELECTRONIC DEVICES
5 THAT ARE IDENTIFIED FOR EACH BRAND NAME AND THE WEIGHT OF COVERED ELEC-
6 TRONIC DEVICES THAT LACK A MANUFACTURER'S BRAND; AND ANY OTHER INFORMA-
7 TION DETERMINED BY THE DEPARTMENT AS NECESSARY TO ASSIGN A RETURN SHARE;
8 AND

9 (B) THE TOTAL WEIGHT OF COVERED ELECTRONIC DEVICES COLLECTED, TRANS-
10 PORTED AND RECYCLED DURING THE PRECEDING CALENDAR YEAR, INCLUDING
11 DOCUMENTATION VERIFYING COLLECTION AND PROCESSING OF SUCH MATERIAL.
12 S 27-2313. RETAILER RESPONSIBILITY.

13 BEGINNING JANUARY FIRST, TWO THOUSAND EIGHT RETAILERS SHALL PROVIDE TO
14 THEIR CUSTOMERS THE DEPARTMENT'S TOLL FREE TELEPHONE NUMBER AND WEBSITE.
15 REMOTE SELLERS MAY INCLUDE THIS INFORMATION IN A VISIBLE LOCATION ON
16 THEIR WEBSITE TO FULFILL THIS REQUIREMENT.
17 S 27-2315. DEPARTMENT RESPONSIBILITY.

18 1. THE DEPARTMENT SHALL DETERMINE THE RETURN SHARE FOR EACH MANUFAC-
19 TURER THAT IS IN BUSINESS OR THAT IS NO LONGER IN BUSINESS, BUT HAS A
20 SUCCESSOR IN INTEREST, OF COVERED ELECTRONIC DEVICES BY DIVIDING THE
21 WEIGHT OF COVERED ELECTRONIC DEVICES IDENTIFIED FOR EACH SUCH MANUFAC-
22 TURER BY THE TOTAL WEIGHT OF COVERED ELECTRONIC DEVICES IDENTIFIED FOR
23 ALL SUCH MANUFACTURERS AND MULTIPLYING THIS QUOTIENT BY ONE HUNDRED. FOR
24 THE FIRST PROGRAM YEAR, THE RETURN SHARE OF COVERED ELECTRONIC DEVICES
25 IDENTIFIED FOR AN INDIVIDUAL MANUFACTURER SHALL BE BASED ON THE BEST
26 AVAILABLE PUBLIC INFORMATION FOR RETURN SHARE DATA FROM OTHER STATES AND
27 OTHER PERTINENT DATA. FOR THE SECOND AND EACH SUBSEQUENT YEAR, THE
28 RETURN SHARE OF COVERED ELECTRONIC DEVICES IDENTIFIED FOR EACH MANUFAC-
29 TURER SHALL BE BASED ON THE MOST RECENT SAMPLING OF COVERED ELECTRONIC
30 DEVICES CONDUCTED IN THE STATE.

31 2. THE DEPARTMENT SHALL DETERMINE THE RETURN SHARE IN WEIGHT FOR EACH
32 MANUFACTURER OF COVERED ELECTRONIC DEVICES BY MULTIPLYING THE RETURN
33 SHARE FOR EACH MANUFACTURER BY THE TOTAL WEIGHT IN POUNDS OF COVERED
34 ELECTRONIC DEVICES, INCLUDING ORPHAN DEVICES, COLLECTED FROM COVERED
35 ENTITIES THE PRECEDING YEAR.

36 FOR THE FIRST PROGRAM YEAR, THE TOTAL RETURN SHARE IN WEIGHT SHALL BE
37 BASED ON THE BEST AVAILABLE PUBLIC INFORMATION AND OTHER PERTINENT DATA
38 ON RETURN SHARE IN WEIGHT, INCLUDING AVAILABLE DATA, IF ANY, ON COVERED
39 ELECTRONIC DEVICES RECYCLED DURING THE PREVIOUS YEAR IN THE STATE.

40 3. ANNUALLY, ON OR BEFORE FEBRUARY FIFTEENTH, THE DEPARTMENT SHALL
41 PROVIDE EACH MANUFACTURER WITH ITS RETURN SHARE AND THE RETURN SHARE IN
42 WEIGHT OF COVERED ELECTRONIC DEVICES FOR SUCH YEAR.

43 4. THE DEPARTMENT SHALL RECEIVE ALL FEES IMPOSED PURSUANT TO THIS
44 TITLE. SIXTY DAYS AFTER RECEIVING FROM THE DEPARTMENT PURSUANT TO SUBDI-
45 VISION 3 OF THIS SECTION ITS RETURN SHARE IN WEIGHT, MANUFACTURERS WITH-
46 OUT APPROVED PLANS SHALL SUBMIT TO THE DEPARTMENT FEES, AS REQUIRED
47 PURSUANT TO PARAGRAPH (A) OF SUBDIVISION 3 OF SECTION 27-2309 OF THIS
48 TITLE.

49 5. THE DEPARTMENT SHALL PREPARE AND IMPLEMENT ITS PLAN FOR THE
50 COLLECTION, TRANSPORTATION, AND RECYCLING OF COVERED ELECTRONIC DEVICES
51 FOR THOSE MANUFACTURERS WITHOUT APPROVED PLANS.

52 (A) THE DEPARTMENT SHALL ENSURE THAT THE PLAN PROVIDES COLLECTION
53 SERVICES FOR COVERED ELECTRONIC DEVICES THAT ARE REASONABLY CONVENIENT
54 AND AVAILABLE TO ALL COVERED ENTITIES IN THE STATE RESIDING WITHIN ITS
55 GEOGRAPHIC BOUNDARIES, INCLUDING BOTH RURAL AND URBAN AREAS. THE PLAN
56 MAY PROVIDE COLLECTION SERVICES JOINTLY WITH ONE OR MORE MANUFACTURERS.

1 (B) THE DEPARTMENT'S PLAN MAY PROVIDE COLLECTION SERVICES IN FORMS
2 DIFFERENT THAN COLLECTION SITES, IF THOSE ALTERNATE SERVICES PROVIDE
3 EQUAL OR BETTER CONVENIENCE TO HOUSEHOLDS AND EQUAL OR INCREASED RECOV-
4 ERY OF COVERED ELECTRONIC DEVICES.

5 (C) FOR RURAL AREAS WITHOUT COMMERCIAL CENTERS OR AREAS WITH WIDELY
6 DISPERSED POPULATIONS, THE DEPARTMENT'S PLAN MAY PROVIDE COLLECTION AT
7 THE NEAREST COMMERCIAL CENTERS OR SOLID WASTE SITES, COLLECTION EVENTS,
8 MAIL-BACK SYSTEMS, OR A COMBINATION OF THESE OPTIONS.

9 (D) COLLECTION SITES MAY INCLUDE ELECTRONIC RECYCLERS AND REPAIR
10 SHOPS, RECYCLERS OF OTHER COMMODITIES, REUSE ORGANIZATIONS, NOT-FOR-PRO-
11 FITS, RETAILERS, GOVERNMENT RECYCLING SITES, OR ANY OTHER SUITABLE
12 LOCATIONS.

13 (E) THE DEPARTMENT'S PLAN SHALL ENCOURAGE THE USE OF EXISTING
14 COLLECTION AND CONSOLIDATION INFRASTRUCTURES FOR HANDLING COVERED ELEC-
15 TRONIC DEVICES TO THE EXTENT THAT SUCH INFRASTRUCTURE IS ACCESSIBLE ON A
16 REGULAR AND ONGOING BASIS, IS COST EFFECTIVE AND COMPLIES WITH THE ENVI-
17 RONMENTALLY SOUND MANAGEMENT RULES AND REGULATIONS PROMULGATED PURSUANT
18 TO THIS TITLE.

19 (F) THE DEPARTMENT'S PLAN TO ESTABLISH REASONABLE LIMITS ON THE NUMBER
20 OF COVERED ELECTRONIC DEVICES BY PRODUCT TYPE ACCEPTED PER HOUSEHOLD PER
21 DAY OR PER DELIVERY AT A COLLECTION SITE OR SERVICE. FOR THE PURPOSES OF
22 THIS TITLE AND NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN
23 THIS TITLE, THE COLLECTION OF NOT MORE THAN TEN COVERED ELECTRONIC
24 DEVICES PER DAY FROM ANY PERSON IN ACCORDANCE WITH THE DEPARTMENT'S PLAN
25 SHALL BE DEEMED TO BE THE COLLECTION OF A COVERED ELECTRONIC DEVICE FROM
26 A HOUSEHOLD. ALL HOUSEHOLDS MAY USE A COLLECTION SITE AS LONG AS THE
27 HOUSEHOLDS ADHERE TO ANY RESTRICTIONS ESTABLISHED IN THE PLANS.

28 (G) SMALL BUSINESSES, NOT-FOR-PROFIT CORPORATIONS AND SCHOOL DISTRICTS
29 MAY DELIVER COVERED ELECTRONIC DEVICES FOR RECYCLING AT NO CHARGE TO
30 SUCH SMALL BUSINESSES, NOT-FOR-PROFIT CORPORATIONS AND SCHOOL DISTRICTS,
31 ONLY TO LOCATIONS SPECIFIED BY THE DEPARTMENT.

32 6. THE DEPARTMENT SHALL ORGANIZE, CONDUCT AND COORDINATE PUBLIC
33 OUTREACH.

34 7. THE DEPARTMENT SHALL USE ALL MONEYS APPROPRIATED FROM THE ELECTRON-
35 IC EQUIPMENT RECYCLING ACCOUNT FOR THE SOLE PURPOSE OF IMPLEMENTING THE
36 PROVISIONS OF THIS TITLE.

37 8. BEGINNING IN TWO THOUSAND EIGHT, THE DEPARTMENT SHALL COMPLETE AN
38 ANNUAL REPORT ON ALL COVERED ELECTRONIC DEVICES COLLECTED, TRANSPORTED,
39 AND RECYCLED PURSUANT TO ITS PLAN ON OR BEFORE JANUARY THIRTIETH. SUCH
40 REPORT SHALL INCLUDE:

41 (A) A LIST OF ALL PARTIES WHOM THE DEPARTMENT HAS DESIGNATED AS
42 APPROVED TO RECEIVE PAYMENTS, THE AMOUNT OF PAYMENTS IT HAS MADE TO
43 THOSE PARTIES, AND THE PURPOSE OF THOSE PAYMENTS;

44 (B) THE TOTAL WEIGHT OF COVERED ELECTRONIC DEVICES COLLECTED IN THE
45 STATE THE PREVIOUS CALENDAR YEAR;

46 (C) A LIST OF ALL COLLECTION SITES OPERATED IN THE STATE AND THE
47 PARTIES WHO OPERATE THEM;

48 (D) AN EVALUATION OF THE EFFECTIVENESS OF THE EDUCATION AND OUTREACH
49 PROGRAM; AND

50 (E) AN EVALUATION OF THE EXISTING COLLECTION AND PROCESSING INFRAS-
51 TRUCTURE.

52 9. THE DEPARTMENT SHALL, BY JUNE FIRST, TWO THOUSAND SEVEN, MAINTAIN
53 AND UPDATE AN INTERNET WEBSITE AND A TOLL-FREE TELEPHONE NUMBER WITH A
54 CURRENT LISTING OF WHERE CONSUMERS CAN DEPOSIT COVERED ELECTRONIC
55 DEVICES FOR RECYCLING.

1 10. BEGINNING JANUARY THIRTIETH, TWO THOUSAND NINE, AND ANNUALLY THEREAFTER, THE DEPARTMENT MAY ADJUST THE COST PER POUND FOR RECYCLING COVERED ELECTRONIC DEVICES, WHICH COST PER POUND AMOUNT IS USED TO CALCULATE THE ADDITIONAL FEE THAT MANUFACTURERS MUST PAY TO THE DEPARTMENT PURSUANT TO PARAGRAPH (A) OF SUBDIVISION 3 OF SECTION 27-2309 OF THIS TITLE AND THE PAYMENT THAT A MANUFACTURER MUST PAY TO THE DEPARTMENT PURSUANT TO SUBDIVISION 10 OF SECTION 27-2309 OF THIS TITLE, IN ORDER TO REASONABLY APPROXIMATE MARKET COSTS FOR THE COLLECTION, TRANSPORTATION AND RECYCLING OF COVERED ELECTRONIC DEVICES. PRIOR TO MAKING ANY SUCH ADJUSTMENT, THE DEPARTMENT SHALL NOTIFY THE PUBLIC, INCLUDING ALL REGISTERED MANUFACTURERS, OF ANY PROPOSED CHANGE TO THE COST PER POUND AND PROVIDE A PUBLIC COMMENT PERIOD. THE DEPARTMENT SHALL NOTIFY ALL REGISTERED MANUFACTURERS OF ANY CHANGES TO THE COST PER POUND BY NOVEMBER FIRST PRIOR TO THE PROGRAM YEAR FOR WHICH THE REVISED COST PER POUND IS TO BE USED.

16 S 27-2317. FEES FOR THE COLLECTION OR RECYCLING OF COVERED ELECTRONIC DEVICES.

18 NO FEE OR CHARGE SHALL BE IMPOSED UPON ANY COVERED ENTITY FOR THE COLLECTION, TRANSPORTATION OR RECYCLING OF COVERED ELECTRONIC DEVICES BY ANY PERSON OR ENTITY PARTICIPATING IN OR BEING COMPENSATED BY THE STATE-WIDE PROGRAM OPERATED AND FUNDED BY THE DEPARTMENT OR BY A MANUFACTURER FOR RECYCLING OR TAKE-BACK OR FOR ANY OTHER PURPOSE RELATED TO THE COLLECTION, TRANSPORTATION OR RECYCLING OF COVERED ELECTRONIC DEVICES. PROVIDED, HOWEVER, THAT THIS SHALL NOT PROHIBIT COLLECTORS PROVIDING PREMIUM SERVICES FROM CHARGING CUSTOMERS A FEE FOR THE ADDITIONAL COLLECTION COST OF PROVIDING SUCH SERVICE, WHEN FUNDING FOR COLLECTION FROM THE STATE-WIDE PROGRAM FUNDED BY THE DEPARTMENT OR A PROGRAM FUNDED BY A MANUFACTURER DOES NOT FULLY COVER THE COST OF SUCH SERVICE.

29 S 27-2319. CONTRACTS FOR COLLECTION, TRANSPORTATION AND RECYCLING OF COVERED ELECTRONIC DEVICES.

31 THE COMMISSIONER MAY ENTER INTO CONTRACTS WITH MUNICIPALITIES, NOT-FOR-PROFIT CORPORATIONS, AND FOR-PROFIT ORGANIZATIONS AND COMPANIES FOR THE COLLECTION, TRANSPORTATION AND RECYCLING OF COVERED ELECTRONIC DEVICES. CONTRACTS SHALL INCLUDE PROVISIONS TO ENSURE THE FOLLOWING:

35 1. THE COVERED ELECTRONIC DEVICES ARE COLLECTED FROM A COVERED ENTITY LOCATED IN THE STATE;

37 2. THE COLLECTION, TRANSPORTATION AND RECYCLING OF THE COVERED ELECTRONIC DEVICES ARE CONDUCTED IN ACCORDANCE WITH ALL LOCAL, STATE AND FEDERAL LAWS;

40 3. NO FEES OR COSTS ARE CHARGED TO COVERED ENTITIES; PROVIDED, HOWEVER, THIS SHALL NOT PROHIBIT COLLECTORS PROVIDING PREMIUM SERVICES FROM CHARGING CUSTOMERS A FEE FOR ADDITIONAL COLLECTION COST OF PROVIDING SUCH SERVICE, WHEN FUNDING FOR COLLECTION FROM THE STATE-WIDE PROGRAM FUNDED BY THE DEPARTMENT DOES NOT FULLY COVER THE COST OF SUCH SERVICE; AND

46 4. RECORDKEEPING TO ACCOUNT FOR ALL COVERED ELECTRONIC DEVICES ACCEPTED AND THE DISPOSITION OF SUCH DEVICES.

48 S 27-2321. ENVIRONMENTALLY SOUND MANAGEMENT REQUIREMENTS.

49 1. ALL COVERED ELECTRONIC DEVICES COLLECTED PURSUANT TO THIS TITLE SHALL BE RECYCLED IN A MANNER THAT IS IN COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS, RULES AND REGULATIONS.

52 2. THE DEPARTMENT SHALL ESTABLISH BY RULE PERFORMANCE STANDARDS FOR ENVIRONMENTALLY SOUND MANAGEMENT FOR PROCESSORS DIRECTLY USED TO FULFILL THE REQUIREMENTS OF THIS TITLE. PERFORMANCE STANDARDS MAY INCLUDE FINANCIAL ASSURANCE TO ENSURE PROPER CLOSURE OF FACILITIES CONSISTENT WITH ENVIRONMENTAL STANDARDS.

1 3. THE DEPARTMENT SHALL ESTABLISH BY RULE GUIDELINES REGARDING NONRE-
2 CYCLED RESIDUAL THAT MAY BE PROPERLY DISPOSED OF AFTER COVERED ELECTRON-
3 IC DEVICES HAVE BEEN PROCESSED.

4 4. THE DEPARTMENT MAY AUDIT PROCESSORS THAT ARE UTILIZED TO FULFILL
5 THE REQUIREMENTS OF A DEPARTMENT PLAN.

6 5. BY DECEMBER FIFTEENTH, TWO THOUSAND EIGHT AND ANNUALLY THEREAFTER
7 BY JANUARY FIFTEENTH, EACH RECYCLER USED DIRECTLY BY A MANUFACTURER IN A
8 PLAN SHALL SUBMIT TO THE MANUFACTURER A CERTIFICATION THAT AN AUDIT OF
9 THE RECYCLER HAS BEEN CONDUCTED WITHIN THE PAST TWELVE MONTHS. THE AUDIT
10 MUST ASSESS COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL
11 LAWS, RULES AND REGULATIONS.

12 S 27-2323. DISPOSAL BAN.

13 NO PERSON SHALL KNOWINGLY OR INTENTIONALLY PLACE OR DISPOSE OF ANY
14 COVERED ELECTRONIC DEVICE IN ANY SOLID WASTE DISPOSAL FACILITY.

15 S 27-2325. ENFORCEMENT.

16 1. THE DEPARTMENT SHALL ENFORCE THE PROVISIONS OF THIS TITLE PURSUANT
17 TO THE PROVISIONS OF TITLE 27 OF ARTICLE 71 OF THIS CHAPTER.

18 2. THE VIOLATIONS OF THIS TITLE SHALL INCLUDE, BUT NOT BE LIMITED TO:

19 (A) THE SALE OF ANY COVERED ELECTRONIC DEVICE WHICH DOES NOT COMPLY
20 WITH THE PROVISIONS OF THIS TITLE;

21 (B) APPLICATION FOR COMPENSATION FOR THE RECYCLING OF ANY COVERED
22 ELECTRONIC DEVICE NOT COLLECTED WITHIN THE STATE;

23 (C) USE OF A QUALIFIED COLLECTION PROGRAM TO RECYCLE ANY COVERED ELEC-
24 TRONIC DEVICE NOT DISCARDED WITHIN THE STATE;

25 (D) THE KNOWING FAILURE TO REPORT OR ACCURATELY REPORT ANY DATA
26 REQUIRED TO BE REPORTED TO THE DEPARTMENT BY THIS TITLE; AND

27 (E) ANY VIOLATION OF THE REQUIREMENTS OF THIS TITLE.

28 S 27-2327. REGULATORY AUTHORITY.

29 THE DEPARTMENT MAY ADOPT SUCH RULES AND REGULATIONS AS SHALL BE NECES-
30 SARY TO IMPLEMENT THE PROVISIONS OF THIS TITLE.

31 S 27-2329. DISPOSITION OF FEES AND PENALTIES.

32 ALL FEES AND PENALTIES COLLECTED PURSUANT TO THE PROVISIONS OF THIS
33 TITLE SHALL BE PAID TO THE COMPTROLLER FOR DEPOSIT TO THE CREDIT OF THE
34 ELECTRONIC EQUIPMENT RECYCLING ACCOUNT OF THE ENVIRONMENTAL PROTECTION
35 FUND ESTABLISHED PURSUANT TO SECTION NINETY-TWO-S OF THE STATE FINANCE
36 LAW.

37 S 27-2331. FINANCIAL AND PROPRIETARY INFORMATION.

38 FINANCIAL OR PROPRIETARY INFORMATION SUBMITTED TO THE DEPARTMENT UNDER
39 THIS TITLE IS EXEMPT FROM PUBLIC DISCLOSURE UNDER ARTICLE SIX OF THE
40 PUBLIC OFFICERS LAW.

41 S 27-2333. FEDERAL PREEMPTION.

42 THIS TITLE SHALL BE DEEMED REPEALED IF A FEDERAL LAW OR A COMBINATION
43 OF FEDERAL LAWS, TAKES EFFECT THAT ESTABLISHES A NATIONAL PROGRAM FOR
44 THE COLLECTION AND RECYCLING OF COVERED ELECTRONIC DEVICES THAT SUBSTAN-
45 TIALY MEETS THE INTENT OF THIS TITLE, INCLUDING THE CREATION OF A
46 FINANCING MECHANISM FOR COLLECTION, TRANSPORTATION, AND RECYCLING OF ALL
47 COVERED ELECTRONIC DEVICES FROM HOUSEHOLDS, SMALL BUSINESSES, SCHOOL
48 DISTRICTS, AND NOT-FOR-PROFIT CORPORATIONS IN THE UNITED STATES.

49 S 27-2335. SEVERABILITY.

50 THE PROVISIONS OF THIS TITLE SHALL BE SEVERABLE, AND IF ANY PARAGRAPH,
51 SUBDIVISION, SECTION OR PART OF THIS TITLE IS DECLARED TO BE VOID OR
52 INVALID BY A COURT OF COMPETENT JURISDICTION, THE REMAINING PROVISIONS
53 SHALL NOT BE AFFECTED, BUT SHALL REMAIN IN FULL FORCE AND EFFECT.

54 S 4. The environmental conservation law is amended by adding a new
55 section 71-2728 to read as follows:

56 S 71-2728. ENFORCEMENT OF TITLE 23 OF ARTICLE 27.

1 1. ANY MANUFACTURER WHO VIOLATES ANY REQUIREMENT OF SUBDIVISIONS 1 AND
2 3 OF SECTION 27-2309 OF THIS CHAPTER MUST FIRST RECEIVE A WRITTEN WARN-
3 ING FROM THE DEPARTMENT INCLUDING A COPY OF THE REQUIREMENTS AND THIRTY
4 DAYS TO CORRECT THE VIOLATION. AFTER THIRTY DAYS, SUCH MANUFACTURER MAY
5 BE ASSESSED A PENALTY OF UP TO TEN THOUSAND DOLLARS FOR THE FIRST
6 VIOLATION AND UP TO TWENTY-FIVE THOUSAND DOLLARS FOR THE SECOND AND EACH
7 SUBSEQUENT VIOLATION, IN ADDITION TO BEING RESPONSIBLE FOR ANY PAYMENTS
8 REQUIRED IN THIS ARTICLE.

9 2. EXCEPT AS PROVIDED IN SUBDIVISION 1 OF THIS SECTION, ANY PERSON WHO
10 VIOLATES ANY REQUIREMENT OF TITLE 23 OF ARTICLE 27 OF THIS CHAPTER MUST
11 FIRST RECEIVE A WRITTEN WARNING FROM THE DEPARTMENT INCLUDING A COPY OF
12 THE REQUIREMENTS UNDER TITLE 23 OF ARTICLE 27 OF THIS CHAPTER AND THIRTY
13 DAYS TO CORRECT THE VIOLATION. AFTER THIRTY DAYS, SUCH PERSON MAY BE
14 ASSESSED A PENALTY OF UP TO ONE THOUSAND DOLLARS FOR THE FIRST VIOLATION
15 AND UP TO TWO THOUSAND DOLLARS FOR THE SECOND AND SUBSEQUENT VIOLATIONS.

16 S 5. Subdivision 2 of section 92-s of the state finance law, as added
17 by chapter 610 of the laws of 1993, is amended to read as follows:

18 2. a. The comptroller shall establish the following separate and
19 distinct accounts within the environmental protection fund:

- 20 (i) solid waste account;
- 21 (ii) parks, recreation and historic preservation account;
- 22 (iii) open space account; {and}
- 23 (iv) environmental protection transfer account{.}; AND
- 24 (V) ELECTRONIC EQUIPMENT RECYCLING ACCOUNT.

25 b. All monies received by the comptroller for deposit in the environ-
26 mental protection fund, EXCEPT THOSE MONIES COLLECTED FROM FEES AND
27 PENALTIES IMPOSED PURSUANT TO TITLE TWENTY-THREE OF ARTICLE TWENTY-SEVEN
28 OF THE ENVIRONMENTAL CONSERVATION LAW, shall be deposited first to the
29 credit of the environmental protection transfer account. ALL MONIES
30 RECEIVED BY THE COMPTROLLER FOR DEPOSIT IN THE ENVIRONMENTAL PROTECTION
31 FUND FROM FEES AND PENALTIES COLLECTED PURSUANT TO TITLE TWENTY-THREE OF
32 ARTICLE TWENTY-SEVEN OF THE ENVIRONMENTAL CONSERVATION LAW SHALL BE
33 DEPOSITED TO THE CREDIT OF THE ELECTRONIC EQUIPMENT RECYCLING ACCOUNT.
34 No monies shall be expended from any such account for any project except
35 pursuant to appropriation by the legislature.

36 S 6. Subdivision 3 of section 92-s of the state finance law, as
37 amended by chapter 145 of the laws of 2004, is amended to read as
38 follows:

39 3. Such fund shall consist of the amount of revenue collected within
40 the state from the amount of revenue, interest and penalties deposited
41 pursuant to section fourteen hundred twenty-one of the tax law, THE
42 AMOUNT OF FEES AND PENALTIES RECEIVED PURSUANT TO TITLE TWENTY-THREE OF
43 ARTICLE TWENTY-SEVEN OF THE ENVIRONMENTAL CONSERVATION LAW, the amount
44 of fees and penalties received from easements or leases pursuant to
45 subdivision fourteen of section seventy-five of the public lands law and
46 the money received as annual service charges pursuant to section four
47 hundred four-1 of the vehicle and traffic law, all moneys required to be
48 deposited therein from the contingency reserve fund pursuant to section
49 two hundred ninety-four of chapter fifty-seven of the laws of nineteen
50 hundred ninety-three, all moneys required to be deposited pursuant to
51 section thirteen of chapter six hundred ten of the laws of nineteen
52 hundred ninety-three, repayments of loans made pursuant to section
53 54-0511 of the environmental conservation law, all moneys to be deposit-
54 ed from the Northville settlement pursuant to section one hundred twen-
55 ty-four of chapter three hundred nine of the laws of nineteen hundred
56 ninety-six, provided however, that such moneys shall only be used for

1 the cost of the purchase of private lands in the core area of the
2 central Suffolk pine barrens pursuant to a consent order with the North-
3 ville industries signed on October thirteenth, nineteen hundred ninety-
4 four and the related resource restoration and replacement plan, the
5 amount of penalties required to be deposited therein by section 71-2724
6 of the environmental conservation law, and all other moneys credited or
7 transferred thereto from any other fund or source pursuant to law. All
8 such revenue shall be initially deposited into the environmental
9 protection fund, for application as provided in subdivision {five} SIX
10 of this section.

11 S 7. Subdivision 6 of section 92-s of the state finance law is amended
12 by adding a new paragraph (f) to read as follows:

13 (F) MONEYS FROM THE ELECTRONIC EQUIPMENT RECYCLING ACCOUNT SHALL BE
14 MADE AVAILABLE, PURSUANT TO APPROPRIATION, TO THE DEPARTMENT OF ENVIRON-
15 MENTAL CONSERVATION TO BE USED SOLELY FOR THE PURPOSES OF IMPLEMENTING
16 AND ENFORCING THE PROVISIONS OF TITLE TWENTY-THREE OF ARTICLE
17 TWENTY-SEVEN OF THE ENVIRONMENTAL CONSERVATION LAW.

18 S 8. This act shall take effect January 1, 2007 except that:

19 (a) section 27-2323 of the environmental conservation law, as added by
20 section three of this act, shall take effect January 1, 2008;

21 (b) the department of environmental conservation is immediately
22 authorized to develop any rules and regulations necessary to implement
23 the provisions of this act; and

24 (c) the department of environmental conservation shall notify the
25 legislative bill drafting commission upon the occurrence of the enact-
26 ment of the legislation provided for in section 27-2333 of the environ-
27 mental conservation law, as added by section three of this act, in order
28 that the commission may maintain an accurate and timely effective data
29 base of the official text of the laws of the state of New York in furth-
30 erance of effectuating the provisions of section 44 of the legislative
31 law and section 70-b of the public officers law.

Hewlett-Packard Company
8000 Foothills Boulevard
Mail Stop RN
Roseville, CA 95747

Tel 916.785.2672
Fax 916.785.2683
www.hp.com/recycle



Fax

To: Michael Harder

From: Heather Bowman

Company: Connecticut Department of Environmental Protection

Subject: Connecticut Comments

Telephone: 860-424-3096 (Tessa Gutowski)

Number of pages (including cover): 44

Fax: 860-424-4081

Date: September 8, 2006

Please find the following comments of Hewlett - Packard Company on proposed amendment to the State Solid Waste Management Plan (July 2006): Strategies for Electronic Wastes -- Strategy 4-8.

These comments will be sent overnight for delivery by Monday.



LEAGUE OF WOMEN VOTERS OF CONNECTICUT, INC.

August 27, 2006

Mr. Michael Harder
Connecticut Department of Environmental Protection (DEP)
79 Elm Street – 4th Floor
Hartford, CT 06106

RE: LWVCT Comments on the Proposed Amendment to the State SWM Plan

Dear Mr. Harder:

The League of Women Voters of Connecticut is pleased to submit the attached comments on the Proposed Amendment to the State Solid Waste Management Plan. If you have any questions or would like to discuss these comments further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Dunson".

Cheryl Dunson
Vice President, Public Issues
203/861-7335

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AUG 30 2006
Waste Management Bureau
Planning & Standards Division



**Connecticut Department of Environmental Protection (DEP)
Proposed Amendment to the State Solid Waste Management Plan
July 2006
Comments submitted by Cheryl Dunson, Vice President Public Issues
August 2006**

The League of Women Voters of Connecticut, comprised of over 2,500 members across the state, is a nonpartisan, political organization committed to effective public policy through education and action. The League provides testimony on public policy issues based upon positions derived from member study and consensus. The League supports policies to: reduce the generation and promote the recycling and reuse of solid and hazardous waste; ensure safe treatment, transport, storage and disposal of waste; and recognize suitable waste as potential resources. We appreciate the opportunity to comment on the Proposed Amendment to the State Solid Waste Management Plan [the Plan].

The Plan presents an excellent but sobering look at Connecticut's solid waste management noting the status, pressures, events and trends that are impacting our state. Although the 1991 Plan was premised on self-sufficiency, the 2005 figures presented in the current Plan reflect an approximate 12-fold increase in the out-of-state disposal of Connecticut's solid waste since 1991. The Plan projects that if we maintain the current 30% diversion rate (through recycling, composting, source reduction, etc.), by 2024 we will be shipping approximately 1.6 million tons of waste out of state.¹ The Plan states simply and clearly "There is not enough disposal capacity in Connecticut to handle all waste generated in the state."² This is a call for decisive and re-invigorated action during the 20 year life of the Plan. Although the entire draft is worthy of comment, the League will concentrate on the proposed statutory changes and recommendations for refinement.

Statutory Changes

The League supports the nine significant statutory changes highlighted in the Plan's Executive Summary.³ In particular, the League supports:

Establishment of a recycling program for electronics: According to a recent *Greenwich Time* article, a private equity firm invested \$50 million dollars in a Texas company that recycles computers.⁴ The article quotes one of the investors as saying that consumer electronics recycling is a \$1.5 billion dollar industry that is growing 45% annually. Gartner Inc predicts that by 2010 more than 925 million computers worldwide will need to be replaced. In an *unadvertised*, i.e., word of mouth, September 2005 pilot program, Greenwich Department of Public Works Superintendent John McKee reported to the Greenwich Recycling Advisory Board that in 3 weeks, the program yielded 10 tons of e-waste, despite a lack of advertising. The time for electronics cycling in Connecticut has come.

¹ State of Connecticut, Proposed Amendment to the State Solid Waste Management Plan, July 2006 Table 4-1, P.44

² State of Connecticut, Proposed Amendment to the State Solid Waste Management Plan, July 2006, Executive Summary, P. ES-8

³ Ibid, P. ES-11

⁴ "Greenwich firm invests in recycled PCs", *Greenwich Time*, August 8, 2006, P. A11
1890 Dixwell Avenue, Suite 113, Hamden, CT 06514-3183

Addition of plastics #1 and #2 and magazines to the list of mandated recyclables: As a result of community recycling programs, many residents are accustomed to recycling #1 and #2 plastics and magazines. Requiring that these items be recycled will be “transparent” for many residents who are already doing so; for residents who currently aren’t recycling these items, mandatory recycling will significantly reduce this type of ubiquitous waste from the waste stream. The League recognizes that the mandatory addition of #1 and #2 plastics has the potential to put a strain on local recycling budgets and therefore urges that this change be coupled with the expansion of the bottle bill. In this way, beverage containers can be removed from municipal waste stream by becoming part of the existing deposit-redemption program.

Expansion of the Bottle Bill to include plastic water bottles and Increased Funding Sources: The League has repeatedly testified in support of expanding the universe of products within the redemption program. Last session, we supported legislation to expand the beverage container redemption program to include non-carbonated waters and non-dairy and non-soy beverages. The current beverage container redemption rates of approximately 65-70% demonstrate that Connecticut’s long-standing user-funded program is effective, *i.e.*, has high participation, and equitable, *i.e.*, only those that use the designated products are subject to the program. In terms of funding, we also agree that unclaimed deposits should be considered abandoned property and specifically support the proposal that would enable the State to escheat unredeemed deposits.

Permit program changes and comprehensive alignment and updating of solid waste management laws: The League supports a comprehensive review of existing laws, regulations and procedures to ensure that they will support and advance the attainment of the Plan’s goals.

Recommended Refinements

As noted above, the League commends the DEP for providing an excellent "contextual" statement that clearly sets forth the current status and future actions that will be needed to manage effectively the State’s waste. The League would also like to credit DEP specifically for the thought and effort that went into providing the list of recommended strategies to achieve the numerous objectives of source reduction, increased recycling and composting, more effective management of solid and special waste disposal, education and outreach and others.

Having said that, the League believes that the Plan would benefit from the adoption of a concrete diversion rate goal and an explicit estimate of the funding needed. Clearly, we must increase our diversion rate but exactly what are we reaching for? While the Department did set forth various scenarios, the League believes that the Department should adopt a goal and explicitly identify the top actions and funding needed to achieve the goal. Although the list of strategies will help to guide actions, the Plan needs to set forth those that will provide the most gains, *i.e.*, we need to ensure that we do not confuse activity with progress. If waste management is to compete successfully against our many other demands for public dollars, we must not shy away from articulating the steep price to pay to achieve the goal – and the steeper one if we fail to act. In relation to the latter, the League believes that the Department also should emphasize the costs associated with current and projected increases in shipments of waste out of state, both in terms of the economic and environmental costs of shipments and any dollars lost to the local economy.

Tom Metzner 9/8/06

Comments on Solid Waste Management Plan

In section 1.6 I believe producer responsibility will play an important role in the future of waste management and recycling. This trend could place the financial burden for managing a number of wastes in the market place instead of the tax base. A number of difficult to manage wastes such as electronics, carpet, mattresses, tires, paint and others could be recycled through manufacturer-financed programs.

Fee on demolition contractors to finance recycling or disposal, remove hazardous wastes.

Section 2-13 – List mercury in fluorescent lights and include other examples of mercury including thermostats and flame sensors.

Section 2.2.6 HHW

Only 4 permanent HHW facilities in Connecticut. I would mention that most towns in Connecticut have access to at least one collection event per year, that the state's HHW program is well established, with 30,000 households participating every year.

Collections are held generally in the spring and fall each year but there are no collection opportunities during the cold weather months which creates a problem for residents moving or cleaning out a house at this time.

I would not say that the data on volumes is not available. It has been accepted but not analyzed largely because it can be misleading.

Section 2.5

I would add some parts of the US to examples of producer responsibility laws. Washington state and Maine on electronics, IMERC states on mercury, New Jersey on Nicads.

Section 3.2

Shared responsibility. I believe the role of manufacturers should be financial. I don't believe we should require or suggest they be required to take physical custody of wastes. If they choose to that's OK. We talk about manufacturers "sharing" financial responsibility. I believe we should commit to something stronger such as manufacturers assuming "primary" responsibility for end of life management of wastes.

Section 3.3 Goal 3

While I agree with finding a funding mechanism, can the goal reflect a **decreasing financial role** for government as part of the shared responsibility mentioned in the previous goal? Perhaps a funding mechanism for state and local governments for those costs not otherwise shred by manufacturers? (Also 8th Objective in next section.

Section 4.3.1 on the mercury reduction and education act

I would include novelties in the sales ban items listed in the second bullet. The first bullet should be about product phase out. It is the most important provision in my opinion and most clearly makes your point about pollution prevention. The phase out of mercury products has forced manufacturers to develop non-mercury alternatives to many different uses for switches, relays and industrial thermometers. The NEWMOA website even can provide numbers on the amount of mercury removed or potentially removed from commerce due to phase out.

Strategy 1-5

Freecycle is another great reuse organization we should recognize in the plan.

Page 4-21

Municipalities are not enforcing ordinance but DEP doesn't have adequate staff. Maybe municipalities don't have adequate staff either.

On expanding beverage container law – Do so in a way that clearly directs what happens with unclaimed deposits

Strategy 2-10 – Isn't that NERC's role?

Page 4-72

Support efforts and programs to recycle C&D waste. Explore producer responsibility funding options, especially for roofing materials

Strategy 4-8 on electronics

I don't agree with formation of a state oversight board or other government entity for electronics recycling. At least I don't think we should commit to one.

Maine is demonstrating you don't need one. They have set up a system of regional collection points where the wastes are separated by manufacturer and each manufacturer billed according to the weight of products under their name plus a share of the "orphan" waste. DEP may license/permit/register existing recyclers to serve as collection points in CT. Then each municipality would sign on to an option of collection strategies – regional, municipal, one-day collections, or direct to an aggregation point. I believe this option should be on the table for CT. A private third party organization may emerge from the manufacturers to help them organize their administrative responsibilities. There would be some governmental oversight but not for running programs. Manufacturers should pay their "fair share", which may or may not solely include market share. It may consider the amount coming in to collection points.

I don't believe a disposal ban is necessary. If electronics are showing up in the MSW after implementation of a program, it represents a flaw in the design or implementation of this program. Disposal bans are enforced against municipalities, generators or haulers not the manufacturers. Enforcing disposal bans has been problematic for other recyclables why do we need it for electronics?

Strategy 4-9 Household hazardous waste

Include work with real estate agents to assist residents preparing a house for sale to clean out HHW properly.

Page 4-92 Reporting

Develop electronic reporting protocols

Page 4-96

4 permanent HHW facilities not 5

Page 5-5 Role of CRRA

I don't believe CRRA has ever been involved in HHW collection.

**STATEMENT BEFORE THE PUBLIC HEARING ON CONNECTICUT'S DEP
PROPOSED AMMENDMENT TO THE STATE SOLID WASTE MANAGEMENT
PLAN 2006**

First I would like to thank and congratulate the DEP on all their work for this very comprehensive report. I especially admire your "Vision Statement and Goals for Managing Connecticut's Solid Waste". I personally will help work towards these honorable goals and hope that all our 169 CT communities will understand its importance and participate in achieving them within a measure that is not only possible but also impossible. It will behoove all our communities to begin to think in a regional way, that by assisting our neighbors, we will be saving tax dollars for all of us.

We support the following items to be added to the list to be mandated for recycling:

1. We support the Water Bottle Bill and want to see it pass through the Legislature, thus making water bottles redeemable. In addition, to include wine bottles, juice bottles, specialty bottles, e.g. iced tea, etc. (I heard last session, what Poland Springs said about their not wanting the bill to pass, so I personally boycott buying water in those small containers, which I see much too often, in all the streets.)

As per the above redeemable items, there should be an increase in payment for the 5-cent items (example, soda and beer, glass or can) to be raised to 10 cents and for all larger bottles, including wine bottles, be they glass or plastic, raised to 20 cents.

2. Include milk and juice cartons and cereal and or other food boxes, as recyclables
3. Include all plastic bottles and plastic containers, from #1 - #6 to be recycled
4. Include corrugated cardboard.
5. In favor of communities to collect redeemables for profit or your term -to capture escheats.

Suggested areas to be included to be mandated for recycling:

1. That **Special Events**, be they: private, public, religious, political, school, educational, sports, fairs of non-profit or for profit be required to supply adequate recycling bins for their event.

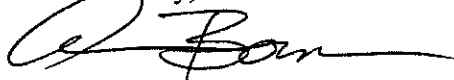
OTHER SUGGESTIONS:

- **NEEDED: MORE OFFICIAL NOTIFICATION** going out to all condos, apartments, housing projects, etc. about recycling. They need to provide the correct bins to their tenants. The threat of a fine should be emphasized. (I personally have a friend who has been wanting to recycle for years at her apartment, and has been giving her cat food cans to a friendly homeowner in the neighborhood. She is afraid to notify her landlord of the law, because she has already complained about the spraying of pesticides and feels threatened that she will be considered as a trouble maker and might be evicted.)
- **NEEDED: MORE OFFICIAL NOTIFICATION** to the public about how and why recycling will save the taxpayer money along with helping preserve our natural resources and our planet.
- Old furniture is a large part of our Bulk Pickup, why couldn't there be a center for refurbishing old furniture to say rehabilitation centers, creative art centers and or to a Penitentiary for example? This would fit into your market and development program as suggested on Page E-14. The same could go for old bicycles.

- **SUGGESTION:** that the DEP, along with some financial incentives, appoint a community that has demonstrated good recycling habits, to participate in an experiment for testing innovative recycling methods, and if proven effective, they could then be adopted by other communities, with the goal of going for zero waste.
- **ORGANIC WASTE AND COMPOSTING AN IMPORTANT ISSUE.**
- Halifax, N.S. has pickups for organic waste materials, yard and kitchen. They supply counter top containers and large bins to collect kitchen waste. It is picked up by private haulers and composted, and sold to local farmers, landscapers and hot houses.
- <http://www.region.halifax.ns.ca/environmenta/index.html>
- I have attached an article that came from Northern Sky News, then a monthly newspaper on environmental issues which covered what was happening along the East coast from Newfoundland to New Jersey. Unfortunately it is no longer in print. However, the attached article tells about a program that was initiated by a Mark Merritt in Annapolis, N.S. for a zero waste program. It shows a vat that could be used for commercial purposes, say for a supermarket to put their organic waste and a cone shaped bin that would be appropriate for the home owner, into which all kitchen wastes from organic to meat products could be deposited.
I have attached the article from Northern Sky News.
In formation about the cones is: fieldsare@klis.com (Doug Wilson, Yarmouth, N.S.) who just sent me these websites:
The green cone web site is <http://www.greencone.com>
The earth tub web site is <http://www.gmt-organic.com/EarthTub/et-info.php>
Things recycled web site with Green Cone info <http://www.members.shaw.ca/things.recycled/>
Solar cone web site <http://solarcone.net/home/index.php>
- **NEW DESIGNS FOR A LARGE CONTAINER FOR RECYCLING CANS AND BOTTLES, BOTH FOR INDOOR AND OUTDOOR USE.** They need to have a top that has a hole just large enough for a can or bottle to go through and very visible lettering that says RECYCABLES ONLY!

Thank you for your time and attention.

Submitted by,



Ann Berman, Milford Chair of Environmental Concerns Coalition
77 Pelham St., Milford, CT, 06460
Tele: 203-0878-0910



**Northeast
Utilities System**

Exhibit 46

107 Selden Street, Berlin, CT 06037

Northeast Utilities Service Company
P.O. Box 270
Hartford, CT 06141-0270
(860) 665-5000
www.nu.com

September 8, 2006

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DEP-WASTE MANAGEMENT BUREAU
WASTE ENGINEERING & ENFORCEMENT

Mr. Michael Harder
Connecticut Department of Environmental Protection
Bureau of Materials Management and Compliance Assurance
Waste Engineering and Enforcement Division
79 Elm Street
Hartford, CT 06106-5127

RE: Northeast Utilities Service Company Comments on Proposed Amendments to the State Solid Waste Management Plan

Dear Mr. Harder:

Northeast Utilities Service Company (NUSCO), on behalf of its affiliates, The Connecticut Light and Power Company (CL&P), Yankee Gas Services Company (Yankee Gas), Northeast Generation Company (NGC) and Northeast Generation Services Company (NGS), hereby submits comments on the Connecticut Department of Environmental Protection's (CT DEP) Draft Solid Waste Management Plan, public noticed on July 18, 2006.

As large public service companies, the NU companies manage several waste streams addressed in the State Solid Waste Management Plan and applaud the CT DEP's efforts in developing this new plan. NUSCO is especially encouraged by the CT DEP's strategy to maximize beneficial use of special wastes, specifically contaminated soil. NUSCO's following comments are supportive of the CT DEP's proposal and specifically address NUSCO's concerns about the need for rules addressing contaminated soil reuse and universal waste.

As stated in Strategy 4-10 (Objective 4) the plan "Management of Special Waste and Other Types of Waste" the Department plans to:

Evaluate and seek appropriate changes to the existing statutory and regulatory requirements for the reuse of soil with lower levels of contamination to encourage its reuse in a manner that is both protective of human health and the environment and minimizes the need for permanent disposal [and] develop general permits for the management, handling and beneficial reuse of contaminated soils. (Proposed Amendment to the State Solid Waste Management Plan July 2006, page 4-79)

As you are aware, CL&P is currently in the midst of several major electrical transmission upgrade projects which require the management of over 300,000 cubic yards of soil that will be excavated from these project corridors. These corridors are generally located along roadways and through commercially and/or industrially developed areas. The soil characteristics in these

Mr. Michael Harder
September 8, 2006

areas are expected to have been altered due to the very nature of their location and their constant exposure to potential contaminants in the form of stormwater runoff, paving activities, and railroad bed maintenance.

The strategy to develop general permits for the management, handling and beneficial use of this material would greatly benefit CL&P operations as well as promote the CT DEP's strategy to appropriately and protectively manage this material so that the material does not needlessly take up landfill or other disposal facility capacity.

Contaminated Soil Management and Handling:

In the absence of a general permit mechanism for the offsite management and handling of this soil, the CT DEP has required CL&P to obtain Temporary Authorizations (TAs) to manage the soil staging areas necessitated by these projects. Other construction projects CL&P and Yankee Gas may undertake, such as new substations or natural gas lines, would also require the temporary onsite or offsite storage of excavated materials.

NUSCO generally supports the concept of the CT DEP's recently proposed General Permit for Contaminated Soil and/or Sediment Management (Public Noticed February 11, 2006) to ensure best management practices are used, as long as the General Permit is not more onerous than the Temporary Authorizations. To that end, NUSCO encourages final publication of the General Permit as soon as possible.

Contaminated Soil Reuse:

NUSCO supports the CT DEP's strategy to evaluate and seek appropriate changes to the existing statutory and regulatory requirements for the reuse of soil with lower levels of contamination to encourage its reuse in a manner that is both protective of human health and the environment and minimizes the need for permanent disposal. As stated above, much of the soil generated by CL&P and/or Yankee Gas has not necessarily become contaminated as a result of chemical spills, leaking oil tanks, industrial accidents or improper disposal; rather this roadside soil is affected from years of commercial and/or industrial use (i.e. storm water run off, asphalt fragments, railroad bed maintenance practices).

Section 22a-209f of the Connecticut General Statutes allows the CT DEP to issue general permits for the beneficial reuse of solid wastes. The current regulatory requirements in the Connecticut Remediation Standard Regulations (RSRs) RCSA Section 22a § 133(k)(2)(h) allow the reuse of polluted soils only with the approval of the Commissioner, provided such reuse is consistent with the requirements of the section, including providing a map showing the location, and depth of proposed placement of such soil. Although reuse options for polluted soil are and should be limited to those that are protective of human health and the environment, including such options as asphalt batching and roadbed base, the current options should be expanded. Most of the soil NUSCO generates meets these criteria and would be an effective substitute for virgin material.

Mr. Michael Harder
September 8, 2006

However, the administrative burden associated with mapping the final deposition and reuse location of these materials severely hinders the reuse potential of this type of material. This burden generally leaves the generator with no other option but to dispose this minimally contaminated soil at landfills and other permitted disposal locations, taking up valuable disposal capacity when there is industrial demand for this type of material.

For these reasons, NUSCO encourages the CT DEP to move forward with a general permit for the reuse of soil with lower levels of contamination to encourage its reuse in a manner that is both protective of human health and the environment and minimizes the need for permanent disposal.


Universal Waste:

In addition to promoting the beneficial reuse of contaminated soil, NUSCO encourages the CT DEP to continue to examine and appropriately identify other ways to reduce the amount of special wastes entering disposal facilities. One opportunity for accomplishing this is to encompass additional wastes streams within the Universal Waste program. Additional universal waste streams would encourage recycling and/or beneficial reuse and reduce volumes of wastes entering disposal facilities such as manhole sludge.

We appreciate the opportunity to offer these comments on CT DEP's proposed Solid Waste Management Plan. If you have any further questions, please contact Christie Bradway at (860) 665-5296.

Very truly yours,

NORTHEAST UTILITIES SERVICE COMPANY, as Agent for
THE CONNECTICUT LIGHT AND POWER COMPANY,
YANKEE GAS SERVICES COMPANY,
NORTHEAST GENERATION COMPANY AND
NORTHEAST GENERATION SERVICES COMPANY



Patricia McCullough
Director – Environmental Management

PEOPLE'S ACTION FOR CLEAN ENERGY, INC.

PACE

Exhibit 50

A non-profit 501(c)(3) public health organization

101 Lawton Road, Canton, Connecticut 06019-2209
(860) 693-4813; (860) 693-4664; Fax (860) 693-2822; www.pace-cleanenergy.org

PACE Advisors:

Everett Barber
Sunsearch

Christie Brinkley
Model / Activist

William Burch, Ph.D.
*Yale School of Forestry
and Environmental Studies*

Peter Cook
Architect / Activist

Paul Gunter
*Nuclear Information
Resource Service*

Joel Gordes
Environmental Energy Solutions

Denis Hayes
Earth Day Network

Winona Hauter
Public Citizen

Nancy Hazard
*Northeast Sustainable
Energy Association*

Michio Kaku, Ph.D.
*Nuclear Physics
City University of New York*

Alex Kuzma
Children of Chernobyl Relief Fund

Charles Prewitt, Ph.D.
*Chemistry
Eastern Connecticut State University*

Edward Sarisley, Ph.D.
Central Connecticut State University

Steven Strong
Solar Design Associates

PACE Officers:

President
James O'Rourke
Connecticut Legislature

Chairperson
Judi Friedman

Vice Chairperson
Barbara Backman

Vice Chairperson
Joan Benham

Vice Chairperson
Ken Owen

Treasurer
Donna Grant

Secretary
Tom Atwater

September 2, 2006

Dear Mr. Harder,

PACE is extremely interested in the Bottle Bill Hearing. We strongly believe that the bill should at least include plastic water bottles and that the deposit should be increased to ten cents. This move would dramatically reduce our waste and help pollution and energy issues.

As our waste and energy problems increase, this move alone would help to alleviate some of the problems. Our members feel that this concept just makes common sense. The hundreds of households that compose our membership are in total agreement on this very practical plan.

Thank you for your concern and interest.

Sincerely

Judi Friedman
Judi Friedman Chair

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Waste Management Bureau
Planning & Standards Division

COMMENTS OF PHILIPS ELECTRONICS ON BEHALF OF THE ELECTRONICS MANUFACTURERS COALITION FOR RESPONSIBLE RECYCLING

State of Connecticut Proposed Amendment to the State Solid Waste Management Plan August 2006

Philips Electronics is submitting the following comments on the State of Connecticut Proposed Amendment to the State Solid Waste Management Plan. These comments are submitted on behalf of the Electronics Manufacturers Coalition for Responsible Recycling (Coalition). The Coalition represents sixteen of the largest consumer electronics companies in the world who have come together to support the use of an advance-recycling fee (ARF) to pay for a consumer electronics-recycling program. The coalition members are Canon, Epson, Hitachi, IBM, JVC, LG, Mitsubishi, Panasonic, Philips, Pioneer, Samsung, Sanyo, Sharp, Sony, Thompson, and Toshiba. The Coalition supports an ARF because experience in California, a number of European countries and some Canadian provinces has clearly shown that an ARF provides a sustainable and adequate source of funds to local governments and recyclers for recycling end of life electronics in the most cost-effective manner possible while maintaining a level playing field in the market. Connecticut itself currently uses ARF type funding mechanisms for lead acid batteries and beverage containers and has in the past used ARF funding for tires. Moreover, the Proposed Amendment calls for expansion of the existing beverage container fee to cover bottled water.

Summary

1. The Coalition agrees with the Proposed Amendment that Connecticut should establish a source of funding for electronics recycling.
2. The Proposed Amendment calls for funding based on producer responsibility but never even attempts to justify this approach or discuss why it rejected the ARF funding mechanism. The state has used such a funding mechanism in the past and the Proposed amendment calls for expansion of the fee to cover water bottles. The report also ignores that such a fee for electronics has been working successfully in other jurisdictions.
3. Supporters of producer responsibility say that it would provide an incentive to manufacturers to make better products but the experience and financial analysis show that this is not the case.
4. The Connecticut Proposed Amendment actually provides a disincentive because it is not economically viable for the vast majority of responsible manufacturers who are the leaders in making environmental improvements.
5. Other regulatory and voluntary programs already encourage the development of more energy efficient and environmentally preferable products.
6. The California ARF system for electronics waste has been a significant success.
7. The arguments raised against ARFs are not justified.
8. The Solid Waste Plan should be amended to call for an advance-recycling fee on electronics to provide funding for the Connecticut electronics waste recycling.

1. *The Coalition agrees with the Proposed Amendment that Connecticut should establish a source of funding for electronics recycling.*

The Coalition believes that electronic waste poses a burden on local governments and that there are recoverable materials in these products. Therefore, the Coalition agrees that there should be a source of funding for electronics recycling.

2. *The Proposed Amendment calls for funding based on producer responsibility but never even attempts to justify this approach or discuss why it rejected the ARF funding mechanism that Connecticut has used in the*

past, that the amendment proposes to use for water bottles and that has been working successfully in other jurisdictions.

The Proposed Amendment (P. 4-77) calls for a manufacturer fee to be the source of funding for electronics recycling but never even attempts to justify the recommendation. In fact, the report notes that stakeholders called for a program of "shared responsibility" but the final recommendation would place all financial responsibility on manufacturers. Moreover, the report says nothing about Connecticut's past use of advance fees for recycling lead acid batteries and bottles and for a period of time to cover tires. Ironically, the Connecticut DEP so favors the advance fee for beverage containers so much that it proposes in the Proposed Amendment to expand the fee to cover water bottles. It is hard to understand why the DEP would propose a different mechanism for electronics than it has used successfully for other products and that it now proposes to use for water bottles.

The report also ignores that such a fee was supported by local governments and the Connecticut Resource Recovery Authority at hearings in 2006 and approved by the Joint Committee on Environment.

Finally, the report also ignores the successful experience of the advance fee in many other jurisdictions. The advance fee approach is being used in many European nations and a number of Canadian provinces. Closer to home the advance fee approach has been used in California since January 1, 2005. The discussion in point 6 below clearly shows that the California system has been a huge success.

3. *Supporters of producer responsibility say that it would provide an incentive to manufacturers to make better products but the experience and financial analysis show that this is not the case.*

a. *Established manufacturers do not need any additional incentives to make more environmentally sensitive products.*

Established manufacturers like Philips already are leaders in environmental design improvements and have done so without the need for such an incentive. Using Philips as an example illustrates the level of activity that has occurred without such an incentive:

-- Philips has environmental requirements going back to the 1980s with a first environmental company-wide program since 1994.

-- Philips has publicly reported on its environmental performance since 1998.

-- Philips banned the use of mercury, PBDE, PDD and cadmium and 39 other substances from its product portfolio in 1998 and lead and cadmium in 2004, unless a product division received a specific exemption from the company.

-- Philips publishes an annual Sustainability report www.philips.com/sustainability/report

-- In both 2004 and 2005 Philips was the top company in its market sector in Dow Jones Sustainability Index. (Another coalition member, Sony, achieved this position for 2006.)

-- Philips was designated by Global 100 as one of the top 100 most sustainable companies in the world (Two other coalition members, Panasonic and Canon, also designated) www.global100.org

-- In 2004 Philips developed 21 "Green Flagship Products" and in 2005 Philips developed another 50 products -- "Green Flagship Products are those that offer better environmental performance than competitors or predecessor products in at least 2 focal areas (hazardous substances, energy conservation, recycling, packaging and weight).

-- All Philips' televisions and DVD players comply with Energy Star requirements.

-- Philips was the first computer monitor company to offer full line of lead free (RoHS complaint) flat panel monitors and Philips is 100% RoHS compliant in consumer electronics worldwide as of Q4 2005.

-- Philips' lamps have the lowest mercury in the lamp industry.

Philips undertook these actions because sustainability is a key element of our market strategy. Sustainability provides a business opportunity and is essential to reduce company risk and to protect our reputation. And our

key established competitors all have taken actions without any such incentive. Companies understand that responding to environmental issues can enhance global growth (“Green is Good for Business,” Business Week May 8, 2006, page 124). Wal-mart has undertaken a major sustainability initiative (CNN Money, “The Green Machine,” July 27, 2006.) A book about to be released by two Yale university professors, “Green to Gold: How Smart Companies Use Environmental Strategy to Innovate, Create Value and Build Competitive Advantage,” documents how companies are incorporating sustainable development into their corporate strategy. The notion that responsible companies need incentives to make environmentally superior products is outmoded and wrong.

Sebastian Mallaby, writing in the August 7, 2006 Washington Post, notes that as the value of companies is increasingly in intangible assets such as brand value rather than physical assets, companies are working harder to protect their brands by being more responsive to customer opinions including those involving environmental concerns.

“Or consider the environmental behavior of U.S. companies at home. This used to be a classic case of politics leading business. For most of the past generation, regulators have forced environmental rules on grumbling corporations. But in the current debate on climate change, this order has reversed itself. Impatient companies are capping their own carbon emissions.”

The actions of responsible companies shows that they do not need artificial incentives to make environmental improvements in the design of their products.

b. Making manufacturers pay a fee for recycling in the hopes of encouraging better environmental design makes no financial sense.

Sorts of electronics collection events show that televisions last on average 14-17 years and computers last 11 years. It is inconceivable that a potential savings 14-17 years in the future will have an impact on environmental design decisions made today. It is unrealistic to believe that companies make investment decisions based on the possibility that it might lower recycling costs so far in the future. The cost of capital is too high and the return is too low for this to be a serious factor in design. The Connecticut report contains no evidence to the contrary.

c. Imposing a manufacturer fee does not provide any incentive for improved design.

A recent analysis of producer responsibility concludes that imposing a fee on manufacturers does not provide any environmental design incentive.

“Providing incentives for ecological design of products is a kind of holy grail for EPR proponents...It is difficult to see how true cost-internalization can be achieved for more complex products, such as electronics...Fees on manufacturers to provide incentives for improved design would have to reflect a wide array of product characteristics such as weight, bulk, chemicals constituents of the product and degree of recyclability. Fees would need to be tailored not just to a product class made by several manufacturers...but to a firm’s individual products and models. If EPR were implemented through a physical take-back system rather than up-front fees, products would have to be tracked and sorted out of the waste-stream by brand name – a daunting bureaucratic challenges with very high transaction costs. “Planning the Funeral at the Birth: Extended Producer Responsibility in the European Union and the United States,” Harvard Environmental Law Review, 2006.

4. *The Connecticut Proposed Amendment actually provides a disincentive because it is not economically viable for the vast majority of responsible manufacturers who are the leaders in making environmental improvements. The Connecticut proposed amendment report contains no economic analysis of the impact of the proposal.*

The Connecticut Proposed Amendment contains no analysis on the economic feasibility of the proposal. Presumably the authors would say that manufacturers would pass the cost on in the price of the product. That is not feasible in today’s economic environment. If the authors assumed the manufacturers would just eat the cost

the authors would be ignoring the current state of profitability in the industry. Ironically, the established manufacturers like Philips have higher costs than newer Asian competitors in part because of the effort they devote to environmental design. Increasing the costs of the established manufacturers that they cannot pass on would adversely affect the very companies making the design changes that the authors of the Proposed Amendment would claim to want. It would provide a disincentive to spending additional resources on such improvements, as companies would have to make cuts to pay for the fee.

a. The Consumer Electronics Industry is Being Flooded by Low Cost Asian Manufacturers Who Are Not Making Environmental Design Improvements Being Made by Established Manufacturers

Seventy percent of 130 television manufacturers were not in business ten years ago (Smart Money 3/2005 article). Gartner, a leading provider of global technology research, reports similar numbers. According to Gartner "The emergence of China as a worldwide manufacturing powerhouse added further pressure to the consumer electronics industry, as state sponsored original design manufacturers emerged to build consumer products for anyone seeking to enter the consumer electronics market as a new "manufacturer... Any company with the resources and a market entry point can deliver a product relatively quickly by contracting with these ODMs." (The Consumer Electronics Industry in Flux, November 16, 2005).

New entrants are charging much lower prices in part because of lower manufacturing costs and no environmental design improvement efforts. One new company, Byd:sign (pronounced "by design") sold 70,000 televisions with a staff of just 19 people by keeping prices 35 to 40% below those of bigger competitors. According to the story (Newsweek International, January 23, 2006), "Prices are plummeting as more and more players jump into the game, many of them unknown names out of Taiwan and Mainland China." Olevia, made by Syntax-Brilliant, makes the Number 1 selling television at Amazon.com. It sells products at 20-30% below name-brand prices. Taiwan-based computer manufacturer, Acer Inc, "strives to run the leanest possible operations so it can offer low prices and still profit." (AP 2/26/06)

According to a new study released by the advertising consulting group, Vertis, brand names are becoming less influential when consumers are deciding where to shop for home electronic products. Vertis Press Release, "Appeal of Discounts and Coupons Increases Among Home Electronics Consumers," June 13, 2006

b. Retailers have significant impact on pricing and limit the ability of manufacturers to pass on costs.

Costs cannot be passed on because of intense competition and power of retailers. The financial services company, Morningstar, in a recently published book, "The Five Rules for Successful Stock Investing," says in a section titled "What's not to Like in Consumer Products," "Increasing Power of Retailers – As Wal-Mart has increasingly come to dominate the U.S. retail landscape, consumer goods manufacturers have lost much of the pricing power they used to enjoy. Everybody wants their products in Wal-Mart stores, which means that Wal-Mart is able to dictate many of the terms under which it will sell these products, including price." (Page 309)

Other large electronics retailers have similar pricing power.

Dell, which sells direct to customers making it a retailer as well as manufacturer, reported in July 2006 very poor quarterly results. In "What Dell Should Do," an article in the July 21, 2006 Business Week Online, Charles Wolf, an analyst at Needham & Co, says that Dell should consider selling through retailers. He notes, however, "A move into big-box retailers like Best Buy and Circuit City would mean markups that would erode Dell's price advantage."

It is ironic that while the report discusses the concept of "Shared Responsibility" and, as a general matter, retailers rather than manufacturers are benefiting from sales, the Connecticut Proposed Amendment puts all the financial responsibility on manufacturers and none on retailers.

c. *As a result of pricing pressure from retailers and new Asian competitors, the consumer electronics market faces very low operating margins that do not allow for additional costs to be passed on.*

A story from the January 3rd edition of *Business Week Online*, discussing the sharp decline in television prices contains the following statement:

“What’s behind the steep drop in prices? Strong consumer demand for low-end plasmas and LCDs give the decline healthy momentum, and aggressive pricing by Chinese and Taiwanese manufacturers only go further in shredding margins and creating a ruthlessly competitive environment for TV manufacturer. “I don’t think anybody is making any money other than the retailers, really” says (Riddhi) Patel (analyst with ISuppli).”

The financial services company S&P makes a similar conclusion:

“At this point in the cycle, she (S&P analyst Amy Glynn) also see (sic) declines in average selling prices, which S&P thinks are hurting manufacturers, helping stimulate demand and benefiting retailers.” “Electronics Stores’ Fast-Forward Mode” by Sam Stovall S&P in *Business Week Online*, July 13, 2005.

The financial services company, Morningstar, in a recently published book, "The Five Rules for Successful Stock Investing," says that "Falling in Love with Products" is one of the five mistakes investors make.

"...Consumer electronics is simply not an attractive business. Margins are thin, competition is intense, and it's very tough to make a consistent profit."

Gartner says that the consumer electronics industry will follow the PC industry with, “Lower costs, combined with ongoing price pressures, resulted in lower gross margins.”

Peter Burrows and Steve Hamm in “Tech Has a New Top Dog,” *Business Week Online*, June 19, 2006, note, “Consumer tech? Margins can be razor thin or nonexistent.”

The October 18, 2005 Merrill Lynch analysis of Philips Electronics repeatedly discusses the “total lack of operating leverage in Mainstream Consumer Electronics.”

Evidence discussed above clearly shows that the consumer electronics industry is very competitive and manufacturers have very low operating margins (the percentage of profit before interest and taxes from each dollar of sales). Low margins are the result in manufacturers not being able to raise prices -- if they could raise prices why wouldn't they price their products to have high margins leading to higher profits? Retailers require manufacturers to price products to achieve certain price points making raising prices difficult leading to these “razor thin margins.”

And if manufacturers could simply pass on the costs of the fee, why would virtually all consumer electronics manufacturers oppose the approach contained in the Proposed Amendment?

d. *As a result of this competition and pricing pressure, consumer electronics is not a very profitable business.*

A July 18, 2006 analysis of Philips Electronics by Merrill Lynch values the consumer electronics business at \$0.

"We value the mainstream business at zero as we believe that the CE industry is intensely competitive and value creation is challenging.”

Morningstar’s most recent financial analysis of Philips (April 18, 2006) says the following:

“Philips’ consumer electronics business recorded 15% revenue growth, but operating margins remained anemic at 2.5% underlying the difficulty in making money in this highly contested market. We are especially concerned

that profitability in this segment could deteriorate further, as overcapacity in the flat-panel industry could turn Philips thin profits into losses.”

The situation for Philips is even more serious in the US.

“Philips...has for the first time in 15 years posted a profit in the North American consumer electronics business. It’s a small profit...according to Sanford Bernstein analyst Scott Geels... Credit a heightened sense of urgency. In 2001 Philips Chief Executive Gerard Kleisterlee told a reporter that if Philips couldn’t make a profit in North American consumer electronics within a few years he would shut it down” “Moving into Light,” Forbes.com, from Forbes magazine August 14, 2006.

The July 18, 2006 Merrill Lynch analysis says that Philips Electronics is doing better than other electronics companies.

“... We think Philips is performing reasonably well compared to its competitors... The mainstream business was only just above breakeven due to the price discounting from competitors to clear their inventory... Samsung reports a Q2 margin of -4% in its Digital Media business (c. 70% of sales are TV and A/V, the remainder is PC/printers) despite increasing its flat panel market share to become the #1 player in the US and EU.”

A July 27, 2006 Merrill Lynch analysis of Sony says that “LCDs still posted an operating loss” (in the latest quarter).

These same pressures are affecting manufacturers of plasma televisions. “Profitability has been challenging for the majority of the PDP makers, despite rising consumer uptake of plasma TV sets. “LG Reclaims Top Plasma Panel Rank, I Suppli Says,” Electronic Business Online, 6/29/2006

Overwhelming evidence demonstrates that manufacturers do not have the ability to absorb additional costs that would be imposed by a fee on manufacturers as recommended in the Proposed Amendment.

e. Manufacturer Fee Bills Put Established Manufacturers Who Are The Companies Leading the Development of Environmental Improvements At Economic Disadvantage.

The Connecticut Proposed Amendment unfairly and unnecessarily puts established manufacturers at an economic disadvantage to new Asian entrants by adding costs to these manufacturers when they already have higher costs and lower profit margins. Established manufacturers are the manufacturers making the environmental design improvements that legislators want to see. These research and design implementation initiatives add to established manufacturer costs.

Established manufacturers are widely recognized for being innovation leaders (See April 24, 2006 Business Week in which 3 Coalition members – IBM, Samsung and Sony – are included in the list of the world’s 25 most innovative companies and a fourth Apple, works closely with the Coalition and also strongly favors an advance recycling fee). Three other Coalition members, Philips, Panasonic and LG Electronics, made the top 100 most innovative companies.

As noted above, established manufacturers are also recognized as being leaders by independent third parties as leaders in sustainable business.

While purporting to provide incentives for better environmental design, the recommended Connecticut approach provides no such incentive and ironically provides a disincentive by harming the established manufacturers who are the leaders in environmental design improvements.

5. *Other regulatory and voluntary programs already encourage the development of more energy efficient and environmentally preferable products.*

There are numerous voluntary and regulatory programs that encourage or require the development on environmentally preferable products. These include:

- European ROHS Directive on lead, mercury, cadmium and hexavalent chromium that has been adopted for video screen products such as televisions and computer screens by California as of January 1, 2007
- California electronics recycling reporting requirements on use of toxics and recycled material.
- Government procurement preferences for environmentally preferable products (EPEAT for computers --- www.epeat.net)
- Energy Star specification for standby mode for televisions (www.energystar.gov) adopted as a requirement by California Energy Commission as of January 1, 2006.
- Energy Star initiative to develop specification for active mode (EPA Energy Star press release).
- Natural drive to lower energy consumption because of thermal management, product-design requirements and improvements in components functions. Reducing energy use allows for dissipation of heat buildup with less reliance on fans. This also allows for the design of thinner products, which are desired by consumers. Component suppliers offering more functionality onto each component making for better efficiency.

It is undeniable that products today contain significantly less toxic materials, are much more energy efficient and are lighter than products made more than a decade ago.

6. *The California ARF system for electronics waste has been a significant success.*

According to Jeff Hunt, supervisor of the California program, predictions of daunting administrative problems have been largely incorrect "and the program as a whole has been a tremendous success in both recycling and driving the creation of local businesses and jobs." (Milken Institute 2006 Global Conference report, http://smartbrief.blogspot.com/2006/04/e-waste-tsunami_24.html). Electronics recyclers have also praised the program ("E-Waste Business is Booming," [Red Herring.com](http://www.redherring.com), August 10, 2006).

441 collectors and 48 recyclers have registered with California as participating in the program. One retailer, Save Mart Supermarkets, one of the largest grocery stores chains in California, has registered as a collector and collected over 250,000 pounds of material at six stores in one weekend (Business Wire August 10, 2006).

During its first year of operation California recyclers submitted claims for reimbursement for 70 million pounds of covered products or almost 2 pounds per person. But results are actually more impressive. Collections increased throughout the year with the fourth quarter of 2005 resulting in collections of 25 million pounds. At that rate California would have collected 100 million pounds of covered products or 2.8 pounds per person. California officials predict that collections will double in 2006 making California the jurisdiction with the highest per capita recovery rate of any state. (Milken Institute 2006 Global Conference report, http://smartbrief.blogspot.com/2006/04/e-waste-tsunami_24.html).

Even this is misleading since California only reimburses recyclers for covered products – video screens. It does not reimburse recyclers for other electronic waste such as computers, printers, scanners, keyboards, and mice that are also recovered from consumers and recycled. While there is no official data at this time of these non covered products anecdotal evidence suggests that actual collections are 50-100% higher than the official results of collections from covered products. This is confirmed by Electronics Recyclers, the largest electronics recycler in California, which says that actual collections including non-reimbursable equipment, are nearly 67% higher for the first half of 2006 than reported collections. Even if California reimbursable collections were 100 million pounds in 2006 (much lower than projected by California), total recovery would be about 167 million pounds or 4.6 pounds per person.

The California program has resulted in additional public benefits. Goodwill has made collection a profit center in California and Goodwill testified in support of ARF at Congressional hearing. <http://energycommerce.house.gov/108/Hearings/09082005hearing1631/Davis.pdf> (See pages 9-10)

7. *Arguments against ARFs are not justified*

The following arguments have been raised against ARFs. None of them are justified.

- The bill places an administrative burden on retailers that will increase their costs.

The California bill allows retailers to retain 3% of the fee to help cover their costs. The bill allows retailers to keep any interest on the fees until they submit the fees every quarter. National retailers already have made the necessary changes to implement the California ARF system and would have little or no additional cost to add fees in other states. Retailers in 45 states including Connecticut already collect state sales taxes and remit them to the state without any reimbursement. Retailers in all 50 states already collect state taxes on gasoline, beer and cigarettes and remit them to the state and retailers in all states except where the state government controls all sales collect taxes on wine and spirits and remits them to the state. Retailers in ten states including Connecticut collect and remit bottle bill fees to the state, in nine states including Connecticut collect and remit fees on lead acid batteries and in 34 states collect and remit fees on tires all for funding collection efforts for those products.

Ironically, when faced with the possibility of a manufacturer fee in Canada, the Retail Council of Canada opposed such a fee because of the adverse affects on large and small retailers. "Environmental Levies," Retail Council of Canada.

- The bill will result in a huge government bureaucracy.

The funding mechanism, the advance fee, is independent of the structure for implementing the recycling program. The mechanism can be implemented without establishing a huge government bureaucracy. While some argue that California's program is overly bureaucratic data shows that the administrative costs to run the recycling program are low (~ 10% of collected fees according to the National Center for Electronics Recycling, August 2006) and at or below overhead costs in Maine on a per capita basis. Moreover, Connecticut could transfer payments to local governments to implement the program avoiding any state bureaucracy. North Carolina has proposed such a system and says it can operate such a system with just three additional people. Connecticut also could outsource the management of the program to a third party. The Connecticut Resource Recovery Authority expressed interest before the Joint Environment Committee last year in operating such a program. Manufacturers have said they would run the program based on ARF funding. Capping fees would also limit the likelihood of creation of a government bureaucracy.

- The bill will result in local retailers losing sales to Internet sites that will not have to pay the fee.

The California experience is that all major Internet retailers are collecting the fee. The California DTSC report specifically says that the "Board of Estimate believes the majority of Internet and catalogue retailers are participating in the California e-waste recycling program by remitting the fee." Projected revenues from collected fees in California are coming in on target strongly suggesting that there has not been a loss of sales to Internet retailers. The California program also prohibits any electronic product seller not collecting the fee to be ineligible for state government procurement. Surveys show that while consumers heavily use the Internet to research and shop for products, most people make their purchases at retail stores and half of online buyers pick up products at local stores. "Using the Small Screen to Find Bigger Ones," *eMarketer*, July 11, 2006.

Manufacturers further suggest including in the bill language to prohibit sales of their products in the state unless the manufacturers include in their contract language the requirement that internet sellers collect and forward the advance recovery fee to the state providing a legal mechanism, a contract violation, to stop Internet retailers who are not collecting the ARF.

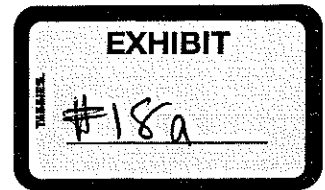
- The bill does not provide an incentive to manufacturers to improve their environmental design.

Established manufacturers are widely recognized for being innovation leaders (See April 24, 2006 Business Week in which 3 Coalition members – IBM, Samsung and Sony – are included in the list of the world’s 25 most innovative companies and a fourth Apple, works closely with the Coalition and also strongly favors an advance recycling fee. Three other members made the top 100 most innovative companies including Philips, Panasonic and LG Electronics.) Manufacturers already have significantly improved design by making products much more energy efficient and significantly reducing use of toxics.

The alternative proposed by the retailers actually provides a disincentive to environmental design by increasing costs of the manufacturers leading environmental design efforts to the benefit of new low-cost manufacturers without any record of environmental design improvements who will not have any costs until their products show up in the waste stream in a decade.

8. *Conclusion*

The Solid Waste Plan should be amended to call for an advance-recycling fee on electronics to provide funding for the Connecticut electronics-recycling program.



P.O. Box 71
Windsor, CT 06095
August 23, 2006

Commissioner Gina McCarthy
State of Connecticut
Department of Environmental Protection
79 Elm Street
Hartford, Connecticut 06106-5127

Re: **Comments Concerning Proposed Amendments to the Solid Waste Management Plan ("Plan"), July 14, 2006**

I have reviewed the proposed revisions to the Solid Waste Management Plan and offer the following comments for subject categories:

I. Introduction

The economy of the United States runs principally on oil, and secondarily on natural gas. These fuels, created from the geological pressure-cooking of ancient phytoplankton, or tiny aquatic plants, are also called liquid and gaseous petroleum, or together simply petroleum. Together oil and natural gas constitute about two thirds of the energy supply of the United States – and also most of the rest of the world. The use of petroleum has been increasing at 2 to 3 percent a year for most years since about 1935.

We do not live so much in an information age, or a technology age, but rather a **petroleum age**. This has huge implications for our economic lives because economic goods and services do not make themselves, but require energy for the extraction of their raw materials, and for their manufacture, distribution and sale. We are not wealthy in the United States, Japan and much of Europe so much because we are more clever, work harder or have better systems of economic thought than others but because we use more petroleum. What this means, practically, is that about a coffee cup's worth of oil (and other fuels) is used to produce each dollar's worth of goods or services that you buy. Take out the money in the United States economy and it would continue to function through barter, although quite awkwardly and inefficiently. Take out the energy and the economy would stop in a few days. When Russia cut off its supply of oil to Cuba in the 1990s, food disappeared from markets in less than a week and the average Cuban soon lost more than 20 pounds. The abundance of petroleum, which is still the case in 2006, will not last your lifetime, and it may not even last until your children graduate! **Think about these things as you go about your own purchases for the next week!**

Thus, the most important issue facing the American Economy is almost certainly the **"end of cheap oil"**. The quantity of useful oil (and gas) in the Earth is finite because most oil and gas was made about 100 million years ago in very special geological times, and it is being formed now at a rate that is tiny compared to the rate at which we are using it. As a consequence, oil and gas are considered *non-renewable resources*. Although we will probably never totally run out of oil - there will always be enough oil to lubricate your bicycle - sooner or later the majority of the remaining oil will be used.

consequence, oil and gas are considered *non-renewable resources*. Although we will probably never totally run out of oil - there will always be enough oil to lubricate your bicycle - sooner or later the majority of the remaining oil will be used.

The total quantity of oil that we will ever extract from the Earth has been estimated by various geologists as probably 2 trillion barrels, with a possible but unlikely upper limit of three trillion barrels (the quantity of gas, expressed in energy units, is roughly the same). As of 2006, we have used one trillion barrels, or from one third to one half of all the oil that we will ever use, most of it in the past 50 years. Leading geologists call the time after the peak "the second half of the age of oil" and talk about the inevitable "end of cheap oil" (oil at \$5 or even \$10 a gallon is still cheap in their eyes—and ours) as shortages send the price skyrocketing. This certainly will happen during our lifetime or those of your children.

The Nation's second most important energy source, natural gas, is also a non-renewable resource. Although the world's total gas supply is less depleted than oil, it too is a very finite resource that will not last much longer than oil. The most important aspect of the availability of oil is not when, if ever, we "run out" of oil but rather when we reach the peak of its production, the so called "Hubbert's Peak". While it is not certain when we will reach Hubbert's peak for global oil most investigators believe that it will be soon – perhaps it has happened by the time you read this, certainly if you are about 20 now, it will happen by the middle of your life. The world will still be using lots of oil after the peak, just less than at the peak, and it will have to be divided by more and more people if, as seems likely, the global population and its affluence continue to increase. As it is, the global *per capita* oil use peaked in 1978. For many of the world's poorer people the end of cheap oil is a reality already.

Hubbert's peak is not some far-fetched theory but rather a fact. Most American's would be surprised to learn that their Nation's own oil production peaked in 1970, and that by 2006, the U.S. produced only about 40 percent of what we did then. M. King Hubbert had predicted that 1970 peak for the United States in 1955, and many scoffed at his prediction. But it happened, and the production of oil for the U.S. declined essentially every year since then. Even so, our use has increased considerably, with the difference made up by oil imported from all around the world. American natural gas has peaked or will shortly, which is the reason for the importation of increasing quantities of Liquefied Natural Gas.

Since oil and gas constitute two thirds of the energy supply of the United States, a very large question for our economy, perhaps the largest, is what we will do without the major part of the energy that presently runs it. While there are many alternative fuels, including coal, nuclear, hydroelectric, wind and biomass, none of them have the energy density, ease of transport and utility of oil and gas, and only coal is likely to be able to fill the gap quantitatively. We have a big problem here that is likely to dominate much of the rest of your lives.

The second largest problem facing our economy, or perhaps it is even more important than the end of cheap oil, is the threat to the environment, including soils, water, biodiversity and especially the atmosphere. Most fuels are made of reduced carbon, and when they are burned (oxidized) they are changed to carbon dioxide (CO₂), a clear gas that enters our atmosphere. As a consequence of the economic activity around the world, the CO₂ in the

atmosphere is increasing greatly, leading to the warming of all of the world, the northward movement of tropical diseases, the melting of glaciers and ice caps, and large changes in the patterns of storms and, perhaps most important, the moisture of the soil. Oceans are rising now at a rate of least an inch every ten years as a consequence, and there are predictions that as much as half of Florida, Manhattan, Bangladesh, Pakistan and many other areas will be underwater in 100 years. Even larger areas will be impacted by droughts caused by greater evaporation and transpiration (water loss through a leaf) in a warmer world. While there will be winners and losers from global warming, the general sense is that the negative impacts will be far greater than the positive ones, especially as ever larger human numbers are forced out of coastal areas and parched soils into ever more crowded areas not effected by these problems.

These two big problems are related, as more energy would be needed for relocating cities, replacing soil nutrients, irrigation, fighting disease and air conditioning in a globally-warmed future. These two big problems – the end of cheap oil and the threats to our environment -- are the most fundamental economic problems facing humanity in coming decades. They are not new ideas but have been well known to the scientific community since at least the 1960's. Nevertheless, governments and economists, who did not like these ideas, have suppressed them. But these two factors – the end of cheap oil and global climate change – are very likely to have huge impacts on the day-to-day economic life (i.e. providing and getting to jobs and gaining food, shelter and clothing as well as amenities) of most people. But, again, these issues are barely mentioned in most economics books and if so usually as "externalities", that is as issues that are secondary to the main economic process, which is to satisfy immediate human needs and desires through purchases in markets; this is unconscionable.

What is the likely prospect for the future given these disconcerting issues? Of course, there is no magic crystal ball, but there are three main possibilities. The first is that neither the world nor the U.S. will be able to deal with "the end of cheap oil" (and natural gas), and that many economies will begin to disintegrate as people cannot get to work, as food becomes much more expensive, as the many jobs that we have that are based on affluence disappear and as nations and cultures squabble over whatever oil and gas is left. There will be a huge transfer of economic, political and possibly military power to nations that have whatever petroleum is left. Issues that take up the main attention of our citizens and our politicians today – reduction of taxes for the wealthy, terrorism, abortion, gay rights and so on will appear as an incredible waste of our national attention relative to preparing for the end of cheap oil. Perhaps, it will mean the end of civilization, as we know it.

The second possibility is that we will turn to coal, for which large reserves remain, and to biomass on a massive scale. In this case, solving the first problem, the end of cheap oil, could make the second, global climate change, far worse since coal produces nearly twice as much CO₂ per unit of energy as gas or oil. Biomass might or might not contribute importantly to atmospheric CO₂ depending upon exactly how it is done, but if undertaken on a scale that would be important relative to the lost oil and gas it would have very deleterious impacts on biodiversity, soils and the global food supply. Neither of these two alternatives seem very desirable to us.

There is a third possibility. In Chinese culture, the symbol for disaster is also the symbol for opportunity. We do have an opportunity here to resolve both issues if we really are willing to do that. The first issue is that we will have to make huge investments into whatever replaces oil and gas after implementing strict conservation through better planning. These investments will be in dollars, labor, ingenuity and energy, and they almost certainly will be on a scale unprecedented in human history. We could decide that anything that we consider as a replacement for oil and gas *must* be "atmosphere-friendly", that is it cannot add any CO₂ to that atmosphere. We could make our energy from windmills, solar voltaics, certain biomass and other means of harvesting the sun. We could do this in a way that enhances local control of one's life, of community and of democracy. If we make that decision, then it may be possible to adjust to the "end of cheap oil" in a way that has long-term very positive effects for the environment and that would allow for the continuation of civilizations that make sense -- and even a life of modest affluence for the world's population. Howard Odum speaks of a possible, "Prosperous way down". This is the path that makes the most sense for many reasons.

But the problem is this: the third path is impossible given the conventional economic model. It is not a "cheapest now" solution, it is not a "free market" decision, and it probably is not a "no government" decision and it certainly is not a decision that conventional economics would suggest. A different approach to economics is essential and must start with a base as much in the natural sciences as in the social sciences using the scientific method to produce a system of steady state economics. The heart of this new approach to economics is energy waste minimization through stringent conservation via requiring a plan for its accomplishment.

I. Vision Statement and Goals for Managing Connecticut's Solid Waste

Connecticut's long-range vision for solid waste management is to:

- Significantly transform our system into one based on resource management through collective responsibility for the production, use, and end-of-life management of products and materials in the State;
- Shift away from the "throwaway society," toward a system that promotes a reduction in the generation and toxicity of trash, and where wastes are treated as valuable raw materials and energy resources, rather than as useless garbage or trash; and
- Manage wastes through a more holistic and comprehensive approach than today's system, resulting in the conservation of natural resources and the creation of less waste and less pollution, while supplying valuable raw materials to boost manufacturing economies.

The goals of the State Solid Waste Management Plan are:

- Goal 1: Significantly reduce the amount of Connecticut generated solid waste requiring disposal through increased source reduction, reuse, recycling and composting.

- Goal 2: Manage the solid waste that requires disposal in an efficient, equitable and environmentally protective manner, consistent with the statutory solid waste hierarchy.
- Goal 3: Adopt stable, long-term funding mechanisms that provide sufficient revenue for state, regional and local programs while providing incentives for increased waste reduction and diversion.

Comments:

1. The three long-term visions are better categorized under the superior overarching vision of "establishing to the maximum extent possible, a sustainable steady state economy [FN1] achieved through minimization of energy waste and greenhouse gases by life-cycle management of products and materials from extraction of raw materials, production, use and end of life."
2. The first goal should be to significantly minimize energy waste and greenhouse gases to extend the availability of global fuel supplies for current and future generations by:
 - a. Defining the minimum and maximum acceptable Quality of Life ("QoL"). See attached article, *Consumption, Everyday Life & Sustainability*, funded by the European Science Foundation's Tackling Environmental Resource Management Programme;
 - b. Reducing all material waste consistent with a defined QoL; and
 - c. Reducing per capita consumption to the lowest achievable level for a defined QoL
 - d. Insuring consistency with the State Plan of Conservation and Development, Connecticut's Energy Plan and other pertinent planning documents.

II. Current Status Of Solid Waste Management

Currently, about 30 percent of the waste generated in the state is recycled, most of it newspapers, bottles with a return deposit and some plastics and cardboard.

Through increased recycling and expanded composting of yard debris and other organic wastes from homes and businesses, the DEP wants to raise the total amount of trash diverted from the waste stream to 49 percent.

The plan also seeks to reduce the amount of waste generated by working with manufacturers to trim packaging and encouraging consumers to reuse items.

[FN 1] A "steady state economy" means an economy with a relatively stable, mildly fluctuating product of population and per capita consumption, which is a viable alternative to a growing economy and has become a more appropriate goal in the United States and other large, wealthy economies.

In the end, less waste would be burned in the state's six incinerators, and the demand for landfill space to dispose of incinerator ash would diminish. More recycling and separation of construction, demolition and electronic waste is also needed.

The changes are needed because of recent increases in certain types of waste, such as plastics and electronics, and because burning trash at the incinerators is likely to become much more costly in the next few years.

Currently, about 57 percent of the 3.8 million tons of trash disposed of annually in Connecticut is incinerated, generating about 551,000 tons of ash each year.

About 9 percent of the state's trash is shipped to out-of-state landfills, and another 4 percent is buried in-state. The state must reduce the amount of trash it generates substantially, he said, because projections show that otherwise, the amount will continue to increase and exceed the state's disposal capacity within the next few years.

Comments:

1. The Plan presents no analysis to assess the quantum of energy contained in the current waste stream and the proposed energy savings and reduction in "Greenhouse" gases from source reduction, recycling, reuse, composting.

III. Moving Towards Connecticut's Vision: Objectives And Strategies

Comments:

1. Declare a **War on Waste**.
2. Replace Connecticut goal of economic growth and *business uber alles* mentality with goals of a steady state economy. Dollar spent is dollar burned.
3. Source reduction should be the primary focus of reducing solid waste above all other objectives and goals because it requires the least energy consumption for its attainment and will achieve the longest lasting results.
4. No consideration has been given to revising the State Demolition Code to require that Building Officials seek feasible and prudent alternatives to demolition, such as deconstruction, rehabilitation and reuse and recycling, etc. and for DEP to assert concurrent jurisdiction, if authorized under current law, for licensing and permitting of demolition as a primary solid waste initiative.
5. No consideration has been given to:
 - a. The absence of solid waste considerations in the preparation by state agencies of Environmental Assessments and Impact Evaluations under the Connecticut Environmental Policy Act ("CEPA"). The Regulations of Connecticut State Agencies should require analyzes and assessments of solid waste generation,

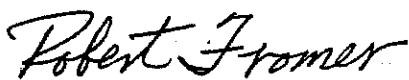
- b. An outright ban on the non-essential ubiquitous plastic bags and styrofoam products used for cups and food containers; and
- c. Seeking establishment of revised zoning laws to phase out take-out food establishments.

IV. Implementation Considerations

Comments:

1. Implementation of the Plan requires a serious commitment to enforcement through increased numbers of inspectors, a system of rewards and stiff fines and penalties, which can become a lien on property.
2. Seek establishment of a:
 - a. Value added tax or fee on every consumer product to fund implementation;
 - b. Dedicated tax for billboard and newspaper advertisers promoting consumer products to fund implementation;
 - c. Autonomous solid waste authorities in each region having a regional council of governments with power to implement regional plans approved by the DEP for an integrated approach to implementation;
3. Fund a regular television channel and program from the Phoenix Auditorium providing news, announcement, discussions, etc on all environmental issues; and
4. Create a Source Reduction Committee to work with business and industry to prevent waste.
5. Creation of Regional Material Exchanges to recycle and produce revenue.

Cordially,



Robert Fromer

Consumption, Everyday Life & Sustainability

funded by the European Science Foundation's

TERM (Tackling Environmental Resource Management) Programme

(<http://www.comp.lancs.ac.uk/sociology/esf/index.htm>)

The Quality of Life

Michael Jacobs, General Secretary of the Fabian Society, London

Introduction

The term Quality of Life (QoL) has been widely used in a number of disciplines to express the idea of personal well-being in a framework which goes beyond the simple economic equation of well-being with income. (There is one important variant on this which I shall not discuss here, namely its use in the health policy literature to refer to the nature - as opposed to the length - of elderly or sick people's lives.) Quality of life is generally used as the overarching concept, which encompasses income (and therefore consumption) but also includes other factors which contribute to well-being. In this short paper I shall discuss the meanings that have been attached to QoL in the literature, some issues concerned with its measurement, and the component factors, which are generally held to contribute to it. I shall then offer a very sketchy observation on the relationship between QoL and consumption.

The Quality of Life: Individual and Social

The first point to make is that the literature on quality of life generally fails to distinguish between the quality of individual lives and the quality of the collective life of a society (or a place) as a whole.

The starting place for most QoL studies has been the subjective experience of well-being of the individual. However the attempt to measure this has involved an inexorable slide towards a non-individual perspective. People's subjective perceptions of their well-being are so clearly non-comparable, and affected by expectation and social comparison, that attention quickly turned to the identification of objective conditions which influence subjective experience: people's objective state of health, for example, rather than their feelings of well-being. But many of these objective conditions are not (or cannot be measured as) peculiar to the individual at all. The quality of air, the level of education or indeed the level of employment, all require collective or aggregate measurement. So the quality of life gradually became, for many researchers, a description of the collectively experienced conditions of a society or place, with only an indirect and contingent relationship to the subjective experience of well-being of individuals.

In the hands of Greens, this process has been taken further. Concerned to argue that the social costs of economic growth have increased to the point where they now outweigh the benefits of higher income, green writers have included factors such as loss of natural habitats, global warming and increasing inequality to their concept of quality of life. Yet these factors are not elements of personal well-being at all. They are components of the quality or health or sustainability of society as a whole. Their value is not derived from the aggregate well-being of individuals, but independently, from a conception of what constitutes a good society.

There are thus two related but separate concepts operating here: individual QoL and social QoL. This is particularly important in relation to environmental goods. Some environmental goods and costs directly affect individual QoL - air quality, for example, or traffic congestion. But many do not. Natural habitats do not make me better off personally, nor does reducing the risk of global warming to future generations. These contribute rather to the health or quality of society. The same is true of many social or shared goods, including cultural goods which many people do not use themselves, such as universities and public service broadcasting.

Of course social QoL contributes to individual QoL: (some) individuals feel better off when they live in a better society. But this is not the justification for pursuing social QoL. They are logically separate. (Conversely, individual QoL should contribute to social QoL: a society would not be very good or healthy if its natural habitats were preserved and inequality eradicated but its people were all stressed at work and going through divorce). If people feel that social QoL contributes to their own personal QoL this indicates a self-identification with, or feeling of membership of, society. Politically this would appear to be an important prerequisite for defending social goods whose contribution is to social QoL.

The rest of this paper will focus on individual QoL.

Individual Quality of Life: Definition

The simplest definition of individual QoL is the *subjective feeling that one's life overall is going well*. (Note that this differentiates QoL from 'happiness', which tends to connote too transitory and emotional a condition). 'Overall' is intended to define QoL as the overarching judgment of how all the different elements of one's life combine together.

There are three problems with this definition, however. The first is that it can only be measured subjectively, by asking people about their own QoL. This raises all the familiar problems of subjective measurement, its reliability and comparability. The second is that QoL in this definition relies heavily on the character and dispositions of the individual. A person may be rich, successful in their job, healthy and happily married and *still* not feel their life is going well, perhaps because they have unfulfilled personal goals or simply because they have a depressive personality. If we say such a person does not have a good QoL, as we will have to on this definition, the concept becomes more or less meaningless in terms of public policy and research.

The third problem is the converse of this. Subjective satisfaction with one's life is strongly related to one's expectations of it. Expectations in turn are related to social position: people compare themselves to others in their self-perceived social position. Low expectations achieved lead to higher subjective reporting of QoL than high achievement that fails to meet expectations. This leads to the apparent conclusion that one way to increase QoL is to reduce people's expectations. Yet this fails to account for the desirability of personal growth and development, of the accomplishment of challenging individual life goals. As J S Mill said, it is better to be Socrates dissatisfied than the pig satisfied.

These problems suggest a definition of QoL not in terms of overall subjective experience, but as *a set of conditions relating to an individual's life that would appear to indicate, from outside, that it is going well*. This definition accepts that it may not, in fact, capture the subjective perception

of overall well-being, but makes a generalized claim that - if these conditions obtain - in most cases it will.

The crucial distinction between the two definitions is not between subjective and objective measurement. Many of the factors which contribute to QoL on the second definition require at least a partial element of subjective measurement. It is between QoL as an 'overall' judgment and QoL as a set of separate conditions or factors which contribute to this judgment. Whereas the 'overall' judgement can only be made by the individual, the separate factors can be observed and presented by the social researcher. There is no need, in fact, to combine them into a single 'overall' measure of QoL. To do so requires procedures for commensuration and weighting which will inevitably involve disputable value judgments.

The Components of Individual Quality of Life

Many years of both conceptual and empirical research (the latter on what people report contributes to their QoL) have resulted in a generally accepted list of factors which together comprise or determine QoL. (There are generally small differences of content and presentation.) The same factors can contribute to a good or a bad QoL, though not always symmetrically. Ill health, for example, can make QoL worse more or less without limit, but good health contributes to a good QoL only up to a point. The following is my own presentation / categorisation:

- (1) Income and consumption
- (2) Health:
 - (a) Physical
 - (b) Mental (stress, depression, happiness)
- (3) Relationships:
 - (a) Family
 - (b) Friends
- (4) Satisfaction with:
 - (a) Job
 - (b) Leisure
- (5) Personal autonomy:
 - (a) 'Free' time (in which activities can be 'chosen')
 - (b) Life opportunities and choices
- (6) Security, of:
 - (a) Person
 - (b) Income, employment, housing etc
 - (c) Lifeworld, including environment (NB. Different people need or want different levels of security.)
- (7) Personal development: accomplishment, personal growth
- (8) Social goods contributing to individual well-being:
 - (a) Environmental (air quality, townscape, etc)

- (b) Social (low crime, social order)
- (c) Public services (education, health, parks, etc)

(9) Social goods contributing to a good society:

- (a) Environmental (natural habitats, risks)
- (b) Cultural (museums, art galleries, etc - if not used)
- (c) Ethical (equality, reduction in poverty, etc)
- (d) Government (democracy, etc)

Discussion of QoL generally assumes that the relationship between income and QoL is unproblematic. Higher incomes allow higher consumption levels, and people are assumed to buy goods and services because they contribute to their QoL. In fact the relationship between consumption and QoL is not quite so simple; we shall discuss this below.

All the other factors are only partially related to individual income, or not related to it at all. (This is of course the reason for the QoL concept in the first place.) The quality of personal relationships are not affected by income. In some cases there are society-wide relationships with income which do not apply to all individuals: this applies to physical health, job satisfaction, personal development. Many affluent people do not experience high quality in these aspects of their lives; many poorer people do. In the case of social goods, these are not bought individually but provided through collective regulation or public spending. Higher individual income may enable a person to move to an area with (say) better environmental or crime conditions but it may not.

Quality of Life and Public Policy

The public policy relevance of the concept of QoL as defined in this way should be fairly clear. If the objective of government is to improve QoL (because this is the overarching concept of well-being), raising household incomes, which is normally taken to be the principal objective of economy policy, may not be the most appropriate method. Depending on the trade-offs people make (or society judges) between gains in income and gains in the other factors, it may be more important to concentrate on improving the latter.

Indeed if the very economic processes which generate higher incomes themselves contribute to a reduction in the other factors, then raising incomes may be positively counter-productive. Present patterns of economic growth clearly contribute to environmental degradation, and arguably to poor job satisfaction, low job and income security, high levels of stress, certain health problems, possibly even to high crime. This is the familiar environmentalist argument about 'the social costs of growth'; the claim is that to improve QoL society should either stop income growth altogether (the older version of the argument) or change its patterns (the more modern version). (There is no guarantee of course that changing the patterns of economic activity to improve environmental impacts would also lead to improvements in the other aspects of quality of life, though this is often implicitly assumed by environmentalists.)

This argument of course ignores the equally plausible claim that recent patterns of economic growth have increased QoL, not just by raising incomes but by increasing personal autonomy, improving health, education and other public services, even improving family relationships through the liberation of women (and so on). It is by no means clear, contrary to what environmentalists frequently argue, that individual QoL has fallen in (say) the last twenty years.

(In fact many environmentalists actually want to argue that social QoL has fallen - society has got worse - a much more plausible claim. But they have failed to distinguish between the individual and social concepts.)

In fact, the relationship between national income and QoL is not obvious. Many of the components of QoL would appear to be only partially related to economic factors. They would seem to be primarily culturally or personally determined. Economic policy may simply not be the relevant field of public policy, either negatively or positively. In other cases the issue would appear to be, less the growth of national income as simply its allocation. It may well be that a reallocation of resources into education, preventive health care and environmental protection would improve the quality of life more than either a reduction or growth of current spending patterns. (Of course, higher national income might allow even more spending in these fields.)

Indeed it is not clear that any aspect of public policy can affect some of the aspects of QoL. There are surely strict limits to how far governments can improve personal relationships, satisfaction with leisure activities or personal development.

Where improving the non-income components of QoL will involve a reduction in national income and therefore in personal income (or just in personal income, for example through a reduction in working hours) the trade-off between income and the other components of QoL is crucial. People may be willing to substitute some of their income for an improvement in other aspects of QoL, but they may not. (Experience of the demand for reduced working hours suggests caution here, as does the unpopularity of taxes.)

There may be a particular problem in an increasingly competitive global economy. Some policies to improve QoL, such as in increased job satisfaction and reduced working hours (and stricter environmental regulation) may raise costs in such a way as to seriously undermine competitiveness. The trade-off may then become, not just a marginal income loss but a substantial income and employment loss, of a kind which would clearly reduce QoL. There may actually be little scope for marginal trade-offs: they will perforce become large trade-offs, and then unacceptable.

Whatever people's *actual* trade-offs, of course, it will always be possible for the social critic to challenge these. Many Greens want to argue that people would in fact have a higher QoL if they traded off income for time or environmental goods or personal development, even though they do not realise this now. This is a perfectly legitimate position.

Consumption and the Quality of Life

The missing question in all this is how consumption is related to QoL. It is generally assumed in the QoL literature that consumption improves people's QoL, otherwise they wouldn't do it. But is this so? How much consumption actually *adds* to QoL? It is arguable that much consumption in industrial societies simply maintains the social position of households, fitting them out with the basic prerequisites of participation in a society in which everyone else is also buying more. If the social pressures to consume as the basis of social participation were reduced, people wouldn't need to buy some of what they currently do.

If we can in this way distinguish between genuinely QoL-enhancing consumption and participation-maintaining consumption, and reduce the requirements of the latter, we may find that the contribution of income to QoL is not as important as generally thought. This, however,

cannot be done by individuals. The question is, what are the social and institutional processes by which it might occur?

From the Reader distributed for the *Consumption, Everyday Life and Sustainability* Summer School 1999, Lancaster University.

ΣΥ. 186

The Day



DEP Pitches \$1 Enders Home As Possible Home For Local Agency

By **Julie Wernau**

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Waterford — Step right up. Step right up. Come see the amazing \$1 house.

After no one offered to purchase the historic house located on the outskirts of Harkness Memorial State Park for \$1 and move it, the state Department of Environmental Protection opened it Thursday morning to civic groups, hoping to lure a buyer.

Among those lured to the presentation included the West Farms Land Trust, Waterford Education Foundation, Waterford Historic Properties Commission, Goshen Coastal Conservancy and Friends of Harkness Memorial State Park.

"We're really pleased that there's so much interest, and we really look forward to getting your help," DEP State Parks Division Director Pamela Adams told the throng.

The 2 1/2-story Victorian, formerly a caretaker's cottage for the sprawling estate of James and Anna Rumrill, was most recently owned by the late Ostrom Enders.

Waterford Municipal Historian Robert Nye brought out an old painting of the Rumrill estate and caretaker's cottage and displayed it on a side porch, while attendees, coffee cups in hand, waited to get a peek at the home.

Adams said the DEP's preference is to keep the home where it is, and the agency will work for up to a year to work out an agreement.

"Our last option is demolition. We really don't want to do that," Adams said. "It's a piece of Waterford history."

The fate of the Enders property is sensitive. If moved, historians say the house would be removed from its "historic context."

The home has ties to a number of prominent Waterford families, including the Rumrills' daughter Anna Hammond, who gave Waterford its first library, and Enders, who was president of the former Hartford National Bank and Trust Co.

Susan McGuire, whose great-grandfather lived in the cottage as a gardener for the Rumrills, arrived at the open house with her family, descendants of Waterford artist Burtus Brooks.

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The property is also environmentally sensitive as it fronts 21.5 acres of waterfront, dedicated as a natural area. State Sen. Andrea Stillman, D-Waterford, said removing the home would remove a deterrent for those who would tread on Goshen Cove.

First Selectman Daniel Steward said the town is not looking to take on another liability and would like another group to maintain it.

"You need time. You cannot do this in a rush," he said. "There's got to be some documentation with how that would work."

In terms of precedence, historic buildings on the town-owned Jordan Green are used and maintained by the Waterford Historical Society, Steward said.

By statute, Adams said, the DEP is not allowed to lease the home directly to a private entity, nonprofit or civic group and would need to lease it to the town, which would in turn work out an agreement with another entity.

The home has not been entirely vacant since Enders sold the property to the DEP in 1986. A handful of DEP employees have lived in the building over the years, Adams said. The house was occupied until about two years ago and continues to be heated.

"The thing that will kill a house fast is if you don't heat it in the winter time," said Eric Hansen, project supervisor at the park, as he ran his fingers along the house's plaster walls to seek out cracks.

Inside the house, people bustled from room to room, ogling two rooms large enough to hold small meetings, eyeing closets and snapping flash photographs of attic crawl spaces.

"It's a beautiful house. It's just beautiful. Every room has a view to die for," Susan McGuire said as she peered out a back window overlooking the cove.

State Historic Preservationist Susan Chandler declared the historic character intact as she surveyed the home's hardwood floors, woodstove and two fireplaces.

"The first thing that strikes me is that the sizes of the rooms are really quite large," she said of the six-bedroom home. "So many historic buildings have problematic floor plans for reuse."

A steep flight of stairs was flanked by an old, electric chairlift. Upstairs, pineapple-dotted wallpaper led to two child-size bedrooms painted with fluffy white clouds.

Downstairs, Stillman and State Rep. Betsy Ritter, D-Waterford, ventured into the basement and declared it safe and dry.

Several groups said it would make a wonderful learning center.

West Farms Land Trust President Robert Schacht said the group has been turned down for a number of grants because it lacks a designated office space. After surveying the house, he thought the property's picturesque location would be perfect as both an office and an educational center.

"Remediation and repairs are the big issue," he said.

The DEP has not asked an engineer to inspect the house. Adams said the town and/or those groups interested in taking on the property, would be expected to inspect the home and bring it up to code at a yet unknown cost.

"Unfortunately," Adams said, "wonderful places like this house fall behind when we have to fund other projects."

j.wernau@theday.com ■



▷

Supreme Court of Connecticut.

FORT TRUMBULL CONSERVANCY,
 LLC,

v.

Antonio H. ALVES, et al.

No. 16667.

Argued Feb. 13, 2002.
 Decided March 4, 2003.

Conservation organization formed by city residents brought action under the Environmental Protection Act against owner of buildings, city building official, and city, seeking declaratory and injunctive relief to prevent the issuance of permits allowing the owner to demolish 39 buildings. The Superior Court, Judicial District of New London, D. Michael Hurley, Judge Trial Referee, granted defendants' motions to dismiss for lack of subject matter jurisdiction. Organization appealed. After transferring the appeal, the Supreme Court, Sullivan, C.J., held that: (1) organization had standing to sue under the Act even though city and building official had no jurisdiction to consider environmental ramifications of issuing demolition permits, overruling Connecticut Post Ltd. Partnership v. South Central Connecticut Regional Council of Governments, 60 Conn.App. 21, 25, 758 A.2d 408; (2) building official was not required under the Act to consider environmental matters when issuing demolition permits; (3) trial court's error in granting defendants' motion to dismiss was harmless with respect to those claims that were

subject to a motion to strike; and (4) some of organization's allegations stated claim against city and owner.

Affirmed in part and reversed in part.

Borden, J., filed an opinion concurring in part and dissenting in part.

**1191 Scott W. Sawyer, with whom, on the brief, was Ellin M. Grenger, for the appellant (plaintiff).

Michael P. Carey, with whom was Thomas J. Londregan, New London, for the appellees (named defendant et al.).

*482 Edward B. O'Connell, New London, for the appellee (defendant New London Development Corporation).

SULLIVAN, C.J., and BORDEN, KATZ, PALMER and ZARELLA, Js.

SULLIVAN, C.J.

The issue to be resolved in this appeal is whether the plaintiff, Fort Trumbull Conservancy, LLC, has standing under General Statutes § 22a-16 [FN1] to bring an action against the defendants to enjoin the demolition of thirty-nine buildings. The defendants are the New London Development Corporation (corporation), Antonio H. Alves, the New London building official, and the city of New London (city). The trial court, *Hon. D. Michael Hurley*, judge trial referee, granted the defendants' motions to dismiss the complaint for lack of subject matter jurisdiction and rendered judgment thereon. The plaintiff appealed from that judgment to the

Appellate Court ****1192** and we then transferred the appeal to this court pursuant to Practice Book § 65-1 and General Statutes § 51-199(c). We affirm the judgment of the trial court in part and reverse in part.

FN1. General Statutes § 22a-16 provides in relevant part: "[A]ny person, partnership, corporation, association, organization or other legal entity may maintain an action in the superior court for the judicial district wherein the defendant is located, resides or conducts business ... for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity, acting alone, or in combination with others, for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction...."

The trial court reasonably could have found the following relevant facts. The corporation, a nonprofit private development corporation, applied to Alves for demolition permits to destroy thirty-nine buildings owned by it in the city. As the city building official, Alves was authorized to administer the state demolition code, General Statutes § § 29-406 through 29-413. [FN2] Some ***483** of the buildings for which demolition permits had been sought were eligible for listing on the National Register of Historic Places, and none of

the defendants had declared the buildings to be blighted, deteriorated or deserving of condemnation by virtue of their unfitness for human habitation.

FN2. General Statutes § 29-404 provides: "The local building official shall administer sections 29-406 to 29-413, inclusive. Each such official shall have experience in building demolition, construction or structural engineering, shall be generally informed on demolition practices and requirements and on the equipment necessary for the safety of persons engaged in demolition and the public and shall have a thorough knowledge of statutes and regulations of the department concerning demolition. Such official shall pass upon any question relative to the manner of demolition or materials or equipment to be used in the demolition of buildings or structures."

The plaintiff, a limited liability corporation formed by residents of the city, instituted an action pursuant to § 22a-16 seeking a variety of declaratory judgments, temporary and permanent injunctions, damages, costs and equitable relief. The effect of the relief sought by the plaintiff would be to enjoin the issuance of demolition permits for the buildings in question and to enjoin the defendants from taking action to further the demolition process. The plaintiff alleged that demolishing the buildings in question would result in a wide variety of environmental harms, including the consumption of energy that would contribute to widespread terrain disruption, air pollution and water

contamination. The plaintiff alleged, for example, that the demolition would have an adverse environmental impact at oil facilities in Louisiana, Alaska and Venezuela, coal mines in Wyoming and Pennsylvania, and cement, steel and bulldozer factories. The plaintiff also alleged that the demolition would waste raw materials, burden solid waste disposal facilities in Connecticut and elsewhere and require expenditure of energy to transport the solid waste materials.

The defendants filed motions to dismiss the plaintiff's complaint, claiming that the plaintiff lacked standing under the Connecticut Environmental Protection Act ***484** act), General Statutes § 22a-14 et seq., and that the plaintiff was not otherwise classically or statutorily aggrieved. Specifically, the defendants argued that, because Alves and the city had no statutory authority to consider environmental issues in determining whether to issue the demolition permits, the plaintiff was not aggrieved by the issuance of the permits. The trial court granted the motions and this appeal followed.

The plaintiff claims on appeal that the trial court improperly concluded that the plaintiff did not have standing under § 22a-16 to pursue its claim. The plaintiff further claims that: (1) regardless of whether it has standing under § 22a-16, it has standing to bring an action against the defendants under General Statutes § 7-148(c)(8); [FN3] and (2) the dismissal of its ****1193** action violated the public trust doctrine. [FN4] We conclude that the ***485** plaintiff had standing to bring its

action under § 22a-16. [FN5] We also conclude, however, that the plaintiff has failed to allege sufficiently a cause of action against Alves. To the extent that its claims against the city are derivative of the claims against Alves, those claims also legally are insufficient. Accordingly, we conclude that the granting of the motion to dismiss as to those claims, although improper, was harmless, because the claims properly would have been subject to a motion to strike. The plaintiff has raised claims against the city that are not derivative of its claim against Alves, however, and against the corporation, that would withstand a motion to strike. Accordingly, the granting of the motions to dismiss was improper as to those claims.

FN3. General Statutes § 7-148(c) provides in relevant part: "Powers. Any municipality shall have the power to do any of the following, in addition to all powers granted to municipalities under the Constitution and general statutes

* * *

"(8) The environment. (A) Provide for the protection and improvement of the environment including, but not limited to, coastal areas, wetlands and areas adjacent to waterways in a manner not inconsistent with the general statutes;
"(B) Regulate the location and removal of any offensive manure or other substance or dead animals through the streets of the municipality and provide for the disposal of same;

"(C) Except where there exists a local zoning commission, regulate the filling of, or removal of, soil, loam, sand or gravel from land not in public use in the whole, or in specified districts of, the municipality, and provide for the reestablishment of ground level and protection of the area by suitable cover;

"(D) Regulate the emission of smoke from any chimney, smokestack or other source within the limits of the municipality, and provide for proper heating of buildings within the municipality...."

FN4. The plaintiff's claim does not implicate what this court has referred to as the "public trust doctrine." In Leydon v. Greenwich, 257 Conn. 318, 332 n. 17, 777 A.2d 552 (2001), we noted that "that term traditionally has been used to refer to the body of common law under which the state holds in trust for public use title in waters and submerged lands waterward of the mean high tide line," and distinguished it from the common-law concept that "land held by a municipality as a public park or public beach is for the benefit of all residents of this state." (Internal quotation marks omitted.) Id., at 332, 777 A.2d 552. Neither of these doctrines is applicable in the present case.

FN5. Accordingly, we do not reach the plaintiff's claims under § 7-148 and what it refers to as the public trust doctrine.

[1][2][3] As a preliminary matter, we address the appropriate standard of review. "If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause." (Internal quotation marks omitted.) Ramos v. Vernon, 254 Conn. 799, 808, 761 A.2d 705 (2000). "A determination regarding a trial court's subject matter jurisdiction is a question of law. When ... the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) Doe v. Roe, 246 Conn. 652, 660, 717 A.2d 706 (1998).

[4][5][6][7] "Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction.... The objection of want of jurisdiction may be made at any time ... [a]nd the *486 court or tribunal may act on its own motion, and should do so when the lack of jurisdiction is called to its attention.... The requirement of subject matter jurisdiction cannot be waived by any party and can be raised **1194 at any stage in the proceedings." (Citations omitted; internal quotation marks omitted.) Lewis v. Gaming Policy Board, 224 Conn. 693, 698-99, 620 A.2d 780 (1993).

[8][9] "Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to

vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.... These two objectives are ordinarily held to have been met when a complainant makes a colorable claim of direct injury he has suffered or is likely to suffer, in an individual or representative capacity. Such a 'personal stake in the outcome of the controversy' ... provides the requisite assurance of 'concrete adverseness' and diligent advocacy." (Citations omitted.) Maloney v. Pac., 183 Conn. 313, 320-21, 439 A.2d 349 (1981). "The requirement of directness between the injuries claimed by the plaintiff and the conduct of the defendant also is expressed, in our standing jurisprudence, by the focus on whether the plaintiff is the proper party to assert the claim at issue." Ganim v. Smith & Wesson Corp., 258 Conn. 313, 347, 780 A.2d 98 (2001).

[10][11] "Two broad yet distinct categories of aggrievement exist, classical and statutory.... Classical aggrievement requires a two part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the decision, as opposed to a general interest that all members of the community share.... Second, the party must also show that the *487 agency's decision has specially and injuriously affected that specific personal or legal interest.... Aggrievement does not demand certainty, only the possibility of an adverse effect on a legally protected interest....

[12] "Statutory aggrievement exists by legislative fiat, not by judicial analysis of

the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) Terese B. v. Commissioner of Children & Families, 68 Conn.App. 223, 228, 789 A.2d 1114 (2002).

To provide context for our analysis of the claim that the plaintiff has no standing under § 22a-16 to bring an action against Alves and the city, we begin our analysis with a review of our case law governing the scope and nature of the standing conferred by that statute. [FN6] In Belford v. New Haven, 170 Conn. 46, 47, 364 A.2d 194 (1975), one of our early cases addressing this issue, the plaintiffs sought to enjoin the city of New Haven and its mayor from leasing portions of a public park to a private entity for purposes of constructing a rowing course. The trial court concluded that the plaintiffs lacked standing because they had not proved any claim under the act, and the plaintiffs appealed. *Id.* On appeal, we held that, under § 22a-16, "standing ... is conferred only to protect the natural resources of the state from **1195 pollution or destruction.... The act does not, *488 as the plaintiffs urge, confer standing upon individuals to challenge legislative decisions of a municipality which do not directly threaten the public trust in the air, water and other natural resources of this state." (Citation omitted.) *Id.*, at 54, 364 A.2d 194. We then noted that, at trial, the plaintiffs had not proved "any claim under the ... [a]ct" *Id.*, at 55, 364 A.2d 194. Accordingly, we affirmed the judgment of the trial court that the plaintiffs did not have standing. *Id.*

FN6. We note that the Appellate Court has considered the issue before us in this case and concluded that § 22a-16 does not confer standing to bring an action against an agency that does not have jurisdiction to consider environmental matters. See Connecticut Post Ltd. Partnership v. South Central Connecticut Regional Council of Governments, 60 Conn.App. 21, 25, 758 A.2d 408, cert. granted, 255 Conn. 903, 762 A.2d 907 (2000) (appeal withdrawn April 5, 2001). For the reasons that follow, we now overrule that decision to the extent that it is inconsistent with this opinion.

In Manchester Environmental Coalition v. Stockton, 184 Conn. 51, 53-55, 441 A.2d 68 (1981), the plaintiffs, two individuals, [FN7] brought a challenge under the act against the approval of a plan for an industrial park by the defendant commissioner of commerce. The plaintiffs claimed that " 'unreasonable pollution, impairment or destruction' " of the air would result from the automobile traffic that would be generated by the expected employment at the industrial park. Id., at 56-57, 441 A.2d 68. On appeal, we reviewed the trial court's ruling that, under § 22a-16, "the plaintiffs' standing and their burden of proof at the trial comprise one and the same thing." Id., at 57, 441 A.2d 68. We concluded that "[t]hat is not the case. Standing is automatically granted under the [act] to 'any person.' The plaintiffs need not *prove* any pollution, impairment or destruction of the environment in order to have standing." (Emphasis added.) Id. Accordingly, we

overruled *Belford* to the extent that it was inconsistent with that conclusion. Id., at 57 n. 7, 441 A.2d 68.

FN7. The trial court in *Manchester Environmental Coalition* determined that the named plaintiff was not a proper party plaintiff and that finding was not challenged. Manchester Environmental Coalition v. Stockton, *supra*, 184 Conn. at 53 n. 1, 441 A.2d 68.

Thus, in *Manchester Environmental Coalition*, we recognized that, contrary to our implicit holding in *Belford*, standing to bring a claim under § 22a-16 does not depend on *proving* a violation of that statute at trial. Rather, we implicitly concluded that a mere colorable *489 claim by any person of " 'unreasonable pollution, impairment or destruction' " of the environment was sufficient to establish standing under the act. [FN8] Id., at 57, 441 A.2d 68.

FN8. We note that *Manchester Environmental Coalition*, involved an administrative defendant. There was no claim in that case, however, that the plaintiffs lacked standing because the defendant commissioner of commerce lacked jurisdiction to consider environmental issues.

We next considered the scope of the standing conferred by § 22a-16 in Middletown v. Hartford Electric Light Co., 192 Conn. 591, 473 A.2d 787 (1984). In *Middletown*, the plaintiffs, the city of Middletown and its zoning enforcement officer, sought to enjoin the defendants, the Hartford Electric Light Company and its parent company,

Northeast Utilities, from burning mineral oil containing polychlorinated biphenyls (PCBs). Id. at 593, 473 A.2d 787. The trial court dismissed seven of the eight counts of the plaintiffs' complaint and found for the defendants on the remaining count. Id. With respect to the four counts in which the plaintiffs had sought to enjoin the defendants from burning the fuel because they had failed to obtain a variety of required permits from the department of environmental protection, the trial court concluded that the plaintiffs were neither classically aggrieved by that failure nor statutorily aggrieved under the act. Id. at 595-97, 473 A.2d 787. The plaintiffs appealed to this court.

Reviewing the plaintiffs' claim under the licensing statutes, we noted that, in our then recent case of ****1196** Connecticut Fund for the Environment, Inc. v. Stamford, 192 Conn. 247, 470 A.2d 1214 (1984), we had held that "[General Statutes] § 22a-19 of the [act], which permits any person, on the filing of a verified pleading, to intervene in any administrative proceeding and to raise therein environmental issues 'must be read in connection with the legislation which defines the authority of the particular administrative agency. Section 22a-19 is not intended to expand the jurisdictional authority of *490 an administrative body whenever an intervenor raises environmental issues. Thus, an inland wetland agency is limited to considering only environmental matters which impact on inland wetlands. Other environmental impacts must be raised before other appropriate administrative bodies, if any, or in their absence by the institution of an independent action pursuant to § 22a-16.' Id., at 250-51 [470 A.2d

1214]." Middletown v. Hartford Electric Light Co., *supra*, 192 Conn. at 597, 473 A.2d 787. We concluded that "[t]hese same principles apply to bar the city's standing under the licensing statutes. The trial court was therefore correct in concluding that § 22a-16 did not provide the plaintiffs with standing under any statute other than the [act] itself." Id.

Thus, in Middletown, we, in effect, interpreted our holding in Connecticut Fund for the Environment, Inc., that § 22a-19 did not expand the jurisdiction of administrative agencies to include consideration of environmental matters that they were not authorized to consider under their enabling statutes to mean that § 22a-16 did not expand the original jurisdiction of the Superior Court to include consideration of statutory claims that were within the primary jurisdiction of a particular state agency. Accordingly, we concluded that the plaintiffs did not have standing to challenge the defendants' failure to obtain the permits and licenses required by a variety of licensing statutes, because that matter was within the pervasive regulatory powers of the department of environmental protection. Middletown v. Hartford Electric Light Co., *supra*, 192 Conn. at 596, 473 A.2d 787.

We also concluded, however, that § 22a-16 did confer standing on the plaintiffs to bring count five of their complaint, which had been brought directly under the act. Id., at 597 and n. 2, 473 A.2d 787. In that count, they had alleged that the burning of the contaminated mineral oil was "reasonably likely to result in the unreasonable pollution, *491 the

impairment of and the destruction of the public trust in the air, water resources and other natural resources within the City." (Internal quotation marks omitted.) Id., at 600, 473 A.2d 787. We noted that, although the trial court also had concluded that the plaintiffs had standing under the act to bring count five, it had dismissed the count on grounds of federal preemption. Id. The trial court further had found, however, that, as a general matter, the "evidence failed to establish that 'any ascertainable amount of pollutants will be produced as a result of the proposed burning program of the [defendants].'" Id. On this record, we concluded that, "[w]hether or not we agree with the trial court's reasoning on preemption, we can sustain its judgment on the alternate ground of factual insufficiency." Id., at 601, 473 A.2d 787.

We again considered the scope of standing under § 22a-16 in Fish Unlimited v. Northeast Utilities Service Co., 254 Conn. 21, 755 A.2d 860 (2000). In that case, the plaintiffs [FN9] sought: (1) an injunction to prevent **1197 the operation of Millstone Nuclear Power Station (Millstone); and (2) a declaratory judgment that the discharge permit issued to the defendants by the department of environmental protection was invalid. Id., at 23, 755 A.2d 860. The plaintiffs alleged, inter alia, that "water intakes and discharges at Millstone were causing unreasonable pollution, impairment and destruction of the air, water and other natural resources of the state within the meaning of § 22a-16." Id., at 28, 755 A.2d 860. The trial court concluded *492 that "the plaintiffs lacked standing under § 22a-16 to bring this action

directly in the Superior Court, and that the plaintiffs failed to exhaust their administrative remedies before the department." Id., at 24, 755 A.2d 860. The plaintiffs appealed. Id.

FN9. The plaintiffs were: Fish Unlimited, a national clean water fisheries conservation organization based in Shelter Island, New York, with a satellite office in Waterford; the environmental groups Don't Waste Connecticut, based in New Haven, STAR Foundation, based in East Hampton, New York, and North Fork Environmental Council, Inc., based in Mattituck, New York; Fred Thiele, a New York state assemblyman, of Sag Harbor, New York; Green Party of Connecticut; the town of East Hampton, New York; and Coalition Against Millstone, an organization located on Long Island advocating the permanent closure of the Millstone Nuclear Generating Station. Fish Unlimited v. Northeast Utilities Service Co., *supra*, 254 Conn. at 22-23 n. 1, 755 A.2d 860.

We began our analysis of the standing issue in *Fish Unlimited* by recognizing that the act "waives the aggrievement requirement in two circumstances. First, any private party ... without first having to establish aggrievement, may seek injunctive relief in court 'for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction ...' General Statutes § 22a-16. Second, any person or other entity, without first

having to establish aggrievement, may intervene in any administrative proceeding challenging 'conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.' General Statutes § 22a-19 (a)." Fish Unlimited v. Northeast Utilities Service Co., *supra*, 254 Conn. at 31, 755 A.2d 860. We concluded, however, that, "[a]lthough § 22a-16 abrogates the aggrievement requirement for bringing an action directly in the Superior Court"; *id.*; under Middletown v. Hartford Electric Light Co., *supra*, 192 Conn. at 595, 473 A.2d 787, and Connecticut Fund for the Environment, Inc. v. Stamford, *supra*, 192 Conn. at 247, 470 A.2d 1214, "the plaintiffs must pursue their claim by intervening in an administrative hearing before the department pursuant to § 22a-19." Fish Unlimited v. Northeast Utilities Service Co., *supra*, at 31, 755 A.2d 860. "Only in the absence of an appropriate administrative body may an independent action pursuant to § 22a-16 be brought." *Id.*, at 32, 755 A.2d 860.

*493 In Waterbury v. Washington, 260 Conn. 506, 800 A.2d 1102 (2002), we had occasion to revisit our holdings in Middletown and Fish Unlimited. In that case, the plaintiff city of Waterbury, brought an action seeking, inter alia, a declaratory judgment that it had not unreasonably polluted, impaired or destroyed the public trust in the water, as provided in § 22a-16, in connection with its use of water from the Shepaug River. *Id.*, at 511, 800 A.2d 1102. The defendants counterclaimed, alleging, inter alia, that the plaintiff had violated the act. *Id.*, at 519, 800 A.2d 1102.

The trial court found for the **1198 defendants on their counterclaim. *Id.*, at 524, 800 A.2d 1102. The plaintiff appealed, contending for the first time on appeal that the trial court lacked subject matter jurisdiction over the claim because the defendants had failed to exhaust their administrative remedies under the so-called minimum flow statutes, General Statutes §§ 26-141a through 26-141c. *Id.*, at 525, 800 A.2d 1102.

In our decision, we again interpreted Middletown as being grounded in the doctrine of exhaustion of administrative remedies. *Id.*, at 538-39, 800 A.2d 1102. We determined, however, on the basis of the plain language and legislative history of the act--in particular, of General Statutes § 22a-18 (b), [FN10] which allows the trial court to remand an action to an administrative agency that has primary jurisdiction over the environmental question--that "[the act] does *494 not embody the exhaustion doctrine as a subject matter jurisdictional limit on the court's entertainment of an action under it." *Id.*, at 537, 800 A.2d 1102. We concluded, therefore, that the defendants were not required to exhaust their remedies under the minimum flow statutes before bringing suit under § 22a-16. *Id.*, at 545, 800 A.2d 1102. Accordingly, we overruled Middletown and Fish Unlimited to the extent that they conflicted with that conclusion. *Id.*

FN10. General Statutes § 22a-18 (b) provides: "If administrative, licensing or other such proceedings are required or available to determine the legality of the defendant's conduct, the court in its discretion may remand

the parties to such proceedings. In so remanding the parties the court may grant temporary equitable relief where necessary for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction and the court shall retain jurisdiction of the action pending completion of administrative action for the purpose of determining whether adequate consideration by the agency has been given to the protection of the public trust in the air, water or other natural resources of the state from unreasonable pollution, impairment or destruction and whether the agency's decision is supported by competent material and substantial evidence on the whole record."

Finally, we note that, shortly before issuing our decision in *Waterbury*, we had occasion to reconsider our holding in *Connecticut Fund for the Environment, Inc. v. Stamford*, *supra*, 192 Conn. at 250, 470 A.2d 1214, that § 22a-19 did not confer standing to intervene in an administrative proceeding when the agency had no jurisdiction to consider environmental issues. See *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 153, 788 A.2d 1158 (2002). Although *Nizzardo* involved standing to intervene in administrative proceedings under § 22a-19, and not standing to bring an action under § 22a-16, *Nizzardo* is relevant to this case because it involved the scope of an administrative agency's jurisdiction under the act. In *Nizzardo*, the plaintiff sought to intervene in

proceedings before the state traffic commission concerning the application of the defendant First Stamford Corporation for a certificate of operation for a proposed commercial development pursuant to General Statutes § 14-311. *Id.*, at 135-37, 788 A.2d 1158. The plaintiff claimed that the application "concerned 'an administrative proceeding which involves conduct which is reasonably likely to have the effect of unreasonably polluting, impairing or destroying the public trust in the air, water, wildlife or other natural resources of the State'" *Id.*, at 137-38, 788 A.2d 1158. The commission denied the request to intervene; *id.*, at 138, 788 A.2d 1158; and, on the plaintiffs' appeal, the trial court affirmed *495 that decision. *Id.*, at 139, 788 A.2d 1158. The plaintiff then appealed to the Appellate Court, which affirmed the judgment of the trial court. *Id.* We then granted certification to appeal. **1199 *Nizzardo v. State Traffic Commission*, 252 Conn. 943, 747 A.2d 520 (2000).

On the plaintiff's appeal, we reaffirmed our holding in *Connecticut Fund for the Environment, Inc.*, as reiterated in *Middletown*, that § 22a-19 was " 'not intended to expand the jurisdictional authority of an administrative body whenever an intervenor raises environmental issues.' " *Nizzardo v. State Traffic Commission*, *supra*, 259 Conn. at 153, 788 A.2d 1158, quoting *Middletown v. Hartford Electric Light Co.*, *supra*, 192 Conn. at 596-97, 473 A.2d 787. In support of this conclusion, we noted that "[i]f a party wants to raise environmental concerns that are beyond the scope of authority of a particular agency, [§ 22a-16] provides a means for doing so." *Nizzardo v. State Traffic*

Commission, supra, at 159, 788 A.2d 1158. We also concluded that the state traffic commission had no jurisdiction to consider environmental issues. Id., at 167, 788 A.2d 1158. Accordingly, we concluded that the plaintiff had no standing to intervene in the proceedings before the commission. Id., at 168, 788 A.2d 1158.

[13][14] With these principles in mind, we now turn to the merits of the defendants' claim in this case that the plaintiff had no standing to bring an action under § 22a-16 because Alves and the city had no jurisdiction to consider the environmental ramifications of issuing the demolition permits. As we have noted, we previously have recognized that, under § 22a-16, "any private party ... without first having to establish aggrievement, may seek injunctive relief in court 'for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction' " Fish Unlimited v. Northeast Utilities Service Co., supra, 254 Conn. at 31, 755 A.2d 860, overruled on other grounds, Waterbury v. Washington, supra, 260 Conn. at 545, 800 A.2d 1102. This court hitherto has recognized *496 no restriction on the class of persons with standing to seek relief under § 22a-16. See Manchester Environmental Coalition v. Stockton, supra, 184 Conn. at 57, 441 A.2d 68 ("[s]tanding is automatically granted under the [act] to 'any person' "). The limitation on the scope of standing to intervene in an administrative proceeding pursuant to § 22a-19, first recognized by this court in Connecticut Fund for the Environment, Inc., and reaffirmed in Nizzardo, was grounded in our recognition that "[a]n

administrative agency, as a tribunal of limited jurisdiction, must act strictly within its statutory authority"; (internal quotation marks omitted) Nizzardo v. State Traffic Commission, supra, 259 Conn. at 156, 788 A.2d 1158; and in our conclusion that the act did not expand that authority to include consideration of any and all environmental matters raised by a would-be intervenor. There is, however, no such a priori limitation on the authority of the Superior Court. Accordingly, all that is required to invoke the jurisdiction of the Superior Court under § 22a-16 is a colorable claim, by "any person" against "any person," of conduct resulting in harm to one or more of the natural resources of this state.

In this case, the plaintiff alleged in its complaint that the issuance of the demolition permits by Alves "involves individual and cumulative conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing, depleting or destroying the public trust in the air, water, land or other natural resources of the state" In support of this legal claim, the plaintiff alleged, inter alia, that "[t]he buildings, structures and properties proposed for demolition, the supply of available energy resources to be consumed in the demolition process and the solid waste demolition by-products are **1200 protectible resources within the legislative policy and intent of [the act]" and "[t]he demolition of the buildings, structures and properties and disposal of the debris will unnecessarily and wastefully *497 result in added and cumulative solid waste disposal burdens on existing solid waste facilities [within the state] and/or require expenditure of

transportation energy for disposal at out-of-state facilities." We conclude that these allegations, although somewhat vague, were sufficient to withstand a motion to dismiss for lack of standing under the act. See Brookridge District Assn. v. Planning & Zoning Commission, 259 Conn. 607, 611, 793 A.2d 215 (2002) ("[i]n ruling upon whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader" [internal quotation marks omitted]); Doe v. Yale University, 252 Conn. 641, 667, 748 A.2d 834 (2000) ("pleadings must be construed broadly and realistically, rather than narrowly and technically" [internal quotation marks omitted]). Accordingly, we conclude that the trial court's granting of the defendants' motions to dismiss was improper.

This does not end our analysis, however. Although we conclude that the trial court improperly determined that it had no subject matter jurisdiction over the plaintiff's complaint, we also conclude that the factual allegations of the complaint were insufficient to support the plaintiff's claims for relief against Alves and its derivative claims against the city. Accordingly, those claims for relief properly were subject to a motion to strike. See McCutcheon & Burr, Inc. v. Berman, 218 Conn. 512, 527, 590 A.2d 438 (1991) (concluding that "the trial court should have treated the motion to dismiss as a motion to strike" and that court's failure to do so "does not affect our decision" that claim was legally invalid); Middletown v. Hartford Electric Light Co., *supra*, 192

Conn. at 600, 473 A.2d 787 (concluding that plaintiffs had standing under § 22a-16, but sustaining judgment for defendants on alternate ground of factual insufficiency).

[15][16][17][18] *498 "The purpose of a motion to strike is to contest ... the legal sufficiency of the allegations of any complaint ... to state a claim upon which relief can be granted." (Internal quotation marks omitted.) Faulkner v. United Technologies Corp., 240 Conn. 576, 580, 693 A.2d 293 (1997); see Practice Book § 10-39. "A motion to strike challenges the legal sufficiency of a pleading, and, consequently, requires no factual findings by the trial court... We take the facts to be those alleged in the complaint ... and we construe the complaint in the manner most favorable to sustaining its legal sufficiency.... Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Citations omitted; internal quotation marks omitted.) Vacco v. Microsoft Corp., 260 Conn. 59, 64-65, 793 A.2d 1048 (2002). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." Novamatrix Medical Systems, Inc. v. BOC Group, Inc., 224 Conn. 210, 215, 618 A.2d 25 (1992).

[19] In its claim for relief against Alves and the city, the plaintiff sought, *inter alia*, a declaratory judgment that: (1) the demolition code is inadequate for the protection of the public trust in the natural resources of the state; (2) the demolition code is not exempt from compliance with the act; (3) Alves does not have only a ministerial duty to comply with the demolition code; and

(4) Alves and the city must consider feasible and prudent alternatives **1201 to the demolition of the buildings in order to comply with the act. In *Nizzardo*, however, we concluded that the act did not expand the jurisdiction of administrative agencies to include consideration of environmental matters not otherwise within their jurisdiction. *Nizzardo v. State Traffic Commission*, supra, 259 Conn. at 155-56, 788 A.2d 1158. As the plaintiff conceded in its complaint, "[n]either the [d]emolition [c]ode, city ordinances, nor [the Building Official and Contracting Administrator's *499 Code] require [Alves] to consider feasible and prudent alternatives or any other related analysis before issuance of a demolition permit." Accordingly, to the extent that the plaintiff seeks a declaratory judgment that Alves should be required to consider the environmental ramifications of demolition before issuing the demolition permits, such relief cannot be granted consistent with our holding in *Nizzardo* that administrative bodies have no duty--indeed, no authority--under the act to consider environmental matters not otherwise within their jurisdiction.

[20] That holding also disposes of the only remaining request for relief against Alves, namely, the plaintiff's claim for an injunction restraining the defendants from "taking any further action or proceedings for the demolition of the buildings, structures and properties described in the verified [c]omplaint" As we have noted, the plaintiff concedes that nothing in the demolition code requires or authorizes the building official to consider the environmental ramifications of the demolition before issuing a permit. Rather, the issuance of the demolition permits is contingent

only upon the applicant's providing written evidence that the applicant is insured for demolition purposes, that utility connections to the premises to be demolished have been severed, and that the applicant holds a current valid certificate of registration pursuant to General Statutes § 29-402. General Statutes § 29-406. In essence, the permit merely constitutes a formal statement by the building official that those requirements have been met. We cannot perceive how the mere determination that certain legal requirements--which have nothing whatsoever to do with the protection of the natural resources of the state-- have been met could violate any duty created by the act. Accordingly, we cannot conclude that the act authorizes the issuance of an injunction *500 prohibiting Alves from proceeding with that determination.

[21] We recognize that the issuance of the permits is legally a condition antecedent to the demolition of the buildings. We further note that there are any number of legal and practical conditions antecedent to the alleged polluting conduct in this case, including the obtaining of demolition insurance, the severance of the utility connections to the premises to be demolished and the obtaining of a certificate of registration pursuant to § 29-402, all of which are prerequisites for the issuance of the demolition permits. General Statutes § 29-406. This court previously has recognized, however, that, in the absence of any duty, the existence of a "but for" relationship between the conduct of the defendant and the harm suffered by the plaintiff does not suffice to establish a cause of action. See *Connecticut Mutual Life*

Ins. Co. v. New York & N.H.R. Co., 25 Conn. 265, 274-75 (1856) (recognizing that harm to plaintiffs was "distinctly traceable and solely due to the misconduct of the defendants," but concluding that, despite "[t]he completeness of the proof of connection between the acts of the defendants and the loss of the plaintiffs," in absence of any duty to plaintiffs, plaintiffs did not have standing to sue defendants). The same principle applies when the plaintiff has failed to **1202 allege the violation of a duty. Nothing in the act authorizes the issuance of an injunction against lawful, nonpolluting conduct merely because that conduct constitutes, as a practical or legal matter, a condition antecedent to the alleged harmful conduct of another person. [FN11] Accordingly, we *501 conclude that the plaintiff has failed to state a claim against Alves upon which relief can be granted. To the extent that the plaintiff's claim against the city is derivative of its claims against Alves, we conclude for the same reasons that that claim must fail. [FN12]

FN11. We note that this case differs from our cases decided under the remoteness doctrine because those cases turn on the remoteness of the alleged misconduct of the defendant from the injury suffered by the plaintiff. See Vacco v. Microsoft Corp., supra, 260 Conn. at 92, 793 A.2d 1048 (motion to strike claim under Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq., properly granted when plaintiff's injuries were too remote from defendant's alleged misconduct); Ganim v. Smith & Wesson Corp., supra, 258 Conn.

at 344, 780 A.2d 98 (plaintiffs lacked standing to bring variety of statutory and common-law claims when alleged misconduct was too remote from claimed injury); RK Constructors, Inc. v. Fusco Corp., 231 Conn. 381, 387-89, 650 A.2d 153 (1994) (motion to strike negligence claim properly granted when plaintiff's injuries were too remote from defendant's alleged misconduct). In this case, the plaintiff simply has not alleged any wrongful conduct by Alves. Accordingly, there is no occasion to consider the proximity of his conduct to the claimed harm.

FN12. The plaintiff's claim against the city apparently is grounded in its theory that the city was obligated under the act to require its employee, Alves, to consider environmental matters before issuing demolition permits. That theory, however, like the theory underlying the claims directly against Alves, is foreclosed by Nizzardo.

[22] We noted in McCutcheon & Burr, Inc. v. Berman, supra, 218 Conn. at 527-28, 590 A.2d 438, that "the primary difference between the granting of a motion to dismiss for lack of subject matter jurisdiction and the granting of a motion to strike is that only in the latter case does the plaintiff have the opportunity to amend its complaint. See Practice Book § [10-44]. The ability to amend after a motion to strike would be unavailing to the plaintiff here, however, because the plaintiff was unable to demonstrate that it could add anything to its complaint by way of

amendment that would avoid the deficiencies in the original complaint. Therefore, although the defendants' motion to dismiss was procedurally incorrect, the resulting foreclosure of the plaintiff's ability to amend was harmless." Likewise, in this case, we conclude that there is nothing in the record to suggest that the plaintiff could amend its complaint to allege a claim for relief against Alves or against the city to the extent that its claim against the city is derivative of its claim against Alves. [FN13] Accordingly, we conclude that, although *502 the granting of the motions to dismiss was improper, the ruling was harmless as it related to those claims because they properly were subject to a motion to strike.

[FN13] We note that, although the dissent criticizes our resolution of this matter on procedural grounds, which we address later in his opinion, it has not pointed to any *conceivable* factual allegation against Alves that could survive a motion to strike.

[23] We note, however, that the plaintiff has alleged conduct by the city that, if proven, could constitute a violation of the act. Specifically, the plaintiff has alleged that the city "has not and does not currently meet the recycling and source reduction goals [for disposal of solid waste] established in [General Statutes §] 22a-220." [FN14] We express no opinion in this case **1203 as to the scope of the city's responsibilities for disposal of the demolition debris under § 22a-220 or whether proof of a violation of that statute would establish a per se violation of the act. We recognize, however, that

this is the type of claim that we determined in Waterbury v. Washington, supra, 260 Conn. at 575, 800 A.2d 1102, to be within the scope of the act. Accordingly, this claim improperly was dismissed. [FN15]

[FN14] General Statutes § 22a-220 sets forth certain duties and rights of municipalities with respect to the disposal of solid wastes generated within their boundaries.

[FN15] We note that the plaintiff has not made any claim for declaratory relief in connection with this allegation. Specifically, it has not requested a declaratory judgment that the city has violated § 22a-220 and that the disposal of the demolition debris will further exacerbate that violation. The plaintiff could amend its complaint, however, to correct this defect. Therefore, the dismissal of this claim, unlike the claims against Alves and the derivative claims against the city, was not harmless.

[24] We also conclude that the plaintiff sufficiently has alleged a cause of action under the act against the corporation on the ground that its demolition activities will result in unreasonable harm to the natural resources of the state. If the plaintiff can prove its claim at trial, the trial court may order some form of injunctive relief against the corporation regardless of whether the demolition permits have been issued. Accordingly, the *503 claim against the corporation improperly was dismissed.

The dissent disagrees with these

conclusions, however, and criticizes the majority for engaging in what it characterizes as an "unfair 'ambuscade' " of the plaintiff by disposing of "the plaintiff's entire case--not just this appeal--on a basis that has never been presented at all in any court in this state." Moreover, it claims that our reliance on *McCutcheon & Burr, Inc.*, is misplaced because that case "involved the exact opposite of what the majority does here." Nevertheless, it would affirm in part the trial court's granting of the defendants' motions to dismiss on alternate grounds of statutory interpretation that were not touched upon by the parties in the trial court or in their briefs to this court. [FN16] For the reasons that follow, the dissent's criticisms are unfounded.

FN16. At oral argument before this court, counsel for Alves and the city, after acknowledging that he had not briefed the issue, stated: "There is not one natural resource mentioned in the complaint, at least a natural resource as contemplated by § 22a-16 and § 22a-19, as it's been construed by this court, for example, in [*Paige v. Town Plan & Zoning Commission*, 235 Conn. 448, 454, 668 A.2d 340 (1995)]. As I understand the *Paige* case, a natural resource within the context of these statutes is something that is not the result of human endeavor. It's a natural thing. The buildings that are going to be razed in this case are not natural things. The constituents of the building are no longer natural things. They might have been trees at one time, but now they are things that

are the result of human endeavor. They are not natural resources. The oil that is being used is not a natural resource. It's the result of human endeavor. Humans take it out of the ground and humans refine it." These brief remarks, made at the close of the argument by counsel for Alves and the city and apparently prompted by questions earlier posed by Justice Borden to counsel for the plaintiff; see footnote 17 of this opinion; constitute the entire record pertaining to the alternate ground on which the dissent would affirm the trial court's ruling.

[25] We begin by addressing the dissent's contention that "neither the oil consumed nor the landfills alleged by the plaintiff to be polluted by the defendants' conduct are natural resources within the meaning of § 22a-16," *504 and, therefore, "the plaintiff does not have standing under § 22a-16 to seek to protect those resources" As we previously have noted in this opinion, "[i]n ruling upon whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those **1204 facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Internal quotation marks omitted.) *Brookridge District Assn. v. Planning & Zoning Commission*, supra, 259 Conn. at 611, 793 A.2d 215. The dissent's narrow reading of the allegations of the complaint pertaining to excessive energy use and overburdening of landfills as being limited to the defendants' consumption, i.e., destruction, of oil and the pollution of

landfills, violates this basic principle. As the plaintiff indicated in its brief and in response to questioning by Justice Borden at oral argument, [FN17] and as a fair reading *505 of the complaint shows, the plaintiff's claims reasonably may be construed to be that (1) the defendants' excessive use of oil would unreasonably pollute the *air* and (2) that the placement of demolition debris in landfills would both pollute the *land* directly [FN18] and result in future emanations from the landfills that could impair the air, water, land, plants, wildlife and other natural resources of the state. Air and land--at least certain types of land--indisputably are protectible natural resources under § 22a-16. [FN19] See *Paige v. Town Plan & Zoning Commission*, 235 Conn. 448, 454-64, 668 A.2d 340 (1995) (noting that *General Statutes* § 22a-1, which refers to "[t]he air, water, land and other natural resources," informs meaning **1205 of "natural resources" under act). The mere fact that the narrow, exclusive construction that the dissent has chosen to impose on the plaintiff's allegations--which exclusive construction the plaintiff specifically disclaimed in its brief and at oral argument--may be noncognizable under § 22a-16--an issue that, we repeat, was not raised before the trial court or in the briefs to this court, and was raised in passing at oral argument only in response to the *506 dissenting justice's questioning--does not, in our view, justify dismissing the allegations without providing the plaintiff with an opportunity to prove its claims of air and land pollution within the state of Connecticut. [FN20]

FN17. The plaintiff stated in its brief that, "viewed in a light most favorable to the plaintiff, the

defendants' conduct was not only destroying and impairing a natural resource (energy sources) but simultaneously polluting natural resources (air, water and land)."

The following colloquy took place at oral argument before this court:

"[Justice Borden]: I don't understand this. The statute says that there has to be an allegation of impairment or pollution of one of the protected resources--air, water ... or land. So that's what I'm looking for. What is the allegation, putting aside what your proof will be ... for an unreasonable pollution of one of the protected resources ... ? Is it paragraph 55?"

"[Counsel for the plaintiff, Scott W. Sawyer]: That's the start of it Your Honor.

"[Justice Borden]: Okay. What's the rest of it? ... I want the language in the complaint....

"[Sawyer]: Paragraph 59.

"[Justice Borden]: Solid waste landfills?"

"[Sawyer]: Yes. They are becoming full, and they are full. And when they're full, what ends up happening, and what the proofs would show, is that they have to [be] transported, thereby causing additional use of oil, as well as the pollution that's emanating, that could be avoided if the demolition doesn't occur in the first place.

"[Justice Borden]: Okay. So let me--I think I'm beginning to understand what the theory is. The theory is that by the unjustified demolition of these

buildings, and the unjustified transport to the landfills of the demolished material, oil and other sources of energy are being expended and that expenditure pollutes the air.

"[Sawyer]: Yes.

"[Justice Borden]: So that's how you get to the pollution of a protected resource, in this case the air. From the use of ... oil The use of oil pollutes the air, and that's the allegation under § 22a-16.

"[Sawyer]: Yes, as well as it pollutes the land because the actual demolition debris, which would otherwise ... still be ... used within the building, is now being put into a landfill.

"[Justice Borden]: So then the pollution of the land is taking something that was in a building and putting it into a landfill.

"[Sawyer]: Yes. Unnecessarily."

FN18. For example, it is foreseeable that the overburdening of a landfill could require either the expansion of that landfill or the construction of another landfill on land that meets the definition of a natural resource.

FN19. We express no opinion in this case as to whether the alleged excessive use of oil or overburdening of landfills within the state would result in unreasonable pollution of, respectively, the air and land under the particular facts of this case. We conclude only that the allegations implicate an interest that § 22a-16 was intended to

protect and, accordingly, the plaintiff has standing to raise the claims.

FN20. We agree with the dissent that claims of the impairment of natural resources existing outside this state almost certainly are not cognizable under § 22a-16. In light of the somewhat vague and overlapping nature of the allegations of the complaint and the defendants' failure to raise this issue, however, we believe that the fairest course is to remand the case to the trial court so that the parties can engage in further proceedings there to narrow and refine those allegations.

We next address the dissent's statement that "*Nizzardo* does not and cannot control the question of whether the plaintiff has stated a substantive cause of action under § 22a-16." The dissent states that it "simply [does] not see how a case that involved statutory standing to intervene under § 22a-19 can, ipso facto, control the different question of whether the plaintiff's complaint stated an independent cause of action under § 22a-16," and criticizes the majority for failing to conduct "an inquiry into both the language and purpose of § 22a-16." The dissent has failed to instruct us, however, on how to avoid the logic of the analysis that it criticizes: under *Nizzardo*, *Alves* has no jurisdiction to consider environmental matters; the plaintiff seeks a declaratory judgment that *Alves*, in administering the demolition code, must consider environmental matters; therefore, the plaintiff seeks relief that cannot be granted. We cannot perceive how a

philosophical inquiry into the language and purpose of § 22a-16 would further elucidate this matter.

We next address the dissent's argument that the reasoning of McCutcheon & Burr, Inc. v. Berman, *supra*, 218 Conn. at 526, 590 A.2d 438, does not extend to the circumstances of this case because, in that case, unlike here, "the parties addressed themselves in substance to the question that was briefed, argued and decided in both the *507 trial court and this court." We disagree. The underlying issue in the present case, i.e., the effect of an administrative agency's lack of authority to consider environmental questions on its liability to suit under the act, has been fully addressed by the parties, both in the trial court and before this court. Indeed, that was the *only* issue briefed and argued by the parties. [FN21] On the basis *508 of our review, **1206 we have concluded that Alves' lack of statutory authority to consider environmental issues did not deprive the plaintiff of standing under the act and, accordingly, did not deprive the trial court of subject matter jurisdiction. We also have concluded, however, that, under Nizzardo v. State Traffic Commission, *supra*, 259 Conn. at 154, 788 A.2d 1158. [FN22] Alves' lack of authority to consider environmental questions means that, as a matter of law, the plaintiff cannot state a claim against him upon which relief can be granted, thereby properly subjecting the claims to a motion to strike.

FN21. The plaintiff stated in its brief that "[t]he crux of our argument is that ... the [laws] governing building demolition fail to contemplate [the consideration

of the environmental ramifications of demolition under the act]," and "the [defendants'] failure to consider environmental ramifications in blindly issuing demolition permits frustrates [the act]." In other words, the essence of the plaintiff's claim is that, under the act, Alves and the city can and must be required to consider the environmental ramifications of issuing the demolition permits. Alves and the city stated in their brief that "the only relevant question [in this case] is whether the defendant, Alves, was required to consider environmental issues as part of the exercise of his authority to process an application for a demolition permit." The defendants noted correctly that Alves had no authority to consider environmental issues under the demolition code and, relying on Connecticut Post Ltd. Partnership v. South Central Connecticut Regional Council of Governments, 60 Conn.App. 21, 758 A.2d 408, cert. granted, 255 Conn. 903, 762 A.2d 907 (2000) (appeal withdrawn April 5, 2001), argued that Alves' lack of jurisdiction deprived the plaintiff of standing. We have concluded, however, purely as a matter of standing jurisprudence, that the Appellate Court in Connecticut Post Ltd. Partnership incorrectly determined that a *defendant's* lack of authority to consider environmental matters means that the *plaintiff* is an improper plaintiff if its claims otherwise implicate an interest protected by § 22a-16. We also

have concluded, however, that, under *Nizzardo*, the defendants' lack of authority under the demolition code to consider environmental issues deprives the plaintiff of the primary relief that it seeks, namely, a declaratory judgment that, under the act, the defendants are required to consider such issues. Finally, we have concluded, purely as a matter of law, that the defendants cannot be enjoined from engaging in legal conduct, namely, the issuance of demolition permits pursuant to the demolition code. The fact that the parties did not fully anticipate this analysis does not mean that they did not address the substance of the underlying issue, namely, the effect of the defendants' lack of jurisdiction to consider environmental questions on their liability to suit under the act. Accordingly, we take exception to the dissent's accusation that we have departed from fundamental procedural norms and engaged in an "ambuscade" of the plaintiff. Moreover, we find the dissent's charge that we have "decided [this] question, to the plaintiff's prejudice, without resort to any ... briefing or argument" to be curious, in light of its proposed resolution of this appeal.

FN22. *Nizzardo* was decided after the parties in the present case had submitted their briefs. This court directed the parties, however, to be prepared to discuss at oral argument before this court the effect of that

decision on the issues raised in the present case.

Similarly, our conclusion in *McCutcheon & Burr, Inc.*, that the defendants' motion to dismiss was an improper procedural vehicle was based on our determination that a failure to comply with General Statutes § 20-325a (b) was not, as the defendants in that case had claimed, subject matter jurisdictional. We concluded instead that "[a]n action to enforce a listing agreement is essentially a breach of contract claim, and the trial court clearly had subject matter jurisdiction over such a claim." *McCutcheon & Burr, Inc. v. Berman*, supra, 218 Conn. at 527, 590 A.2d 438. We also concluded, however, that the plaintiff's failure to comply with the statute rendered the complaint legally insufficient, thereby subjecting it to a motion to strike, even though no such claim had been made or such motion filed. *Id.*

Thus, there is no basis for the dissent's statement that *McCutcheon & Burr, Inc.*, involved "the exact opposite" of our decision in the present case. As we have explained, the defendants' claim in the present case, just as it was in *McCutcheon & Burr, Inc.*, is that the trial court properly found that it had no subject *509 matter jurisdiction over the claims against Alves. We have concluded in this case, just as we did in *McCutcheon & Burr, Inc.*, that the defendants' motions to dismiss improperly were granted because they did not, as claimed by the defendants, implicate the trial court's subject matter jurisdiction. We also have concluded, however, that the claims for relief against Alves, like the claims in *McCutcheon & Burr, Inc.*, properly would

have been subject to a motion to strike. We are not sure what "the exact ****1207** opposite" of our decision in *McCutcheon & Burr, Inc.*, would be, [FN23] but we are confident that that is not what we have done here.

FN23. Perhaps it would be the affirmance of the trial court's granting of a motion to dismiss on alternate grounds that were neither raised before the trial court nor briefed to this court.

Finally, we note that, under our decision in this case, § 22a-16 continues to provide redress for all "unreasonable pollution, impairment or destruction" of "the air, water and other natural resources of the state," in that it allows "any person" to "maintain an action" against "any person" who, "acting alone, or in combination with others" directly engages in such activity. General Statutes § 22a-16. Nothing in this decision is contrary to our dicta in *Nizzardo v. State Traffic Commission*, supra, 259 Conn. at 159, 788 A.2d 1158, that, "[i]f a party wants to raise environmental concerns that are beyond the scope of authority of a particular agency, [§ 22a-16] provides a means for doing so" For example, the plaintiff in *Nizzardo* would have had a cause of action under § 22a-16 against the defendant, First Stamford Corporation, on the basis of its allegation that the proposed commercial development would violate the act.

[26] Moreover, as we have noted, nothing precludes an action pursuant to § 22a-16 against a governmental body that is itself engaging in polluting activities, regardless of whether that body has jurisdiction to consider

environmental ***510** matters. The fact that there is no cause of action against a governmental body if it has no duty to consider environmental matters in making its regulatory decisions does not mean that there is no cause of action if its conduct directly results in harm to the natural resources of the state. For example, the defendants in *Waterbury v. Washington*, supra, 260 Conn. at 506, 800 A.2d 1102, sufficiently alleged in their counterclaim a cause of action against the plaintiff city of Waterbury, even though there was no evidence in that case that Waterbury had enacted environmental ordinances under which it would have had jurisdiction to consider the environmental matters raised by the defendants, because the defendants alleged that Waterbury itself was engaged in the misconduct.

The judgment is reversed in part and the case is remanded with direction to deny the motions to dismiss with respect to the claims against the corporation and against the city under § 22a-220 and for further proceedings according to law; the judgment is affirmed in all other respects.

In this opinion KATZ, PALMER and ZARELLA, Js., concurred.

BORDEN, J., concurring and dissenting.

The majority concludes that: (1) the plaintiff, Fort Trumbull Conservancy, LLC, has standing under General Statutes § 22a-16 [FN1] to bring an action against all three defendants, New ***511** London Development****1208** Corporation (corporation), Antonio H. Alves, the New London building official, and the city of New London (city), for all

of the harms alleged in the complaint regarding the demolition of certain buildings; but (2) as to the two municipal defendants, namely, Alves and the city, the trial court's dismissal of the plaintiff's action for lack of standing constituted harmless error because the complaint against them would be subject to a motion to strike for lack of a substantive cause of action. I concur in part with the majority's first conclusion. Regarding the majority's second conclusion, I disagree that it is appropriate for us to consider, in the present appeal, whether the plaintiff's complaint would be subject to a motion to strike, because the issues that would be raised by such a motion have not yet been presented to either the trial court or this court. In this connection, I also disagree with the majority's analysis that the substantive question of whether the complaint states a cause of action against the municipal defendants is controlled by our decision in Nizzardo v. State Traffic Commission, 259 Conn. 131, 159, 788 A.2d 1158 (2002).

FN1. General Statutes § 22a-16 provides in relevant part: "The Attorney General, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the superior court for the judicial district wherein the defendant is located, resides or conducts business ... for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political

subdivision thereof, any person, partnership, corporation, association, organization or other legal entity, acting alone, or in combination with others, for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction...."

I STANDING

I agree with the majority that the plaintiff has standing to bring an action against all of the defendants under § 22a-16. I disagree, however, that this standing extends to all of the harms asserted by the plaintiff.

Because this case involves statutory standing under § 22a-16, not classical standing, the entire standing inquiry necessarily involves some interpretation of the statute under which the party seeks relief. Keeping this context in mind, I begin by emphasizing two principles regarding the law of standing, as applied to the present case, which the majority does not emphasize. First, every statutory standing inquiry focuses on whether the *512 plaintiff is the proper party to invoke the machinery of the courts, and whether the interest that the plaintiff seeks to vindicate is arguably within the zone of interests protected by the applicable statute. Med-Trans of Connecticut, Inc. v. Dept. of Public Health, 242 Conn. 152, 160, 699 A.2d 142 (1997); Mystic Marinelife Aquarium, Inc. v. Gill, 175 Conn. 483, 492, 400 A.2d 726 (1978). Second, the present action against the municipal defendants is precisely the type of independent action under § 22a-16 that

we specifically anticipated in our decision in Nizzardo v. State Traffic Commission, *supra*, 259 Conn. at 159, 788 A.2d 1158.

Application of these principles and authorities regarding statutory standing to the plaintiff's complaint leads me to conclude that it sufficiently alleged facts to afford it standing to bring an action against all three defendants under § 22a-16. Section 22a-16 affords standing to, among others, "any person, partnership, corporation, association, organization or other legal entity...." This is a partial list of the plaintiffs to whom or which the statute affords standing to bring an action. The plaintiff unquestionably comes within that language, and I do not understand the majority to contend otherwise. Indeed, we have long stated that a basic purpose of the Connecticut Environmental Protection Act (act), General Statutes § 22a-14 et seq., "is to give persons standing to bring actions to protect the environment...." Mystic Marinelife Aquarium, Inc. v. Gill, *supra*, 175 Conn. at 499, 400 A.2d 726. "The broad language of the act gives any person the right to bring an action for declaratory and equitable relief against pollution." Belford v. New Haven, 170 Conn. 46, 53, 364 A.2d 194 (1975), overruled in part, ****1209** Manchester Environmental Coalition v. Stockton, 184 Conn. 51, 57 n. 7, 441 A.2d 68 (1981). Thus, the plaintiff is within the class of persons contemplated by the statute and, therefore, is a proper party to invoke the machinery of the courts thereunder.

***513** In addition, under the rubric of standing, this is precisely the type of case that we anticipated in Nizzardo v.

State Traffic Commission, *supra*, 259 Conn. at 159, 788 A.2d 1158. Contrary to the present case, that case did not involve an independent action under § 22a-16, but an attempted intervention under General Statutes § 22a-19. In Nizzardo, we concluded that the plaintiff did not have standing to intervene in the proceedings of the defendant traffic commission because the commission had no environmental jurisdiction to adjudicate the environmental issues that the plaintiff sought to raise. [FN2] *Id.* We stated therein, however, that "[t]he establishment of the right to bring an independent action to address environmental concerns lends credence to our conclusion that the issues appropriately raised by intervention pursuant to § 22a-19 are limited to those within the jurisdiction of the particular agency. If a party wants to raise environmental concerns that are beyond the scope of authority of a particular agency, the act provides a means for doing so, namely, instituting an independent action pursuant to § 22a-16." *Id.* Thus, in Nizzardo, we specifically anticipated that, as in the present case, a party would have standing to bring an independent action under § 22a-16 against an agency or agent that did not have environmental jurisdiction, such as these municipal defendants.

FN2. Two aspects of Nizzardo v. State Traffic Commission, *supra*, 259 Conn. at 131, 788 A.2d 1158, are worthy of note. First, it decided the question of the plaintiff's standing as a matter of statutory interpretation of § 22a-19. See *id.*, at 148-49, 788 A.2d 1158. Second, its ultimate holding that one may not

intervene to raise environmental issues before an agency that has no environmental jurisdiction; id., at 159, 788 A.2d 1158; also is supported by the notion that, despite the broad language of § 22a-19, the legislature did not intend to require an agency without any environmental jurisdiction-- and, therefore, without any environmental expertise--to decide environmental questions. That rationale does not apply, however, to an independent action under § 22a-16, because the legislature clearly has placed such a responsibility on the court as the ultimate decision maker in such an action. See, e.g., Waterbury v. Washington, 260 Conn. 506, 545-46, 800 A.2d 1102 (2002).

*514 These conclusions do not, however, end the standing inquiry. The plaintiff must also seek to vindicate an interest that is arguably within the zone of interests that the statute involved seeks to protect. New England Cable Television Assn., Inc. v. Dept. of Public Utility Control, 247 Conn. 95, 111-12, 717 A.2d 1276 (1998); Med-Trans of Connecticut, Inc. v. Dept. of Public Health, *supra*, 242 Conn. at 159, 699 A.2d 142. Thus, "standing is conferred only to protect the natural resources of the state from pollution..." Mystic Marinelife Aquarium, Inc. v. Gill, *supra*, 175 Conn. at 499, 400 A.2d 726. That requirement is drawn directly from the language of General Statutes § § 22a-15 and 22a-16. Section 22a-15 declares the policy of the act: "[T]here is a public trust in the air, water and other natural resources of the state of

Connecticut and that each person is entitled to the protection, preservation and enhancement of the same ... [and] it is in the public interest to provide all persons with an adequate remedy to protect the air, water and other natural resources from unreasonable pollution, impairment or destruction." Section 22a-16 affords standing to any person or entity to sue any private or public person or entity, "acting alone, or in combination with others, for the protection of the public **1210 trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction..." (Emphasis added.) See footnote 1 of this opinion for the text of § 22a-16. Thus, in order for the plaintiff to have standing to bring an action against *anyone* under § 22a-16, the plaintiff must be seeking to protect "the air, water [or] other natural resources of [this] state..." On this aspect of the analysis of the plaintiff's standing, I depart from the majority.

As I read the complaint in the plaintiff's favor, as we must at this stage of the proceedings, the plaintiff raises four sets of environmental harms: (1) excessive use of energy in demolishing the buildings at issue; (2) excessive *515 use of energy in this state and elsewhere resulting from the demolition; (3) local air pollution resulting from the demolition process; and (4) overfilling of landfills as the dumping grounds of the debris from the demolition process. At oral argument before this court, the plaintiff refined those claims by specifying that, by its reference to the excessive use of energy, it meant the excessive use of *oil* as a *source* of energy, presumably in enabling the trucks, which are to cart the demolition

debris away from the demolition site, to operate, and also, presumably, the use of such oil in operating demolition machinery. In my view, only the third set of harms, namely, the pollution of the air in New London, is arguably within the zone of interests sought to be protected by § 22a-16, because only that air is within the meaning of the statutory language, "the air, water and other natural resources of the state...." [FN3] Put another way, *516 I would conclude that neither the oil consumed in the demolition process nor the overfilled landfills complained of by the plaintiff are "natural resources of the state," within the meaning of § 22a-16. Moreover, this conclusion would limit the plaintiff's standing in its entirety, as against both the corporate defendant and the municipal defendants, contrary to the conclusion of the majority that the plaintiff's standing extends to all of the harms alleged against both sets of defendants.

FN3. Despite the majority's suggestion to the contrary, this issue has been raised in the present case, at least at oral argument before this court. Both the plaintiff and the defendants addressed themselves, in the context of the standing argument, to the question of whether the plaintiff's contentions regarding oil and landfills are within the contemplation of § 22a-16. Indeed, the defendants contended, in the argument over standing, that the interests sought to be protected by the plaintiff were not resources of the state within the meaning of § 22a-16. In any event, moreover, because we have been squarely

presented with the question of the plaintiff's standing under that statute, we are constrained to interpret the statute properly, and are not confined to those specific arguments raised by the plaintiff. In other words, merely because the plaintiff contends, incorrectly, that § 22a-16 confers standing on the plaintiff to assert *all* of its claims, does not mean that we are precluded from concluding that the plaintiff has standing to assert only *some* of its claims.

In this connection, the majority apparently chides me for my questioning during oral argument before this court, taking the unusual step of referring to me by name and quoting from my colloquy with the plaintiff's counsel in my attempt to understand the plaintiff's theory of pollution as alleged in its broadly and imprecisely phrased complaint. See footnotes 16 and 17 of the majority opinion and the accompanying text. In my view, if a litigant makes oral representations to this court regarding the meaning of its claim, it is irrelevant whether those representations were made in response to questioning, and by whom. In any event, I deem it to be a part of my role as a Justice of this court to attempt to understand what a litigant does mean by such "vague" allegations, rather than to attempt to speculate and, perhaps, arrive at an interpretation that the litigant does not intend. See footnote 20 of the majority opinion.

****1211** It is axiomatic that whether particular substances constitute "natural resources of the state" within the meaning of § 22a-16 presents a question of statutory interpretation. Paige v. Town Plan & Zoning Commission, 235 Conn. 448, 454, 668 A.2d 340 (1995); Red Hill Coalition, Inc. v. Town Plan & Zoning Commission, 212 Conn. 727, 735, 563 A.2d 1347 (1989). Fortunately, in deciding whether the oil or the landfills constitute natural resources of this state, we are not required to write on a blank slate, because both Red Hill Coalition, Inc., and Paige give us guidance. In Red Hill Coalition, Inc. v. Town Plan & Zoning Commission, supra, at 735-40, 563 A.2d 1347, we concluded that "prime agricultural land" is not such a resource within the meaning of the act. In Paige v. Town Plan & Zoning Commission, supra, at 454-63, 668 A.2d 340, we concluded that "trees and wildlife" are such natural resources, irrespective of whether they have economic value. Of more importance to the present case, moreover, in Paige, we distinguished Red Hill Coalition, Inc., as follows: "Prime agricultural land is different from what is claimed to be a natural resource in this case. Prime agricultural land is a subcategory of land subject to human alteration that is kept barren of plant and animal life that would otherwise eventually live on it through natural succession. Agricultural land is not naturally occurring." Id., at 463, 668 A.2d 340. Thus, reading Red Hill Coalition, Inc., and Paige together, I would conclude that, as the defendants in the present case suggested at oral argument before this court, an essential element of a natural resource under the act is that it be a resource occurring

naturally that has not been subject to human alteration.

Applying this definition to the plaintiff's claims in the present case, I would conclude, further, that neither the oil consumed nor the landfills alleged by the plaintiff to be polluted by the defendants' conduct are natural resources within the meaning of § 22a-16. The oil at issue obviously is refined oil, not occurring in its natural condition. The same may be said of the landfills. They are, like the agricultural land considered in Red Hill Coalition, Inc., not a natural resource, because they obviously are land that is the result, not of natural occurrence, but of human alteration. Furthermore, to the extent that the plaintiff relies on the use of oil outside of Connecticut, that oil cannot possibly be a natural resource "of [this] state...." [FN4] General Statutes § 22a-16. Therefore, the plaintiff does not have standing under § 22a-16 to seek to protect those resources, because they are not "natural resources of the state...."

FN4. Indeed, the last time I looked, I did not see any oil wells pumping oil from the ground in this state. Although perhaps Texas, Oklahoma and Alaska could claim oil as a natural resource, our state cannot.

By contrast, however, the air in New London, which the plaintiff asserts will be polluted by virtue of the debris and automotive fumes resulting from the demolition process, is a natural resource of the state. Thus, the plaintiff does have standing to seek protection of that resource. [FN5]

FN5. This conclusion does not mean, however, that, simply because the plaintiff has standing to raise such a concern, any such pollution would, as a factual matter, rise to the level of "unreasonable pollution" of the air, which is what the plaintiff would have to prove in order to prevail on its cause of action under § 22a-16.

***518 II**
**THE MAJORITY'S MOTION TO
STRIKE ANALYSIS**

The majority concludes that, although the trial court improperly dismissed the ****1212** action for lack of standing, that was harmless error because "the plaintiff has failed to allege sufficiently a cause of action against Alves," and because "its claims against the city are derivative of the claims against Alves, those claims also legally are insufficient." Thus, the majority asserts, "the claims ... properly would have been subject to a motion to strike." The problem with this conclusion is that the municipal defendants have never filed a motion to strike the complaint, [FN6] the trial court has never considered whether the complaint is legally sufficient, and, obviously, that fundamental legal question has never even been briefed or argued, either in the trial court or in this court. In my view, therefore, it is inappropriate for the majority to consider that question.

FN6. Indeed, under the procedural posture of the case in the trial court, the defendants could not have properly filed a motion to strike the complaint, because once they moved to

dismiss the case for lack of subject matter jurisdiction, the court was obligated to rule on that question before going any further in the case. See Federal Deposit Ins. Corp. v. Peabody, N.E., Inc., 239 Conn. 93, 99, 680 A.2d 1321 (1996).

Before continuing with this contention, however, I think it would be helpful to specify precisely how the majority reaches the conclusion that the plaintiff has not stated a cause of action against the municipal defendants. The majority's conclusion is based entirely on our decision in Nizzardo v. State Traffic Commission, supra, 259 Conn. at 131, 788 A.2d 1158. I think it is fair to say that the sum and substance of the majority's analysis in this regard is the following passage from the majority opinion: "In Nizzardo ... we concluded that the act did not expand the jurisdiction of administrative agencies to include consideration of environmental matters not otherwise within their jurisdiction. [Id., at 155-56, 788 A.2d 1158]. As the ***519** plaintiff conceded in its complaint, '[n]either the [d]emolition [c]ode, city ordinances, nor [the Building Official and Contracting Administrator's Code] require [Alves] to consider feasible and prudent alternatives or any other related analysis before issuance of a demolition permit.' [FN7] Accordingly, to the extent that the plaintiff seeks a declaratory judgment that Alves should be required to consider the environmental ramifications of demolition before issuing the demolition permits, such relief cannot be granted consistent with our holding in Nizzardo that administrative bodies have no duty--indeed, no authority-- under the act to consider environmental matters not

otherwise within their jurisdiction."

FN7. Significantly, the question of whether the municipal defendants are required to consider "feasible and prudent alternative[s]" is a question that does not even arise in a claim under the act, presented under § 22a-16, unless and until the plaintiff has presented, at the trial, a prima facie showing of unreasonable pollution. In that event, General Statutes § 22a-17 (a)--not § 22a-16--provides to the purported polluter "an affirmative defense, that, considering all relevant surrounding circumstances and factors, there is no feasible and prudent alternative to the defendant's conduct..." Thus, not only has the majority gone beyond the standing question in this case, but, as support for that analysis, it relies on an allegation in the complaint regarding an issue that would not even arise until the plaintiff had established a prima facie case at trial.

In my view, *Nizzardo* does not and cannot control the question of whether the plaintiff has stated a substantive cause of action under § 22a-16. *Nizzardo* involved: (1) the standing of the plaintiff, and not whether he had stated a substantive cause of action; (2) intervention under § 22a-19, and not standing to bring an independent action under § 22a-16; [FN8] and **1213 (3) the proper interpretation of § 22a-19. It is axiomatic that whether a plaintiff has standing and whether a *520 plaintiff has made out a substantive cause of action involve two separate and distinct

inquiries. "When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue *and not ... whether, on the merits, the plaintiff has a legally protected interest that the defendant's action has invaded.*" (Emphasis added.) *Mystic Marinelife Aquarium, Inc. v. Gill*, supra, 175 Conn. at 492, 400 A.2d 726. Thus, I simply do not see how a case that involved statutory standing to intervene under § 22a-19 can, ipso facto, control the different question of whether the plaintiff's complaint stated an independent cause of action under § 22a-16.

FN8. Indeed, as I have noted, in *Nizzardo* itself we specifically stated that, instead of seeking to intervene under § 22a-19, the plaintiff would have had standing to bring an action against a nonenvironmental agency in an independent action under § 22a-16. *Nizzardo v. State Traffic Commission*, supra, 259 Conn. at 159, 788 A.2d 1158.

Thus, the question of whether the plaintiff has stated a cause of action against the municipal defendants would involve, for example, an inquiry into both the language and purpose of § 22a-16. [FN9] Indeed, as the majority acknowledges, we implicitly permitted, and considered on its merits, a claim of pollution by a municipality in *521 *Waterbury v. Washington*, 260 Conn. 506, 800 A.2d 1102 (2002), despite the fact that the city of Waterbury had not enacted environmental ordinances.

FN9. In this connection, I note

that, at least on its face, § 22a-16 arguably could be read to permit such a claim, because the plaintiff could argue that it has stated a claim "for declaratory and equitable relief against ... a political subdivision [of the state] ... acting alone, or in combination with others, for the protection of the public trust in the air ... from unreasonable pollution...." General Statutes § 22a-16. I can see, however, powerful arguments on the other side, namely, that, despite the breadth of this language, it was not intended to embrace, as a substantive matter, a nonenvironmental governmental official who was merely acting in compliance with the applicable statutes and ordinances. The language of § 22a-16, "or in combination with others," probably is aimed, not at this type of situation, in which the official's conduct is simply a "but for" cause of the alleged pollution, but at the situation in which the pollution caused by two or more actors combines to cause "unreasonable pollution...." Indeed, without any briefing or argument on this question, I would be strongly inclined to conclude along these lines. My point is, however, that these are questions that are appropriately addressed, not within the confines of the present appeal, where they have not been briefed or argued, but within the context of a subsequent proceeding in which the plaintiff has had the opportunity to address them.

Contrasting *Waterbury* with the present case simply underscores the notion that, whether a municipality may be held liable for pollution under § 22a-16 depends on the facts of the case, and whether those facts make it a polluter under § 22a-16. Thus, the question of whether the municipal defendants in the present case may be held liable for pollution under § 22a-16--which is the question that a motion to strike would raise--necessarily involves the interpretation of § 22a-16 as applied to the facts alleged in the complaint. Significantly, the majority's entire analysis, quoted previously, fails to perform this interpretive task. [FN10]

FN10. I acknowledge that some--but not all--of the policy concerns that underlie *Nizzardo* could be applied to the separate question of whether the plaintiff here has stated a claim under § 22a-16. That is quite different, however, from concluding, without the question ever having been briefed or argued, that *Nizzardo* controls that separate question. It is true, as the majority notes, that the parties were instructed to address themselves at oral argument before this court to *Nizzardo*, which was decided after they had filed their briefs in this court, and it is also true that they did so. That instruction, however, was given in the context of the question that the present appeal presented, namely, whether the plaintiff had standing under § 22a-16. It did not ask them to address--and they therefore did not address--either in form or in substance, the separate question of whether,

under the facts of the case and the language of the statute, the plaintiff had stated a cause of action under that statute.

****1214** This brings me back, then, to the procedural question of whether it is appropriate for the majority to dispose of this case on what is essentially an alternate ground to affirm the trial court's judgment, namely, that the plaintiff has not stated a valid cause of action against the municipal defendants. I contend that it is not appropriate.

Although, I agree that, when and if a motion to strike were filed, it would *probably* be appropriately granted; see footnote 9 of this opinion; *how* we decide questions ***522** of law is just as important as *what* we decide. It is important that this court, which insists on litigants adhering to fundamental procedural norms, do so itself.

We have often rejected attempts by litigants in this court to raise nonconstitutional issues that were never presented to the trial court, characterizing them as unfair "ambuscades" of the trial court. See, e.g., *In re Jonathan S.*, 260 Conn. 494, 505, 798 A.2d 963 (2002); *State v. Meehan*, 260 Conn. 372, 390, 796 A.2d 1191 (2002); *State v. Berube*, 256 Conn. 742, 748, 775 A.2d 966 (2001). We have also refused to consider claims of an appellate litigant that it had not adequately briefed in this court. See, e.g., *State v. DeJesus*, 260 Conn. 466, 477, 797 A.2d 1101 (2002); *Rocque v. Northeast Utilities Service Co.*, 254 Conn. 78, 87, 755 A.2d 196 (2000). Indeed, we have even criticized, and reversed, the Appellate Court for reaching out and deciding a case before

it on a basis that had never been raised or briefed. See, e.g., *Lynch v. Granby Holdings, Inc.*, 230 Conn. 95, 98-99, 644 A.2d 325 (1994). Finally, we have severely criticized a trial court for deciding a case, adversely to the plaintiff, on a substantive basis that the court itself raised *sua sponte*, without affording the parties, and particularly the plaintiff, prior notice and a hearing on that substantive question. See *Sassone v. Lepore*, 226 Conn. 773, 776-77, 629 A.2d 357 (1993). Nonetheless, the majority is willing to dispose of the plaintiff's entire case—not just this appeal—on a basis that has never been presented at all in any court in this state.

The majority's approach may well have other negative consequences for our appellate jurisprudence. For example, what will we say to the future appellee who is defending an improperly granted motion to dismiss, and who, in violation of our usual appellate limitations and norms, asks us at oral argument before this court, citing the present case, to decide that the trial court's dismissal was harmless because the plaintiff's complaint ***523** was legally insufficient—despite the fact that such an issue had never been raised, briefed or argued in either the trial court or this court? I can think of no legitimate answer to this question.

In addition, the approach of the majority cannot even command the justification of judicial economy. Because the plaintiff's complaint against the corporation still stands, the case must continue in the trial court in any event. It escapes me, therefore, why the majority is so eager to rule the municipal defendants out of the case at this stage

of the proceedings. If it is so obvious that the complaint is legally insufficient that it does not even need presentation, briefing and argument on the question, then surely their lawyers would recognize that and move to strike the complaint against them, after a proper remand on the standing issue.

****1215** Finally, this brings me to the only case on which the majority relies for its analysis, namely, McCutcheon & Burr, Inc. v. Berman, 218 Conn. 512, 590 A.2d 438 (1991). [FN11] In my view, that case offers no support for the majority's analysis, despite the majority's assertion to the contrary.

[FN11]. The majority's additional reliance for this analysis on Middletown v. Hartford Electric Light Co., 192 Conn. 591, 473 A.2d 787 (1984), is misplaced. In that case, the trial court held a full factual hearing; id., at 593, 473 A.2d 787; and found the facts adversely to the plaintiff's claim under the act. Id., at 600, 473 A.2d 787. The trial court's resolution of that fully litigated issue constituted this court's alternate basis for affirmance. Id.

McCutcheon & Burr, Inc., involved the exact opposite of what the majority does here. It is the exact opposite because, as I explain later in this opinion, in McCutcheon & Burr, Inc., the parties addressed themselves *in substance* to the question that was briefed, argued and decided in both the trial court and this court. By contrast, in the present case, the question of statutory interpretation regarding whether the plaintiff had stated a valid cause of action under § 22a-16 was ***524** not

addressed in substance either in the trial court or in the present appeal, despite the majority's assertion that it was so addressed. [FN12]

[FN12]. The majority's response to this argument is that the majority "cannot perceive how a philosophical inquiry into the language and purpose of § 22a-16 would further elucidate this matter." In my view, analyzing the language and purpose of a statute is not a philosophical inquiry; it is, instead, necessary to the process of deciding whether a plaintiff has stated a cause of action based on a specific statute.

In McCutcheon & Burr, Inc., the plaintiff, a real estate broker, brought an action against the defendants, certain individuals and their real estate partnership, for a real estate commission based on, *inter alia*, a written listing agreement governed by General Statutes § 20-325a (b). Id., at 514-15, 590 A.2d 438. The defendants moved to dismiss the complaint for lack of subject matter jurisdiction on the ground that the listing agreement did not comply with § 20-325a (b) because it had not been signed by all of the owners of the property, and the trial court granted the motion to dismiss on that basis. Id., at 517-18, 590 A.2d 438.

On appeal, we fully considered, on the basis of the briefs and arguments presented to us, the question of whether the listing agreement was deficient in that respect, and we agreed with the trial court that the listing agreement was so deficient. Id., at 522, 590 A.2d 438. We noted, however, that this deficiency

in who had signed the listing agreement was not a subject matter jurisdictional defect, subject to a motion to dismiss, but, instead, that "the ruling of the trial court on the motion to dismiss necessitated a *full review of the merits of the underlying issue*, namely, whether the listing agreement satisfied the requirements of § 20-325a (b)." (Emphasis added.) *Id.*, at 526, 590 A.2d 438. It was that ruling that we were reviewing in the appeal in *McCutcheon & Burr, Inc.*, and, therefore, the merits of that issue were fully briefed and argued before us. We stated that "the proper procedural mechanism addressing whether § 20-325a (b) was ***525** satisfied would have been a motion to strike under Practice Book § 152 [now § 10-39], rather than a motion to dismiss under Practice Book § 142 [now § 10-30]." *Id.* Because, however, the plaintiff had not been prejudiced by the foreclosure of an opportunity to amend its complaint; [FN13] *id.*, at 528, 590 A.2d 438; we held that the procedural impropriety was harmless. *Id.*

FN13. I acknowledge that, as the majority asserts, it is highly unlikely that the plaintiff in the present case could, if given the opportunity after the granting of a motion to strike, amend its complaint to add facts that would establish a valid cause of action. In my view, that is irrelevant. Because the parties here have never, in substance, briefed or argued the question of whether the plaintiff has stated a cause of action--in contrast to *McCutcheon & Burr, Inc.*, in which they did brief and argue that question in substance--the plaintiff should not be deprived of its right to notice

and a hearing on that substantive question simply because the majority has decided, *without* such briefing or argument, that the plaintiff has not stated such a cause of action.

****1216** The critical difference between *McCutcheon & Burr, Inc.*, and the majority's analysis is this: in *McCutcheon & Burr, Inc.*, the parties, albeit under an improper procedural heading, briefed and argued to both the trial court *and this court* the merits of this court's decision, namely, whether the plaintiff's listing agreement satisfied the substantive requirement of the governing statute, and this court decided that question on the basis of those briefs and arguments. Thus, no party was treated unfairly by our disposition of the case. In the present case, by contrast, the question of whether the plaintiff's complaint satisfies the substantive requirements of the governing statute, namely, § 22a-16, has never been briefed or argued to the trial court or this court, and the majority has decided that question, to the plaintiff's prejudice, without resort to any such briefing or argument. Put another way, in *McCutcheon & Burr, Inc.*, the parties fully presented to *both* courts the question of whether the plaintiff had a cause of action, but under an incorrect procedural mechanism. In the present case, ***526** by contrast, the parties have presented to both courts, under the *proper* procedural mechanism, the only question in the case, namely, whether the plaintiff has standing, but the majority has decided a different question, in a way that is fatal to the plaintiff's claim, that the plaintiff has never been given the opportunity to confront.

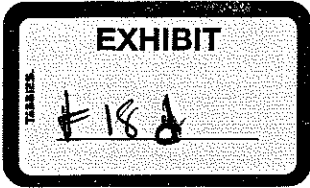
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I therefore respectfully dissent.

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NO. 01-0558621

FORT TRUMBULL CONSERVANCY, LLC. : SUPERIOR COURT

VS. : NEW LONDON JUDICIAL DISTRICT
AT NEW LONDON

ANTONIO ALVES, ET AL : AUGUST 8, 2006

MEMORANDUM OF DECISION

Pending before the court is the defendant New London Development Corporation's (NLDC) motion to dismiss the plaintiff's, Fort Trumbull Conservancy, LLC, second amended complaint. The ground upon which the defendant bases its motion is that the court does not have subject matter jurisdiction because the plaintiff does not have standing. Specifically, the defendant states that the plaintiff is neither "classically nor statutorily aggrieved because it has failed to allege a colorable claim that the defendants' conduct is likely to cause unreasonable pollution to the air, water or other natural resources of the state under General Statutes § 22a-16."¹

FILED

AUG 8 2006

**SUPERIOR COURT - NEW LONDON
JUDICIAL DISTRICT AT NEW LONDON**

The codefendant, the City of New London, moves to dismiss on the same ground and adopts the New London Development Corporation's memorandum of law in support of the motion to dismiss as its own. See Motion to Dismiss filed March 31, 2006.

The procedural history of the present case is as follows. On May 1, 2001, the plaintiff initially filed its complaint against the defendants: Antonio H. Alves, a city of New London building official; the City of New London (city); and NLDC. By motions dated May 29, 2001, the defendants moved to dismiss the plaintiff's complaint on the ground of lack of subject matter jurisdiction in that the plaintiff lacked standing to bring this action pursuant to the Connecticut Environmental Protection Act (CEPA) and was neither classically nor statutorily aggrieved in the present action. By memorandum of decision dated June 19, 2001, this court granted the motions to dismiss finding that the defendant lacked standing to bring this suit and, therefore, the court lacked subject matter jurisdiction. The defendant appealed this court's decision to the Appellate Court. Thereafter, the Supreme Court, pursuant to Practice Book § 65-1, transferred the appeal to itself for adjudication. The Supreme Court reversed this court's judgment in part and remanded the case with direction to deny the motions to dismiss as to the claims against NLDC and the city under § 22a-220, and for further proceedings according to law. *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 510, 815 A.2d 118 (2003) (*Borden, J.*, concurring and dissenting).

Thereafter, on April 25, 2003, NLDC filed a request to revise the plaintiff's complaint which sought, inter alia, to separate the single count complaint against the remaining defendants, the city and NLDC. The request stated that it was impossible to tell which allegations were directed at the city and which were directed at NLDC. The plaintiff filed an

objection to the request to revise on June 2, 2003. On June 24, 2003, this court overruled the plaintiff's objection ordering that the entire complaint be revised to separate the counts against the various defendants. On July 14, 2003, the plaintiff filed a motion for articulation of this court's order of June 24, 2003, which the court denied. On August 14, 2003, the plaintiff filed a notice of compliance with this court's order of June 24, 2003, and requested leave to amend its complaint. In response, the defendants filed an objection to the request for leave to amend on the ground that, inter alia, the plaintiff commingled allegations against the city and NLDC and failed to separate the counts appropriately as to each defendant.² Additionally, the defendants argued that the plaintiff's allegations were vague and conclusory. On September 16, 2003, this court sustained the defendants' objections. On October 6, 2003, this court articulated its ruling of September 16, 2003 by stating that the plaintiff failed to comply with the defendants' request to revise.

On March 2, 2006, the plaintiff filed a second amended complaint containing two counts. The first count is against the defendant NLDC. The second count is against the city, and incorporates the entire allegations of the first count as being fully set forth therein. On March 21, 2006, NLDC filed a motion to dismiss the plaintiff's second amended complaint on

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On August 27, 2003, NLDC filed its objection to the plaintiff's request for leave to amend its complaint. Alves and the city, on August 29, 2003 and September 2, 2003, respectively, filed objections to the plaintiff's request for leave to amend, adopting NLDC's objection and grounds as their own.

the ground that the court lacks subject matter jurisdiction because the plaintiff does not have standing and is not classically nor statutorily aggrieved. On March 31, 2006, the city filed a motion to dismiss asserting identical grounds and adopting NLDC's supporting memorandum of law as its own. This motion is presently before the court.

DISCUSSION

"Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction Accordingly, [t]he subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings" (Citations omitted; internal quotation marks omitted.) *Manifold v. Ragaglia*, 94 Conn. App. 103, 116-17, 891 A.2d 106 (2006).

"Although subject matter jurisdiction may be challenged at any stage of the proceedings, it has been addressed almost exclusively through a motion to dismiss. A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . When a . . . court decides a jurisdictional question raised by a pretrial

motion to dismiss, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.” (Internal quotation marks omitted.) *Id.*, 117.

“[A] party must have standing to assert a claim in order for the court to have subject matter jurisdiction over the claim.” (Internal quotation marks omitted.) *American States Ins. Co. v. Allstate Ins. Co.*, 94 Conn. App. 79, 83, 891 A.2d 75 (2006). “Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.” (Internal quotation marks omitted.) *West Farms Mall, LLC v. West Hartford*, 279 Conn. 1, 11, ___ A.2d ___ (2006).

“Standing is established by showing that the party claiming it is authorized by statute to bring suit or is classically aggrieved.” (Internal quotation marks omitted.) *Broadnax v. New Haven*, 270 Conn. 133, 154, 851 A.2d 1113 (2004). “Classical aggrievement requires a two

part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the decision, as opposed to a general interest that all members of the community share. . . . Second, the party must also show that the agency's decision has specially and injuriously affected that specific personal or legal interest. . . . Aggrievement does not demand certainty, only the possibility of an adverse effect on a legally protected interest." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 486-87, 815 A.2d 1188 (2003).

"Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) *Id.*, 487.

In *Alves*, supra, the Supreme Court stated that "all that is required to invoke the jurisdiction of the Superior Court under § 22a-16 is a colorable claim, by 'any person' against 'any person,' of conduct resulting in harm to one or more of the natural resources of this state." *Id.*, 496. Moreover, the *Alves* court found that the plaintiff had alleged conduct by NLDC such that its demolition activities would result in unreasonable harm to the natural resources of this state. *Id.*, 502-03. Likewise, the *Alves* court found that the plaintiff's complaint contained sufficient allegations against the city that, if proven, could establish a violation of CEPA. *Id.*, 502.

However, the initial complaint that was under judicial scrutiny by the Supreme Court in *Alves* has now been altered from its original form and content; the current and operative complaint is the plaintiff's second amended complaint which was filed without objection on March 2, 2006.³ An amended complaint, which is complete in itself, entirely supersedes the original complaint. *Wesley v. DeFonce Contracting Corp.*, 153 Conn. 400, 404, 216 A.2d 811 (1966); see also *Devivo v. Devivo*, Superior Court, judicial district of Hartford, Docket No. CV 98 0581020 (January 19, 1999, *Hale, J.*), citing *Marrinan v. Hamer*, 5 Conn. App. 101, 103, 497 A.2d 67 (1985). The filing of the amended complaint operates as a withdrawal of the original complaint and renders the original complaint as part of the history of the case. *Id.* “[I]n ruling on a motion to dismiss, the trial court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations construing them in a manner most favorable to the pleader.” *Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 423, 432-33, 829 A.2d 801 (2003). Considering the allegations in the second amended complaint, this court finds that the plaintiff has not alleged sufficient facts to demonstrate that it is statutorily or classically aggrieved to establish standing to bring this suit. Moreover, the factual allegations as currently pleaded provide no basis for the court to infer

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If there is no objection by the defendants within fifteen days of the filing of the proposed amendment, the amendment is deemed to be filed with consent of the defendants and the trial court, absent extraordinary circumstances, has no discretion to disallow it. See *Darling v. Waterford*, 7 Conn. App. 485, 487, 508 A.2d 839 (1986).

harm from the defendants' conduct.

The second amended complaint alleges that the plaintiff has standing pursuant to General Statutes § 22a-16 and § 22a-20 and Article I, § 10 of the Connecticut Constitution. The amended complaint further alleges, inter alia, that NLDC is in the process of demolishing many structures in the Fort Trumbull peninsula, and that NLDC has filed applications for the demolition of many buildings and structures. The plaintiff alleges that the city has not now, or in the past, met recycling and source reduction goals established by General Statutes § 22a-220, and that the defendants have violated or will violate their individual and collective duties, obligations and responsibilities. Although the plaintiff does allege that a public trust exists in the air, water, land, housing and energy resources, and that it is entitled by law to protection, preservation and enhancement of the natural resources in Connecticut, there are no clear allegations as to how the defendants' conduct in violating § 22a-220 – and the demolition of structures – violates § 22a-16.

As our Supreme Court has found, in order to state a cause of action pursuant to § 22a-16, all that is required is for the plaintiff to state a colorable claim that alleges activities or conduct resulting in harm to one or more of the natural resources of this state. *Fort Trumbull Conservancy v. Alves*, supra, 262 Conn. 496. As currently pleaded, the second amended complaint fails to allege that the defendants' conduct in violating § 22a-220 will result in unreasonable harm to the natural resources of this state. Therefore, because the

plaintiff fails to allege facts in its amended complaint to establish aggrievement, the plaintiff lacks standing to bring this suit as currently pleaded.

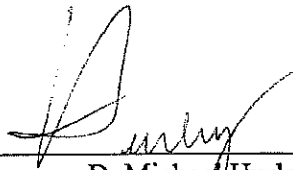
The plaintiff argues that the second amended complaint “exists in its current form as a direct result of this court’s ruling granting the defendants’ request to revise [the complaint] in its entirety over the [plaintiff’s] objections and the subsequent denial of the [plaintiff’s] motion for leave to file an amended complaint.” However, a review of the file reveals that this court did not order the plaintiff to alter the material allegations of its complaint to the extent that it could not claim unreasonable harm to one or more of the natural resources of this state, as is required under § 22a-16. *Fort Trumbull Conservancy, LLC v. Alves*, supra, 262 Conn. 496, 502. Therefore, the plaintiff’s argument is without merit.

The plaintiff also argues that the doctrine of the law of the case should apply in the present case because the Supreme Court determined that the plaintiff had standing under the allegations of the original complaint. “It is axiomatic that on remand for further proceedings after decision by an appellate court, the trial court must proceed with the mandate and the law of the case as established on appeal. A trial court must implement both the letter and spirit of the mandate, taking into account the appellate court’s opinion and the circumstances it embraces.” *Martinez v. State Department of Public Safety*, Superior Court, judicial district of Fairfield, Docket No. CV 00 377191 (January 30, 2004, *Dewey, J.*). The plaintiff, however, has omitted allegations in its amended complaint in such a way as to change the circumstances

and factual predicate upon which the Supreme Court rendered its decision. As noted above, the second amended complaint is now the operative complaint for purposes of judicial review. *Wesley v. DeFonce Contracting Corp.*, supra, 153 Conn. 404. Therefore, in light of the allegations of the second amended complaint, this court finds that the plaintiff has failed to allege statutory or classical aggrievement and, therefore, lacks standing. The motions to dismiss are granted.

CONCLUSION

For the foregoing reasons, the motions to dismiss the plaintiff's second amended complaint are granted.



D. Michael Hurley
Judge Trial Referee

Exhibit 59

FROM: Gerhard R. & Edith R. Schade
887 Goodale Hill Road
Glastonbury, CT 06033

RECEIVED

SEP 11 2006

Waste Management Bureau
Planning & Standards Division

TO: Mr. Michael Harder
DEP Office of Planning and Program Development
4th Floor, 79 Elm Street
Hartford, CT 06106

DATE: September 4, 2006

RE: Comments On Proposed Amendment To the Solid Waste Management Plan

We wish to **urge expansion on the present Bottle Bill** to include non-carbonated beverages, increase the deposit to ten cents per bottle and allow the state to claim the unredeemed deposits as abandoned property.

The present Bottle Bill works very well, which is a very good indication that an expanded bill would work even better. As clean-up volunteers for Cotton Hollow Preserve in South Glastonbury, the reduced amount of trash we had to pick up after the original Bottle Bill was passed 26 years ago. The same was true along the road on which we live, a scenic unimproved lane in Glastonbury. Not only do most people return their bottles to redeem their deposit, many individuals and non-profits collect those bottles that are thrown out as litter to earn the deposit money.

Include non-carbonated beverages. About 90% of the bottles that are now thrown out are water containers. Statistics show that in Connecticut towns less than 30% of non-carbonated plastic bottles are recycled, while 66-70% of the redeemable bottles are recycled. Those that are not recycled produce costly transportation and speeded filling of waste disposing facilities. Recycled plastics produce material to manufacture new products.

In the state of Maine, where we live in the summer, their Bottle Bill includes other non-carbonated beverages, from water, vegetable and fruit juices to milk jugs. Particularly in small towns there are privately run redemption centers, providing employment. We see very few bottles littering the roadsides and trails.

Increase the deposit to ten cents per container. Obviously that added value of the deposit would inspire more consumers to redeem their bottles.

Allow the state to claim the unredeemed deposits as abandoned property. Why should the bottling companies get that additional profit? There is precedent for this policy. Unclaimed assets like old bank accounts and insurance polities escheat to the state. Why not unclaimed deposits on bottles? California and Massachusetts have been collecting these unclaimed deposits for years.

Edith R. Schade
Gerhard R. Schade

The Scotts Company

and subsidiaries



September 7, 2006

Mr. Michael Harder
Department of Environmental Protection
4th Floor
79 Elm Street
Hartford, CT 06106

RECEIVED
SEP 08 2006
Waste Management Bureau
Planning & Standards Division

Re: *Written Comments of The Scotts Miracle-Gro Company and Subsidiaries regarding Proposed Amendments to Connecticut's Solid Waste Management Plan*

Dear Mr. Harder:

This letter is intended to serve as the comments of The Scotts Miracle-Gro Company in support of Connecticut's proposed amendments to its solid waste management plan (the "Amendments"). ScottsMiracle-Gro owns and operates a growing media plant in Lebanon, Connecticut and is therefore an interested party. After reviewing these comments, please do not hesitate to contact me should you have any questions or need further information.

The Scotts Miracle-Gro Company is the world's leading supplier and marketer of consumer products for do-it-yourself lawn and garden care. Founded in Marysville, Ohio in 1868, ScottsMiracle-Gro makes and sells products under many recognized brands, including Scotts®, Turf Builder®, Miracle-Gro®, Ortho®, Roundup® (for U.S. consumers), Earthgro®, Osmocote®, Smith and Hawken® and Morningsong®.

ScottsMiracle-Gro has a large growing media (soils and mulches) business and is one of the nation's largest recyclers of organic waste, recycling more than 6 billion pounds annually in the production of growing media products.

ScottsMiracle-Gro's Growing Media plant in Lebanon, Connecticut was originally owned by a company known as "Earthgro" and was purchased by Scotts (under an affiliate name of "Hyponex") in the late 1990's. As an Earthgro site in the early 1990s, it was issued a consent order for operating without a solid waste permit. ScottsMiracle-Gro has worked with the Connecticut DEP since acquiring the facility and was issued a permit in February, 2006. When the permit application was originally submitted, the plant conducted in-vessel composting of food waste and received many odor complaints. The site no longer composts food waste.

Instead, it uses the same materials as other ScottsMiracle-Gro facilities (topsoil, sand, peat and perlite), as well as bark fines and drinking water residuals. Complaints are no longer heard, and the facility is in compliance with its permit.

However, ScottsMiracle-Gro is always searching for ways it can be a better environmental steward. Peat has been identified by some environmental groups as an endangered nonrenewable resource. Through research conducted at a similar growing media facility in Oxford, Pennsylvania, Scotts has learned that it can substitute paper pulp for peat in its soils mixtures. Such a substitution would not only conserve peat but it would also convert a waste stream (paper pulp) into a useable product. Such use of paper pulp would also reduce the amount of waste going into landfills. Scotts has identified reliable suppliers to supply pulp that is high quality and does not contain high levels of dioxin (sometimes a problem). While ScottsMiracle-Gro has been working with the Connecticut DEP to obtain approval to use paper pulp in its soil products, such approval has been slow in coming.

It is Scotts' opinion that the proposed Amendments would benefit Connecticut residents by building a regulatory climate that encourages Connecticut businesses to recycle waste. It would accomplish this by streamlining the permitting process for those activities that support the goals of the state's Solid Waste Plan, such as increased recycling and composting. In the Amendments' Executive Summary, it is stated that the state wants to "shift from a "throwaway society" toward a system...where wastes are treated as a valuable raw materials..." Additionally, one of the goals listed is to "significantly reduce the amount of CT generated solid waste requiring disposal through increased source reduction, reuse, recycling, and composting. And, it is stated that the state will address this goal by "making review of those applications a high priority, ...and evaluating the option of reducing permitting requirements for the beneficial reuse of certain waste materials".

Should the state of Connecticut allow ScottsMiracle-Gro and similar companies to embark on such recycling and reuse of these waste products, it would be imperative that high standards of excellence be maintained. ScottsMiracle-Gro would do so by taking steps such as:

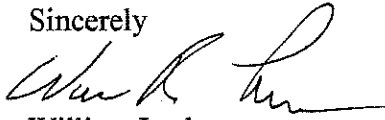
- testing of the raw materials prior to use
- testing of finished goods
- sampling/testing to ensure no impact on the ground water
- sampling/testing to ensure no impact on storm water
- awareness of how the material would impact dust, odors, insects, and pests and proper implementation of control measures.

Such quality control measures would ensure environmental stewardship for Connecticut residents and consumers.

The ScottsMiracle-Gro Company supports the proposed amendments to Connecticut's solid waste management plan and applauds the state for the taking these steps. Thank you.

Mr. Michael Harder
Page 3
September 7, 2006

Sincerely

A handwritten signature in black ink, appearing to read 'William Lechner', with a long horizontal flourish extending to the right.

William Lechner
Vice President, Environmental Health and Safety



SIERRA CLUB

FOUNDED 1892

2xhibit 21
Connecticut Chapter
645 Farmington Ave. Hartford, Connecticut 06105
www.connecticut.sierraclub.org

Mr. Michael Harder
DEP Office of Planning and Program Development
4th Floor, 79 Em St.
Hartford, CT 06106

RE: DEP Solid Waste Management Plan

Dear Mr. Harder,

On behalf of over 11,000 members of the CT Sierra Club, I support aggressive action on your proposed amendment to the State's Solid Waste Management Plan. The action of including water bottles onto our Bottle Bill covers all three stated goals in the proposed amendment:

1. Reduce the amount of solid waste by increased source reduction, reuse, recycling, and composting.
2. Disposal of solid waste in efficient, equitable, and environmentally protective manner.
3. Adopt stable, long-term funding for state, regional, and state programs.

Connecticut has had a bottle redemption bill for 26 years. Its original intent was as litter control; which it has accomplished. But the market for beverages has radically changed since its inception. Bottled water now comprises the major percentage of the non-carbonated market.

The CT Sierra Club believes we need a lot more recycling to save resources and energy. But the best recycling towns in CT have yet to reach the 30% recycling rate. The bottle redemption rate is between 66 and 70%; more than double. Imagine what it would do for our beaches, roadways, and lakes if we added the over 200 million water bottles we purchase every year in CT?

Expanding the bottle bill to include water bottles is not a "water tax." It is redeemable by the people who consume these products and not paid for by the entire citizenry. In addition, a lot of local organizations depend on bottle collecting for fundraising. We can also help them raise more funds by including omni-present water bottles.

And if you ever hear of the "filth and vermin" argument, the record will show it is a scare tactic. In ten bottle bill states in twenty-five years, there has never been one health code violation reported.

Municipalities have testified over the years in favor expanding the bottle bill and they have never complained about losing recyclable material revenue.

Phone: 860-236-4405 -- Email: Connecticut.chapter@sierraclub.org
Fax: 860-236-3782

RECEIVED
AUG 25 2006
OFFICE OF BUREAU CHIEF
MATERIALS MANAGEMENT &
COMPLIANCE ASSURANCE

*Connecticut Chapter
645 Farmington Ave. Hartford, Connecticut 06105
www.connecticut.sierraclub.org*

The border concerns are also an exaggeration. Rhode Island has no bottle bill and we have had one for 26 years. Yet no store has ever produced any evidence that redemption fraud is taking place.

Many people rely on the money from the reverse vending machines and they chop the plastic into a much smaller volume. The recycled material is needed for many other products and 26 years ago who would have thought Connecticut would be drinking so much water away from home? The infrastructure is there to handle water bottles in RVM's, the demand is there, and the excuses have faded in the light of reality. It's time to include water bottles in our redemption law.

Respectfully
John D. Calandrelli
State Program Director
CT Sierra Club

*Phone: 860-236-4405 -- Email: Connecticut.chapter@sierraclub.org
Fax: 860-236-3782*

**Comments on the
Proposed Amendment to the Solid Waste Management Plan**

**Submitted to the
Connecticut Department of Environmental Protection**

**By the
Southeastern Connecticut Regional Resources Recovery
Authority**

August 29, 2006

The plan is a good start at a strategy to solve Connecticut's growing trash problem. The plan takes a comprehensive look at the short term history of waste generation and disposal in the state along with options to handle the future waste flow. It should be stated that what is presented as a solid waste management plan is really a recycling plan intended to meet the requirements of a solid waste management plan.

From a 40,000 foot view the plan looks complete, but as you look closer there are unresolved issues in the details. Although, the Department presents many options it does not take a position on the direction the plan.

It is lacking in the more detailed issue of "who, what, and how".

On the general question of "who" the Department needs to name the parties/ organization that will carry out the implementation of the plan. The plan takes a positive position in setting up a solid waste advisory group, but who do they report to, the Department or the implementers? The towns and regions need some guiding authority to look towards for guidance and help in implementation.

The implementation needs to be uniformly applied through out the state. It cannot be left to the individual towns on how to approach the diversion issue.

On the question of “what”, the Department or implementer needs to identify that fraction or fractions of waste stream that can be diverted to meet the 49% / 50% diversion rate. The Department should do a waste characterization study. Once those fractions are identified the implementer can notify the towns.

On the question of “how”, it comes in two parts. Once a fraction is identified as a good diversion candidate, the implementer needs to advise the towns on how to divert that fraction. On the second part of how is the issue of money. How is all of this going to be paid for? On the issue of money the Department needs to be clear on the financial implication to the towns, or regions. Unfunded mandates will not be helpful in implementing this plan.

The plan projects out to 2024 to meet the 49% and 50% diversion rate for MSW and C&D, but makes no provision to revise or update the plan in the interim. It does not seem prudent on the part of the Department not to include such a provision. No one can project with any accuracy that far into the future. Demographic and the waste stream will surely change and the plan should be adaptive.

The plan does not go as far as to make a clear statement of whether the state should be self-sufficient in disposal of its waste stream. It presents an entire section on out of state disposal, including the cost of both rail and truck transport. The premise may be correct that out of state disposal may be priced competitively, and that waste can be treated as a commodity, but things do change. The states that are the larger importers of waste are constantly looking for a way to slow the importation of waste. Any drastic changes on the part of those states leave Connecticut vulnerable to the ability

to dispose of its waste. When all the other out of state disposal options become problematic in state disposal become the disposer of last resort.

The Southeast region of the state is actively being proposed for development by the tourist industry. The Coast Guard is going to build a museum about the Coast Guard in New London, Utopia is proposing development in Preston and Norwich, and there is always the development of the casinos. The basic premise of your plan; to recycle our way out of any new disposal capacity, will likely not work in the Southeast. If all of this known development happens we will likely exceed the capacity of the Preston facility, not to mention C&D disposal. The plan needs to address new capacity in this type of situation.

The plan mentions that the current resource recovery facilities are nearing the termination of their contracts, and only two will remain publicly owned. The plan should mention that many of the plants have extension provisions in their contracts, and the end of contract term is not as dire. In any case, four of the state's plants will become privately owned at the termination of the contracts. The owners of those plants can then sell the disposal space to anyone willing to pay the disposal fee. The Department should take a position that when these plants come up for permit renewal that as a condition of permit renewal a fixed percentage of the disposal space in these plants must be reserved for Connecticut waste. If making disposal capacity a part of the permit is judged illegal, and a large volume of out of state waste is being disposed of in Connecticut, the state should charge a fee for its disposal. Other states charge such a fee. The state could collect the fee and disperse the amount; including the out of state portion, back to the towns in Connecticut. Another critical issue on privatization of the RRFs is the privatization of the ash disposal from the plants. After the Hartford landfill closes the only in state disposal for ash is a privately owned landfill. The plan should discuss alternative

disposal of ash either as a beneficially reused product or an additional landfill.

Beneficial reuse of the waste material is the hallmark of this plans success. Without an aggressive pro-active position by the DEP a 50% diversion rate will be hard to achieve. The plan list options the Department will do to advance beneficial reuse, but I believe that the Department should go one step further. Pick a component of the waste stream; say food waste to be composted, and write the requirements for a permit to build, operate, and beneficially reuse the material. A company can clearly see what the requirements would be and decide if it can be successful. The prospective company would not need to spend time and money going through the review process with the DEP only to find out that it can not meet the standards.

On the subject of beneficial reuse the Department should look at its beneficial reuse of glass that is collected at state-wide MRFs. Presently we collect glass as curbside recycling. It is delivered to MRFs and sorted by color. Flint or clear has a marginal market value. Green and brown have no market value or a negative value, and is taken to landfills for disposal. It seems pointless and counter to the goal of the plan to mandate glass for recycling, sort it by color, and then dispose of it in a landfill. Taking glass off the mandatory list of recyclables would not solve the problem. If the glass goes to a RRF it has no heating value and will only come out in the ash. In much of the eastern part of the state; if not the entire state, sewer systems are not available and septic systems are used. Green and brown glass would be ideal to use in those septic systems. Unfortunately the present beneficial reuse permit does not allow the recycled glass to be used in such a manner. The Department should re-look at its present beneficial reuse permit and test the glass to see if it can be used in septic systems.

The region operates a large tub grinder for use by area towns to volume reduce the brush collected at area transfer stations. The towns and residents use some of the ground material, but some material remains on site. The ground brush and leaves collected at the transfer stations becomes a volume issue for the towns. The Department should re-look at composting sewer sludge with the brush and leaf material to make a usable product. The towns would solve some of their volume issues, and eliminate a disposal issue they have with the sludge. Residents of Connecticut can now buy fertilizer made from sludge material in the state, and some states land apply the sludge material directly. It's time to re-look at this issue.

The state plan recommended making water bottles part of the state deposit laws. Why only water bottles? Why not include all plastic containers except those containing dairy products.

One of the key providers of money to fund the plan seems to be the escheat. Many different parties over several years have tried to get to the escheats money and have not been very successful. The probability that the escheats will be used to fund this plan is low. If the Department is successful in raising the deposit from 5¢ to 10¢ it only doubles the amount remaining in the distributors hands. If the Department is not successful in getting the escheats money from the distributors I have a suggestion for the Department to consider. There are approximately 30 recyclable containers per pound. With the deposit at 5¢ per container that amounts to \$1.50 per pound or \$3,000.00 per ton. If the deposit is raised to 10¢ per container the amount doubles to \$6,000.00 per ton. Market value for the product in the recycled format is in the range of \$500 - \$1,000.00 per ton. The Department should make the regulation change that escheats containers that are delivered to the state's MRFs are not a waste product. Make the state MRFs redemption centers for containers having deposit value. The material can be

sorted by the necessary distributor and taken back for the deposit. The redeemed money can be used to support recycling.

If the plan is to be successful, it needs a strong enforcement section, and that enforcement needs to be uniformly applied through out the state. If the plan is going to rely upon old recycling ordinances being reinvigorated and voluntarily being enforced by the towns it will not work. You must provide for a strong state wide enforcement program.

The cost to finance a diversion program must be carefully calculated. If the cost to divert the material to be reduced reused or recycled becomes higher for the towns or haulers than disposal at RRF or landfills (publicly or privately owned) the material is going to go to the cheapest disposal option. No town or hauler can survive if they do not take the lowest disposal option. The Department must do this type of calculation whenever it is going to make a change in a regulation or write a permit for beneficial reuse.

The plan takes an aggressive approach in attempting to meet a 50% diversion rate. Has any state come near to that goal on a state wide basis? I understand certain areas within States do meet that diversion rate but not an entire state. If there is a state near that diversion number can we model some of our approaches to take advantage of what they have already learned.

We applaud the Department's decision to move forward on an E-waste bill. The region has run several one day collections over the years, and has recently converted to collecting that material at all of the member town's transfer stations. We collect nearly 300 tons of the material annually, and there is no shortage of the material. The cost of disposal is not cheap. We currently pay \$250 - \$275 per ton to have the material recycled. Any help in defraying the recycling cost would be appreciated.

The Department is recommending that a fund be established; to be used by the host community and neighboring communities, by an applicant for any new RRF or landfill capacity. The funds to be used will allow the communities to be part of the application process. Siting these facilities is a very time consuming, and thorough process. The applicants must meet very strict requirements in order to get the necessary permits. The requirements for one of these facilities are some of the most restrictive if not the most restrictive in the state. Adding an additional layer of requirements only makes it more restrictive and less likely to happen when the need presents itself.

The Department should partner with the University of Connecticut School of Engineering or Environmental Sciences. Funding should be provided from the state to look at new innovative ways to reduce, reuse or recycle waste material. Products or processes could be found to use the material, and also create new businesses and jobs. In order to meet the diversion rate in this plan we will need to think outside the box.

South Central Connecticut Regional Water Authority
90 Sargent Drive, New Haven, Connecticut 06511-5966 203.562.4020
<http://www.rwater.com>

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SEP 08 2006

Waste Management Bureau
Planning & Standards Division

September 6, 2006

Mr. Michael Harder
Department of Environmental Protection
4th Floor
79 Elm Street
Hartford, CT 06106

RE: Comments on Proposed Amendment to the Connecticut State Solid Waste Management Plan

Dear Mr. Harder:

The South Central Connecticut Regional Water Authority (RWA) is a public water utility which provides on average approximately 55 million gallons per day of drinking water to a population of approximately 400,000 people in the New Haven area.

The RWA operates four surface water treatment plants which generate approximately 960 dry tons of water treatment residual solids per year. As disposal options for these residual solids become increasingly limited and costly, we are concerned that the proposed State Solid Waste Management Plan does not recognize water treatment residual solids as a significant solid waste stream in Connecticut. The only mention of water treatment residual solids in the entire plan is in the definition of "special wastes" in Section 2.2.1.

There are currently four available outlets for in-state disposal of water treatment residual solids: 1) landfilling; 2) direct sewer discharge to a Publicly Owned Treatment Works (POTW); 3) delivery of residuals to a POTW via tanker truck where they are incinerated; and 4) composting. The landfilling and sewer discharge disposal options are becoming increasingly less desirable because of landfill capacity limitations (mentioned repeatedly in the plan) and POTW incompatibility issues. Furthermore, incineration and landfilling are at the bottom (#6) of the Solid Waste Management Hierarchy presented in Section 1.5.2 of the plan.

Composting (#3 on the Solid Waste Management Hierarchy) and topsoil blending are viable re-use options for water treatment residual solids that are effectively being utilized in other states. However, until recently, Hyponex Corporation (formerly "Earthgro") located in Lebanon, Conn., was the only facility in the state authorized by the Connecticut Department of Environmental Protection (CTDEP) to re-use water treatment residual solids. Hyponex's final product is bagged and sold commercially as topsoil or potting soil.

Legislation passed in 2004, through the multi-year efforts of the American Water Works Association Connecticut Section Residuals Committee and the Connecticut Water Works Association, made changes to Section 22a-209d of the Connecticut General Statutes that allow public water utilities to re-use water treatment residuals for composting and soil blending provided such use conforms to best management practices described in a CTDEP-approved operations plan. The legislation indicates that water utilities may re-use residuals under an approved operations plan until the CTDEP issues a general permit for such

activities. Hyponex is currently operating their commercial soil blending facility under a DEP-approved operations plan.

In 2006, the Regional Water Authority submitted an operations plan for a demonstration-scale soil blending project. The CTDEP approved the operations plan, but indicated in the approval letter that any larger-scale soil blending operation in which the blended product would be sold to the general public would require the issuance of a beneficial use general permit. Development of a beneficial use general permit is a formidable task, requiring complex and costly human health and ecological risk assessments. It is unlikely that a beneficial use general permit will be developed for re-use of water treatment residuals in the foreseeable future. As such, any commercial soil blending operation other than Hyponex's 'exclusive' operation would not be authorized by the CTDEP.

Composting and soil blending are environmentally safe and established management options for water treatment residuals and are consistent with the vision and goals of the Solid Waste Management Plan. As such, the RWA urges the CTDEP to recognize water treatment residual solids in the Solid Waste Management Plan, and their re-use should be given equal consideration with regard to the streamlined permitting strategies and recommendations presented therein.

Thank you for the opportunity to comment. If you have any questions, please do not hesitate to contact the undersigned at (203) 401-2734.

Sincerely,

REGIONAL WATER AUTHORITY



David M. Leiper
Environmental Compliance Analyst

cc: Carlene Kulisch, Kulisch Consulting LLC



RECEIVED

SEP 07 2006

Waste Management Bureau
Planning & Standards Division

September 5, 2006

Mr. Michael Harder
DEP Office of Planning and Program Development
79 Elm Street, 4th Floor
Hartford, CT 06106

Re: Proposed Amendment to the State Solid Waste Management Plan, July 2006

Dear Mr. Harder:

TOMRA is pleased to submit comments in support of DEP's proposed amendment to the Connecticut State Solid Waste Management Plan. TOMRA manages a recycling business in Connecticut as well as operating its North American Headquarters. We are very appreciative of the Department's focus on recycling and its efforts to continuously improve and support the core programs that contribute to its success today.

TOMRA is particularly interested in the policy that has created a business to manage the billions of used beverage containers generated each year. In this letter, please find an introduction to our existing recycling capacity in Connecticut; the impacts relevant proposals will have on operations; and other comments relevant to the plan.

Business of Redemption Recycling

Tomra of North America (located in Shelton, CT and Stratford, CT) is one of two Reverse Vending Machine (RVM) providers in the Connecticut market (ENVIPCO - Naugatuck, CT is the other). In addition to providing RVM services – both companies provide pick-up and processing services to grocery stores and beverage distributors. TOMRA owns materials handling operations in Stratford and South Windsor, CT. All these businesses exist to serve the market developed as a result of Connecticut's Beverage Container and Redemption law.

TOMRA provides employment to 110 Connecticut residents and through our vendor purchases support Connecticut companies who in turn provide hundreds of additional jobs statewide. Throughout Connecticut, our company provides (Reverse Vending Machine) RVM services and technology to over 110 beverage distributors, 400 retail, wholesale and redemption center

locations with more than 1000 redemption machines in use statewide. TOMRA's RVM technology serves as an efficient and convenient redemption vehicle for consumers while delivering a wide range of benefits to the various stakeholders involved in the redemption process. TOMRA's Materials Handling operations in Connecticut manage 18,000 tons of high-quality material on behalf of our customers in the beverage industry, of which 100% is recycled back into the materials market for new products.

Redemption systems have been able to achieve great efficiencies in managing costs of beverage container recycling programs. According to the widely accepted and industry endorsed BEAR Report, recycling used beverage containers is done so for as little as 1 cent/unit versus 2.48 cents/unit through curbside programs.

Table ES-1
Comparison of Program Effectiveness and Cost (1999)

Recovery Program and Targeted States	Population in Covered States (millions) ⁴	Effectiveness Measures Uniformly Accounting for Differences in Containers Accepted and Other Variables.		Alternative Cost Comparisons (cents/ unit recovered) ⁵			Funding Responsibility
		Overall Recovery Rate ⁶	Normalized Per-Capita Containers Recovered ⁷	Gross Cost ⁸	Net Cost (Including Material Sales Revenue) ⁹	Net Cost less funds from Unredeemed Deposits ¹⁰	
Deposit States¹¹							
Traditional Deposit System (Manual)	47.7	43.1%	295	4.07	2.67	1.26	Consumers (unredeemed deposits), beverage distributors (handling fees) & retailers
Traditional Deposit System (RVM)		18.5%	126	2.53	1.13	(0.28)	
Weighted Average, 9 Traditional Deposit States		61.6%	422	3.61	2.21	0.80	
CA Redemption System	33.9	54.5%	373	1.62	0.55	(0.42)	Consumers (unredeemed deposits) & producers (processing fee)
Curbside ¹²	81.6	9.5%	65	2.48	1.72	1.72	Local governments, tax payers, rate payers
Residential Drop-Off	81.6	1.6%	11	1.10	0.30	0.30	
Other (e.g., non-residential and buy-backs)	81.6	1.8%	13	Unknown	Unknown	Unknown	Varies
Subtotal, 10 Deposit States	81.6	71.6%	490	2.69	1.53	0.53	
Non-Deposit States							
Curbside	199.9	18.5%	127	2.48	1.72	1.72	Local governments, tax payers, rate payers
Residential Drop-Off	199.9	4.5%	31	1.10	0.30	0.30	
Other (e.g., non-residential and buy-backs)	199.9	4.8%	33	Unknown	Unknown	Unknown	Varies
Subtotal, Non-Deposit States	199.9	27.9%	191	1.91	1.25	1.25	
Total U.S.	281.4	40.6%	277	2.32	1.39	0.88	

Sources: MSRP Consulting Team based on numerous sources detailed in end notes #4 through 12.

For an introduction on the Reverse Vending Machine's role in the beverage container return system, I submit the following section of a report published by Businesses and Environmentalist Allied for Recycling (BEAR) titled, "Understanding Beverage Container Recycling":



Reverse Vending Machines

In traditional deposit systems, labor accounts for about 76 percent^[1] of the retailer costs and 82 percent of the redemption center costs. The use of RVMs in some bottle redemption states has reduced labor costs associated with redeeming containers. In fact, in 1999 approximately 30 percent of redemptions nationwide are estimated to have occurred through RVMs, with this percentage likely growing.

RVMs are typically located in supermarkets or recycling centers. The machine identifies the container and brand owner by the barcode marking. It sorts containers by material type, then compacts or shreds the containers in order to destroy the barcode, increase storage capacity, and reduce transportation costs. RVMs will accept aluminum, glass, PET or steel.

Table 3-7
Reverse Vending Machine (RVM) Costs

System Costs	Cost per Container	Cost per Mixed Ton	Cost Per Ton Material (\$/Ton)		
	\$/Unit	\$/Ton	Aluminum	Glass	PET
Collection					
Retailer-Cost	\$0.0171	\$446	\$1,130	\$78	\$456
Retailer-Handling Fee ^[1]	(\$0.0200)	(\$522)	(\$1,324)	(\$92)	(\$534)
Total Retailer Cost	(\$0.0029)	(\$76)	(\$194)	(\$13)	(\$78)
Processing					
Admin & Transportation	\$0.0063	\$165	\$358	\$30	\$380
Distributor-Handling Fee	\$0.0200	\$522	\$1,324	\$92	\$534
Processing	\$0.0019	\$50	\$80	\$20	\$100
Total Processing Cost	\$0.0282	\$737	\$1,762	\$142	\$1,014
COST TOTAL SYSTEM	\$0.0253	\$661	\$1,568	\$128	\$936
Revenue					
Scrap	(\$0.0140)	(\$364)	(\$1,072)	(\$22)	(\$208)
Unclaimed Deposit (22% x \$.05 / 78%)	(\$0.0141)	(\$364)	(\$934)	(\$65)	(\$377)
NET COST	(\$0.0028)	(\$69)	(\$438)	\$41	\$351



Additional economic benefits afforded to dealers, redemption centers, distributors and manufacturers include the following:

- **Container Destruction**
 - Eliminates risk of double redemption
- **100% Container Count**
 - Eliminates short bags & settlement conflicts
- **Non-Deposit Screen**
 - Unique or extended barcodes reject out-of-state containers
- **Administration/Reporting**
 - Customized reports and audits
 - Lowers administrative expense
 - Provides accurate state reporting data
- **Lowers Collection/Processing Costs**
 - Reduces in-store handling labor
 - Lowers supply cost
 - Volume reduction increases truck-loads and reduces trips
- **Reduces Storage Space Requirements**
 - 4:1 compaction ratio
 - Containers commingled by commodity type
 - Eliminates multi-level brand and size segregation
- **Improves Sanitation**
 - Complete scrap removal
 - Flexible pick-up schedules
- **Consumer Convenience and Efficiency**
 - Self-serve speed
 - Accurate payments
 - Clean and attractive platform
- **Environment**
 - Compaction and Bring System efficiencies means less air pollution and greenhouse gas emissions

To expand on that, I have included some product information for your review:

- HCp product brochure
- Tx2 product brochure

Impacts on Current Operations

Two statutory changes pertaining to increasing recycling efforts included in the new solid waste plan would update the Bottle Bill to include “at least” plastic water bottles and increase the deposit to ten cents.

California and Maine have updated their Bottle Bills to include other non-carbonated beverages. Hawaii’s container deposit law, passed in 2002, also includes non-carbonated beverages. Michigan uses a dime deposit to incentivize consumers to recycle. TOMRA conducts business in all four states, and with the knowledge of operating those programs that Connecticut is proposing, TOMRA is willing to offer to work with the DEP on technical issues.

TOMRA does not support the proposal to escheat the unredeemed deposits to the State. Although not specified to do so in the text of the law - these monies are used by the Distributors to pay operators like Dealers and Redemption Centers for their work collecting the beverage





containers. In effect, the unredeemed deposits pay TOMRA and other service providers for the RVMs and materials transportation and processing services required to 'recycle' the used beverage containers. These monies should remain in the system as-is, in order to support the deposit-return recycling program.

TOMRA supports the Department and the high-value it places on Connecticut's beverage container deposit legislation. We are willing to participate in discussions regarding updating the program that affects systems, operations and technology.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Charles W. Riegle Jr.", written in a cursive style.

Charles W. Riegle Jr., Vice President, Government Affairs
TOMRA North America

attachments



SOLID WASTE MANAGEMENT COMMISSION

POST OFFICE BOX 150 / BRANFORD, CONNECTICUT 06405

www.Branford-CT.gov

(203) 315-0622

Exhibit 45

MARGARET J. HALL
Solid Waste Manager

MARIO RICOZZI
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to the Proposed Amendment
to the
State Solid Waste Management Plan of
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- Lots of their volume is air. Even if people step on them, they don't squash well, especially laundry detergent bottles and their ilk. And most people won't step on them.
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- Something like 80% (recollected, but not looked up) of container plastics are 1's and 2's.

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- **Opinion #1: Resources should be focused on reduction, reuse, and recycling of higher weight components of the waste stream (like magazines and organics) and higher toxicity items (like electronics).**
- Opinion #2: Adding remaining 1's and 2's to Branford's recycling collection would strain existing local infrastructure (size of blue boxes, routes accomplished in what time by how many trucks).
- Opinion #3: It would not be unreasonable to presume that adding remaining 1's and 2's to Branford's recycling collection would increase our price, volume, and weight by similar proportions to what happened in 1991, and possibly by larger numbers, since there are probably more other 1's and 2's than there are natural 2's.
 - Without counting infrastructure costs, or gasoline for collection costs (not insignificant!) this could be about an additional \$20/ton for Branford to recycle more plastics. Cost avoidance arguments dwindle as the cost to recycle approaches the cost to burn. Transportation costs alone would be about \$50/ton for the commingled – more for just the plastics fraction.
 - Can the environmental costs of using gasoline (one resource derived from oil) to haul an hour away be defended against the environmental benefits of recycling the additional plastics (another resource derived from oil)? I think not.
- If Branford's analysis yields these results, then might other towns who are not currently recycling plastic have similar market constraints, economic concerns, and legitimate worries about balancing environmental objectives?
- Conclusion: go ahead and **encourage** plastics recycling in the Plan. **Do not mandate it.** And don't give too much weight to opinions of towns with different market conditions who are already recycling plastics who say "sure, go ahead and require it for everybody". I haven't even seen an analysis of how much weight it would redirect from the waste-to-energy plants.
- **Focus on getting plastics into the bottle bill** (yes, yes, I know we've been trying). This keeps the first leg of transportation on residents who are going to the store anyway; reverse vending machines resolve the sorting and quality control issues and allow the material to be reduced before the next leg of transportation; and it keeps the costs (and hassle) with those who use the products. I refill my Nalgene bottle; **I don't buy millions of single-serve containers. I don't want to subsidize other people's waste** any more than I want to subsidize smokers' health costs! Let's try User Responsibility as well as Producer Responsibility.
- If the Plan should continue to advocate a mandate, then don't impose it unless / until
 1. More plastics go through the bottle bill;
 2. An analysis is done to compare natural resources used (like in gasoline) to natural resources gained (from recycling the plastics). Branford is too small to commission such a study, but DEP or EPA?
 3. A cost-sharing formula is determined so that the extra costs don't come from one pocket while the savings go into another. I personally will fight an unfunded mandate that I feel is not environmentally sound; And/or

4. Markets exist closer to “home” – like a MRF in New Haven county and in any rural areas who have excessive transportation costs/issues/distances.

The Plan
Chapter 1, Introduction

1.1 Purpose of the Plan

Paragraph 2, the Plan addresses management of solid waste “(not including non-residential hazardous waste...” From this I infer that the plan does address residential hazardous waste, better known as “household hazardous waste”. Yet does it? Appendix H has a short description in which it states that using EPA estimates, CT has an estimated 18,800 tons of HHW generated annually. How much of this do we currently capture? Data submitted to DEP by programs and vendors apparently has not been analyzed, in part due to lack of staff/funding. Rather than wait for 5 years until we have more data, try to analyze it for trends, and perhaps decide we were asking the wrong questions / obtaining insufficient data, we should do some analysis of existing data and see if a couple more years of the same data will yield useable information. If not, we should review what data DEP requests.

1.5.3 near the bottom of 2nd paragraph, delete comma after “trend nationally”.

1.5.3 4th paragraph, no, DEP doesn’t control all of the market forces. But from whom would “a mandate” come to create additional infrastructure? This is a planning document from DEP to “the state” about “the state”. It is to be, among other things, a guidance document for permit approvals or denials, as well as fast-track or slower action on permits. If more disposal capacity is needed, especially in particular geographic regions, then it seem to me to be well within the appropriate jurisdiction of the Plan to declare a need for more disposal capacity. **In fact, this Plan strikes me as an appropriate mechanism by which to “advise decision makers” of changes (more garbage, more people, less capacity, upcoming lack of public ownership and control) that create “greater uncertainty” and “increased risk”.** How much more change do you want??

1.5.3 Last paragraph, last sentence Has C&D now become a “special waste”. Did I miss another definition change?

1.5.4 First paragraph includes services “traditionally provided” by CRRA. What services are they currently, legislatively allowed to provide? Are they doing all they could? Are they doing all we want them to? Is there an additional statutorily-available role that could fill a need, especially in the discussion of public control?

1.6 3rd bullet, last sentence. “The Dep’t will support” technologies less harmful than existing ones. Yes, please. I think there has been a tendency in the past to not move forward on things that are not environmentally perfect. While we’d all love to see non-polluting things, the reality check we need to impose is indeed that listed here of “is it better than what’s currently happening?”

1.6 last bullet, last sentence. The Dep't will monitor ...studies. Will it commission any of its own? Is this to be taken as an admission that it won't? That would be sad, not to say "short-sited" if we recognize an unfulfilled need.

Appendices and Other

Hopping out of specifics into generalities of the Plan and of Appendix H, in discussing data and its availability, too often I suspect it is the voice of RW Beck stating that "data does not exist" or "is not available" or "is only available for time period x". **Please review the differences between what is readily available in a form useable by a consultant hired on a short-term basis for a specific purpose, and what raw data is out there at DEP or elsewhere that could still be analyzed were time, staff, and resources (money!) available.** Are there things worth knowing that could be known by compiling, counting, deriving, and analyzing? Examples I discussed with Tom Metzner of the DEP and/or Lori Vitagliano of HazWaste were about repeat customers at HazWaste. Do we know if repeat customers are a good thing – the first time they came in they cleaned out the garage, and the second time they came in was 5 years later with a token something because they are now watching buying habits, etc. – or a semi-bad thing – yes, they know to dump HHW at HazWaste instead of in the garbage can, but they somehow have the same stuff accumulate nearly every year and think it's "free", and they're now proud of themselves for doing the right thing, but the world is no less toxic because of them. Or look at the more basic question: if we get less waste from the same number of eligible households over the years, is that because we've gotten the message across and cleaned out the basements of the world? Or because we've convinced the low-hanging-fruit-people (so to speak) and the remainder are still oblivious and filling up garages and garbage cans with the same toxic soup in the hopes of creating new life forms?

Still on the RW Beck and limited data general topic, the Plan – in the appendices – should make clear what raw data is potentially available, along with its strengths and weaknesses. The holders of the data should be able to clarify that.

- For example, Tom Metzner can tell you for what periods of time and from which sorts of HHW collections we have data on quantities of waste. He can also point out that the data doesn't distinguish hazardous material weights from the weights of the packing material. To me, it is more useful to know that's what's out there than to be told that nothing is out there.
- Another example: Appendix H on contaminated soil says there are 3 landfills who take contaminated soil. Since they are not listed, I don't know if they've counted Branford as one of them, but I do know that no one contacted me for pricing for this report, and I have never charged anywhere close to \$60 - \$80/ton for contaminated soil disposal.
- Example: Appendix H lists 9 transfer stations/landfills that accept electronics, and while it does add the disclaimer that the list changes frequently, I suspect it is so wildly out of date as to be not very useful. Also, as to the statement (H-3) that "to date, the only data pertaining to the quantity of used electronics that these

outlets recover is from the special collection events” and that 2003 is the “most recent data available”, that’s hogwash! (Never mind that the appendix says 67 tons were recycled in 2003, despite the disclaimer that it was probably more because of commercial sources. The fact is that Branford did some 75 tons just in fiscal 2005/6.) All towns are required to report recycling tonnages annually to DEP. Ask Judy Beval for the data. If it’s not sufficiently compiled, say so, but I’ve been submitting my data annually since we started the permanent center in January 1999. I think we have a lot better data pretty easily available and that should be stated.

Still somewhat off-topic, rather than strict testimony, it’s appalling, especially when we’re supposed to be promoting waste reduction including less paper, that DEP does not have an email system reliable enough to accept testimony electronically. I understand your practical reasons for that decision, and I’ve seen first-hand evidence of the unreliability, but in the name of getting one’s own house in order, even were it not for the other reasons, I will state here that I strongly encourage the use of my tax money to the state to be used for technological improvements to allow DEP reliably to use technology in this modern world, especially in that most basic service of email. All of that is by way of saying that I am getting ready to send this incomplete document in now by snail mail to make sure you have these comments by the 9/8 deadline which, for some reason, has been given by date received – out of my control -- rather than by date postmarked. I will then probably go on to make some more comments that I will incorporate, email, and phone to see if they were received. If they’re not part of the official record, so be it. If you don’t read them, that would be rather silly.

As part of the official record, I will also point out that in keeping with human nature I have thus far been quicker to criticize details than to spend time complimenting the parts I agree with. There is nevertheless much I agree with. But get the dedicated funding in place or much of the rest falls on its face.

Margaret J. Hall
Solid Waste Manager
P.O. Box 150
Branford, CT 06405
203-315-0622
Cell 203-627-6755
FAX 203-315-2188
www.Branford-CT.gov




Exhibit 56

SOLID WASTE MANAGEMENT COMMISSION

POST OFFICE BOX 150 / BRANFORD, CONNECTICUT 06405

www.Branford-CT.gov
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- **Opinion #1: Resources should be focused on reduction, reuse, and recycling of higher weight components of the waste stream (like magazines and organics) and higher toxicity items (like electronics).**
- **Opinion #2: Adding remaining 1's and 2's to Branford's recycling collection would strain existing local infrastructure (size of blue boxes, routes accomplished in what time by how many trucks).**
- **Opinion #3: It would not be unreasonable to presume that adding remaining 1's and 2's to Branford's recycling collection would increase our price, volume, and weight by similar proportions to what happened in 1991, and possibly by larger numbers, since there are probably more other 1's and 2's than there are natural 2's.**
 - Without counting infrastructure costs, or gasoline for collection costs (not insignificant!) this could be about an additional \$20/ton for Branford to recycle more plastics. Cost avoidance arguments dwindle as the cost to recycle approaches the cost to burn. Transportation costs alone would be about \$50/ton for the commingled – more for just the plastics fraction.
 - Can the environmental costs of using gasoline (one resource derived from oil) to haul an hour away be defended against the environmental benefits of recycling the additional plastics (another resource derived from oil)? I think not.
- If Branford's analysis yields these results, then might other towns who are not currently recycling plastic have similar market constraints, economic concerns, and legitimate worries about balancing environmental objectives?
- **Conclusion: go ahead and encourage plastics recycling in the Plan. Do not mandate it.** And don't give too much weight to opinions of towns with different market conditions who are already recycling plastics who say "sure, go ahead and require it for everybody". I haven't even seen an analysis of how much weight it would redirect from the waste-to-energy plants.
- **Focus on getting plastics into the bottle bill (yes, yes, I know we've been trying).** This keeps the first leg of transportation on residents who are going to the store anyway; reverse vending machines resolve the sorting and quality control issues and allow the material to be reduced before the next leg of transportation; and it keeps the costs (and hassle) with those who use the products. I refill my Nalgene bottle; **I don't buy millions of single-serve containers. I don't want to subsidize other people's waste** any more than I want to subsidize smokers' health costs! Let's try User Responsibility as well as Producer Responsibility.
- If the Plan should continue to advocate a mandate, then don't impose it unless / until
 1. More plastics go through the bottle bill;
 2. An analysis is done to compare natural resources used (like in gasoline) to natural resources gained (from recycling the plastics). Branford is too small to commission such a study, but DEP or EPA?
 3. A cost-sharing formula is determined so that the extra costs don't come from one pocket while the savings go into another. I personally will fight an unfunded mandate that I feel is not environmentally sound; And/or

4. Markets exist closer to "home" – like a MRF in New Haven county and in any rural areas who have excessive transportation costs/issues/distances.

The Plan
Chapter 1, Introduction

1.1 Purpose of the Plan

Paragraph 2, the Plan addresses management of solid waste "(not including non-residential hazardous waste..." From this I infer that the plan does address residential hazardous waste, better known as "household hazardous waste". Yet does it? Appendix H has a short description in which it states that using EPA estimates, CT has an estimated 18,800 tons of HHW generated annually. How much of this do we currently capture? Data submitted to DEP by programs and vendors apparently has not been analyzed, in part due to lack of staff/funding. Rather than wait for 5 years until we have more data, try to analyze it for trends, and perhaps decide we were asking the wrong questions / obtaining insufficient data, we should do some analysis of existing data and see if a couple more years of the same data will yield useable information. If not, we should review what data DEP requests.

1.5.3 near the bottom of 2nd paragraph, delete comma after "trend nationally".

1.5.3 4th paragraph, no, DEP doesn't control all of the market forces. But from whom would "a mandate" come to create additional infrastructure? This is a planning document from DEP to "the state" about "the state". It is to be, among other things, a guidance document for permit approvals or denials, as well as fast-track or slower action on permits. If more disposal capacity is needed, especially in particular geographic regions, then it seem to me to be well within the appropriate jurisdiction of the Plan to declare a need for more disposal capacity. **In fact, this Plan strikes me as an appropriate mechanism by which to "advise decision makers" of changes (more garbage, more people, less capacity, upcoming lack of public ownership and control) that create "greater uncertainty" and "increased risk".** How much more change do you want??

1.5.3 Last paragraph, last sentence Has C&D now become a "spccial waste". Did I miss another definition change?

1.5.4 First paragraph includes scrvices "traditionally provided" by CRRA. What services are they currently, legislatively allowed to provide? Are they doing all they could? Are they doing all we want them to? Is there an additional statutorily-available role that could fill a need, especially in the discussion of public control?

1.6 3rd bullet, last sentence. "The Dep't will support" technologies less harmful than existing ones. Yes, please. I think there has been a tendency in the past to not move forward on things that are not environmentally perfect. While we'd all love to see non-polluting things, the reality check we need to impose is indeed that listed here of "is it better than what's currently happening?"

1.6 last bullet, last sentence. The Dep't will monitor ...studies. Will it commission any of its own? Is this to be taken as an admission that it won't? That would be sad, not to say "short-sited" if we recognize an unfulfilled need.

Appendices and Other

Hopping out of specifics into generalities of the Plan and of Appendix H, in discussing data and its availability, too often I suspect it is the voice of RW Beck stating that "data does not exist" or "is not available" or "is only available for time period x". **Please review the differences between what is readily available in a form useable by a consultant hired on a short-term basis for a specific purpose, and what raw data is out there at DEP or elsewhere that could still be analyzed were time, staff, and resources (money!) available.** Are there things worth knowing that could be known by compiling, counting, deriving, and analyzing? Examples I discussed with Tom Metzner of the DEP and/or Lori Vitagliano of HazWaste were about repeat customers at HazWaste. Do we know if repeat customers are a good thing – the first time they came in they cleaned out the garage, and the second time they came in was 5 years later with a token something because they are now watching buying habits, etc. – or a semi-bad thing – yes, they know to dump HHW at HazWaste instead of in the garbage can, but they somehow have the same stuff accumulate nearly every year and think it's "free", and they're now proud of themselves for doing the right thing, but the world is no less toxic because of them. Or look at the more basic question: if we get less waste from the same number of eligible households over the years, is that because we've gotten the message across and cleaned out the basements of the world? Or because we've convinced the low-hanging-fruit-people (so to speak) and the remainder are still oblivious and filling up garages and garbage cans with the same toxic soup in the hopes of creating new life forms?

Still on the RW Beck and limited data general topic, the Plan – in the appendices – should make clear what raw data is potentially available, along with its strengths and weaknesses. The holders of the data should be able to clarify that.

- For example, Tom Metzner can tell you for what periods of time and from which sorts of HHW collections we have data on quantities of waste. He can also point out that the data doesn't distinguish hazardous material weights from the weights of the packing material. To me, it is more useful to know that's what's out there than to be told that nothing is out there.
- Another example: Appendix H on contaminated soil says there are 3 landfills who take contaminated soil. Since they are not listed, I don't know if they've counted Branford as one of them, but I do know that no one contacted me for pricing for this report, and I have never charged anywhere close to \$60 - \$80/ton for contaminated soil disposal.
- Example: Appendix H lists 9 transfer stations/landfills that accept electronics, and while it does add the disclaimer that the list changes frequently, I suspect it is so wildly out of date as to be not very useful. Also, as to the statement (H-3) that "to date, the only data pertaining to the quantity of used electronics that these

outlets recover is from the special collection events" and that 2003 is the "most recent data available", that's hogwash! (Never mind that the appendix says 67 tons were recycled in 2003, despite the disclaimer that it was probably more because of commercial sources. The fact is that Branford did some 75 tons just in fiscal 2005/6.) All towns are required to report recycling tonnages annually to DEP. Ask Judy Belaval for the data. If it's not sufficiently compiled, say so, but I've been submitting my data annually since we started the permanent center in January 1999. I think we have a lot better data pretty easily available and that should be stated.

Still somewhat off-topic, rather than strict testimony, it's appalling, especially when we're supposed to be promoting waste reduction including less paper, that DEP does not have an email system reliable enough to accept testimony electronically. I understand your practical reasons for that decision, and I've seen first-hand evidence of the unreliability, but in the name of getting one's own house in order, even were it not for the other reasons, I will state here that I strongly encourage the use of my tax money to the state to be used for technological improvements to allow DEP reliably to use technology in this modern world, especially in that most basic service of email. All of that is by way of saying that I am getting ready to send this incomplete document in now by snail mail to make sure you have these comments by the 9/8 deadline which, for some reason, has been given by date received -- out of my control -- rather than by date postmarked. I will then probably go on to make some more comments that I will incorporate, email, and phone to see if they were received. If they're not part of the official record, so be it. If you don't read them, that would be rather silly.

As part of the official record, I will also point out that in keeping with human nature I have thus far been quicker to criticize details than to spend time complimenting the parts I agree with. There is nevertheless much I agree with. But get the dedicated funding in place or much of the rest falls on its face.

Comments Continued
Chapter 2, Current Conditions

If my official comments are only the ones received by US Post, then those are the ones above. I have restrained myself and not changed them, but will continue with the point by point here and email or Fax them. If you can take them all, then discard the ones received by mail, as the sections above are identical.

2.2.3, page 2-5 mentions more municipalities adopting automated trash pick-up. **This and the potentially interconnected topic of single-stream collection are potentially a huge change that I do not otherwise see addressed.** Automated collection of garbage or recyclables is desirable to reduce worker injuries (I will not downplay the seriousness of back injuries, nor the cost of insurance for garbage companies -- both are extremely important) and to reduce size of crews and by both means to save costs. However, there is at least one serious consequence, as well: quality. Yes, "quality" of garbage means how much inspection there is and how carefully one checks to make sure there are no

recyclables mixed with it. The residential public, whose garbage is collected individually from private garbage cans, thinks a black plastic bag, once tied up, is private, if not to say "sacrosanct", but the fact is that if it goes "clink" when you set it down, or if it has certain right angles poking from it, or if it weighs more than it should, there is a pretty good indication of wrong things in it, and minimal more inspection can reveal material that can cause the bag to be left behind for corrective action. We do that. (I refused collection the other day for a too-heavy bag that I found a large glass bottle in, heard more at the bottom, and in which I saw a piece of newspaper at the top - I didn't even find the TV in the middle!)

But automated collection, now in Branford only seen from front loader Dumpster collection, can let a driver say with perfect truthfulness (also a true story) that he had no idea there was a stove in his load. The fact is that most people value convenience very highly, and they don't want to think about their garbage. If they can "sneak in" a little something into the garbage that saves them some time, they will be delighted. I want people to think about their garbage. That means I sometimes am fighting on the side of inconvenience, which can be politically difficult. Over time, if garbage companies don't offer hand collection - increasingly the case - or if the price is overwhelmingly cheaper to switch to automated, then the switch will be made. And I fear recycling will suffer. For those who have spent little or no time in the field, slogging through garbage on a tipping floor, feel free to check with anyone who has, and I assure you they will confirm that what you can readily see as evidence of poor recycling is cardboard. Occasionally one can see quantities of newspaper, and one surely sees the occasional bottle or can, but those won't be seen / found in loads sufficient to reject loads or require clean-up once they get as far as a transfer station or WTE plant. Residential enforcement must start before the bag leaves the property.

Tangentially related, and an interesting development on the horizon is single-stream recycling in any of its variations. By this, I mean some variant of leaving things mixed together to be separated later. It might be blue bags of recyclables in the MSW truck, or just paper and commingled containers in the same compartment. For those of us brought up on markets, markets, markets, it's a hard sell. In any case, it's the classic quantity vs. quality debate, and while current markets will resist such a downgrade in quality, it remains to be seen whether it will be forced on them, whether technology will find ways to compensate, and whether programs insisting on old-fashioned quality will be able to command enough of a higher price to make up for lost volume and higher labor costs. Is this the opportunity of the future, or the beginning of the end?

When CT was facing the original analysis comparing MRFs vs. curbside sort, the answer in the literature appeared to be that it balanced out - labor/money saved at the curbside end in a MRF program was lost in sorting later and more residual. And while Florida seemed able to make curbside sort work (I'd rather sort in Florida than in snow), CT has developed the infrastructure for commingled and MRFs. My argument at the time was that the entity responsible for quality control (say the curbside sort crew) must be the same entity whose revenue would be affected by improper sorting - rarely what was proposed here. Now, as the large hauling companies have ever-increasing vertical

integration to the point of near-monopolies, could they make single-stream work? And would it be a good thing, forcing better technologies from old manufacturing sectors, or a bad thing, giving them good cause to insist on virgin materials instead of recycled crap, and/or chasing even more product and investment overseas? Is insisting on quality just protecting dying industry? I still tend to think not, but **do we want to leave all of this to market forces? I think that's a huge question, and again, one where no decision is a decision, after which it will be too late.** To see automated collection only as a question related to PAYT, I think misses a major point.

2.2.3, page 2-11, MSW Imports and Exports. first line refers to “essentially fixed RRF capacity” leaving out-of-state disposal as the “only option”. That may be a short-term correct statement, and yes, I note it is in a chapter about “current” conditions, but expansion of in-state is certainly possible – Bristol RRF, for example, I believe is a modular facility. A “Current Conditions” chapter isn’t the place to go into pros and cons of expansion possibilities or the possibilities of new plants, but this is misleading left as is.

2.2.5, page 2-13, Bulky Waste Diversion states parenthetically that “(very little if any [corrugated cardboard is] recycled from the C&D waste” at VRFs. Is that true? I recognize that the 20 VRFs for C&D process very little of the bulky in the state, according to your figures, and my direct knowledge is based on a single visit to a single VRF, namely *Ciro Associates (Cherry Hill)* in North Branford, but on that day, that Transfer station certainly was picking out all the cardboard and metal, and even metal wiring before crushing to the size of toothpicks. Was that day not typical, or that plant not typical?

My hopes for the future of C&D recycling rest on this sort of plant, and I hope, not erroneously. In other sections of the Plan (and I was amazed to hear the Waste Management rep praise it at the last External Stakeholders meeting) it advocates for source separation as the primary venue for C&D recycling. It strikes me as very naïve and impractical. Small construction sites barely have room for one dumpster, no less 5. Random construction workers, regardless of the enlightenment of the boss, are extremely unlikely candidates for proper, thorough separation. If ever there was a throw it on the floor, stomp it into the ground, and expect it to go “away” population, this is it. A dumpster is envisioned as the closest thing the world has to “away”. If you think (and I hope to have convinced you of that) that many, if not most, people would be happy to *hide an occasional item in a garbage bag, then multiply a 45 gallon garbage can to the size of a 30cy roll-off, and the potential for “away” has just increased however-many fold that is.* And nothing needs to be hidden; it is their God-given right to put in anything that will fit, and several things that won’t. And to complain if the price is then higher than quoted. Ask a few haulers if I’m right.

2.2.5, bottom of page 2-13, Bulky Waste Diversion, perhaps this comment is more grammar than content, but I’m not sure: “Bulky wastes...may contain ...materials that

contribute to the overall toxicity." Overall toxicity of what? Of bulky waste? Isn't that rather circular?

Continued on the top of p 2-14 "the most effective way to reduce toxicity ... is through separation of potentially toxic materials at the source." Well, taking out toxics to reduce toxicity may be self-evident, but I think the claim of "most effective", doesn't include the concepts I addressed above. It would be most effective if it worked. I'm not sure it's the most efficient, given how well I suspect it would work on the ground. And then the toxics would go where? Away? I'm not sure this argument is well made. Are you trying to espouse removing toxics to let the remaining volume be able to be handled differently because of its reduced toxicity? Unlined landfills out of state perhaps? Beneficial reuse possibilities not currently possible? Just more stuff for hazardous landfills? I don't think you've finished this thought.

2.2.5 Bulky Waste Disposal on p 2-14 mentions C&D not generally accepted at RRF plants. Don't forget the vagaries of definitions allow some materials to be legally disposed of in CT bulky landfills or plants like Bristol (though perhaps not RDF plants like Mid-CT). When a resident or small contractor comes to the Branford transfer station with non-pressure-treated lumber, we will put it in our landfill or with the MSW for Bristol, depending on logistical considerations, including length, how full of nails it is, or how full which of our containers is at the moment. These materials cannot be quantified.

2.2.6 Other special wastes. In the description of current status, each of these materials should include a comment as to whether the current status or 20-year future is likely to be a problem. For the ones which already are or which are coming soon, then this Plan should commit to addressing them. Otherwise, why bother to mention them? I feel I've been left hanging on many fronts just as though the material were not mentioned at all.

2.2.6 Dredge Materials middle of paragraph all the way on the right hand side should be "alternatives" plural. Aren't you glad I'm back to just editing comments?

2.2.6 Street sweepings and Catch basin cleanings. I have objected to the unreality of this guidance document in other forums and will not repeat it here, but these are prime examples of materials that are not under control by existing management / disposal methods. The Plan, for example, repeats back the theory that vector truck discharge water "may be decanted into a sanitary sewer", but since the likely pollutant is metals, that is really not appropriate treatment, and although that "may" be what happens, it isn't what happens, and it shouldn't be what happens. Mostly I suspect it's decanted back into the catch basin. If we want something else to happen, then a practical solution should be proposed. The fact that the description of both materials ends with the statement that "Statistics... are not available" should, in this case, show that the current practice is "don't ask; don't tell."

2.2.6 Sewage Sludge. Final sentence is that "State regulation do not allow for beneficial reuse of this type of ash residue." But this is a planning document. An appropriate question should be "could they allow for beneficial reuse if the material tested OK?"

2.2.6 Contaminated Soils 2nd bullet. The state doesn't aggregate these amounts for reporting purposes. Yes, but they could. The data is submitted. Either aggregate it or stop making me waste my time reporting it. And repeat from comments above, prices "may range" from \$60 to \$80/ton. No one consulted Branford for our tip fees. They also vary and for small projects only, but they are never this high. It might be useful information to mention Springfield's rates, which I gather are more like \$6 or \$10/ton. Someone reading this section might get the impression that customers routinely pay amounts like \$60- \$80, whereas they usually hear the price and go elsewhere.

2.2.6 Contaminated Soils 3rd bullet says soil remediation facility treats soil, but they doesn't say what happens to it next. That's the disposal issue and should be stated.

2.2.6 Animal Mortalities. "...in residential areas can be challenging" Yes. And so? Are we to leave this as another don't ask; don't tell?

2.3 Waste Projections over the next 20 years will be influenced by a variety of factors. You left out a big one: the economy. This single factor has the ability to dwarf virtually all others. In fact, it is a root cause, where "Per capita generation of waste" is merely a fact that is derived from root causes such as the economy, packaging trends, purchasing trends, etc.

Although this comment could be inserted in any number of places (search on ".76 tons" or ".73 tons"), I'll say it here. It is repeatedly stated that it would take "aggressive" action to go from 30% recycling and reduction to 49% recycling and reduction/year, and while I don't really disagree with that statement, let's say it the other way: we're calling it "aggressive" to say that over a 20 year period we doubt whether we can get each person to throw away 60 pounds less per year?! C'mon, should that really be so hard? 60 pounds? 1 big TV set probably weighs more than that. Maybe it's time for some more positive spin. I think I hear the text of my next flyer being written.

2.4 Key factors, 2nd bullet near the end. "Expiration of these contracts...will also mean.." please change to "would" also mean. That's not just grammar; I want it clear that at least in some cases there is a choice, crossroad, option, and it's not a done deal.

2.4 4th bullet Solid waste is a commodity. Yes and no. See comments of BRRFOC on Oneida-Herkimer.

2.4 5th bullet (top of page 2-22) Increasingly Private Run. "maximizing efficiencies" often leads to "innovative approaches". Well, that's not impossible, but it also leads to throwing recyclables in with MSW when recyclable markets are too far away and to lack of inspection, enforcement of separation laws & regulations since they're being paid anyway, and effectively sabotaging transfer stations or waste-to-energy plants who try to enforce rules against mixed loads by giving haulers other choices

of places to go where they're not hassled. See also discussion above of problems with letting ownership go private.

2.4 8th bullet, Markets have Grown. "These firms are now...searching for opportunities to ... increase the quantity and quality of recovered material supplies." See discussion above of single-stream recycling and possible positive impacts on quantity and negative impacts on quality.

2.5 Addressing Key Issues, 1st bullet & #1. Need I point out that this **does not answer the question** "to what extent should CT seek to increase waste diversion..."? The answer of 49% to 61% is not really a goal. I don't mind the reality check of disclaimers about how hard 61% will be to achieve. But what's wrong with setting our goals high? Are we that afraid of failure? I don't mean afraid of not getting to 61%, but afraid of aiming for 61% only to hit, say 55%. A tactic of the zero waste movement is to aim for zero waste, and yet to be rather satisfied with over 90% reduction. Hey, over 90% is nothing to sneeze at! Would setting a goal (remember, it's a GOAL – something to aim for on the horizon) of 61% make us just roll over and give up before we start? Or would it make us say, "Hey, we're serious about innovation. Want to test market that technology here? We support being a leader and claiming bragging rights like California does. What can we do for our economy by creating all those extra jobs from recycled materials compared to the limited jobs disposal generates?"

Chapter 3, Long-Range Vision

3.1 last paragraph about changes already underway. Sounds like everything is supposedly since 1999 proposed Plan, but CRRA's 2 museums weren't since 1999 were they? And is the SCRRA museum still chopped liver? We always get to be the ignored stepchild.

3.2 Guiding Principles 1st bullet, Public Health & Safety. "Generating, collecting," **add transporting**, "processing, recycling, and/or disposing of wastes." **Transportation affects greenhouse gas, global warming, traffic, quality of life, conservation of gasoline, etc. and is well worth spelling out separately as a big piece of trying to see solid waste management as part of the bigger picture.**

3.2 2nd bullet, Equity & Fairness. I'd tend to add "or lack thereof" at the end. Sometimes it isn't an active policy, but the lack of one that contributes to environmental justice issues.

5th bullet, Economic Efficiency & Sustainability. Again, I think it is worth more clearly spelling out transportation as a contributing issue in its own right.

Middle of 5th bullet, hyphenate system-wide.

Chapter 4. Objectives and Strategies

4.1 Overview, 3 Management of Special Wastes. "assure that ...waste...[is] disposed in compliance with the State's solid waste ...hierarchy in facilities that meet all regulatory standards..." So if it goes to a landfill out of state, and a landfill is not the right place in the hierarchy for that waste then the State / the Plan will do what??

4.2.1, Table 4-1 note 6. The Hartford Landfill closes in June 2006. Did it?

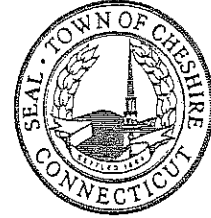
Last overall comment. You're looking for innovative solutions, right? How about this: we need to site another disposal facility in the state in order to be self sufficient. No municipality wants it. So we will put it in the municipality with the highest per capita generation rate for MSW in need of disposal. Don't like the fact that we came up with your town? Then reduce and recycle more until you're not the Town at the top of that list. It strikes me that there's environmental equity – measured this way it includes total consumption, not just recycling rates: maybe Bridgeport does the worst job; but maybe Greenwich does because of excessive purchasing. And instead of politics and lobbying and complaining, the municipality has the option to fix their standing and move the plant to the next town on the list. And then that town could improve, and the next until we no longer have excessive MSW and don't need to site a plant. Ah, but I dream.

Overall a good job. I'm out of time for commenting. Note that if I couldn't get through the full document, few people will. Thank you for the opportunity to comment.

Margaret J. Hall
Solid Waste Manager
P.O. Box 150
Branford, CT 06405
203-315-0622
Cell 203-627-6755
FAX 203-315-2188
www.Branford-CT.gov

TOWN OF CHESHIRE

Michael A. Milone, Town Manager
84 South Main Street • Cheshire, Connecticut 06410-3193
203-271-6660 • Fax: 203-271-6639



Mr. Michael Harder
Department of Environmental Protection
Bureau of Waste Management
79 Elm Street, 4th Floor
Hartford, CT 06106-5127

August 18, 2006

RE: Solid Waste Management Plan (SWMP)

Dear Mr. Harder

The Town of Cheshire will not be able to have a representative at next week's Public Hearings on the above referenced item. However, we would like these comments to be entered into the record on this matter.

The Town of Cheshire is currently one of the five member Towns, which comprise the "Wallingford Project." The agreement for this is to expire on July 1, 2010. The five member Towns collectively and individually are exploring all of the possible solid waste options beyond this date. An issue that has been a constant in all of the studies is the lack of any substantial capacity at the six existing trash to energy facilities. As a municipality, there are simply not any favorable alternatives, which presently exist. From my cursory review of the above referenced document, it does not appear that the SWMP does anything to address this issue. Additionally, the possibility of placing these plants in private ownership may potentially give the municipality even fewer options. It is our hope that this plan should somehow meet the needs of our Towns and cities and provides a viable outlet for waste generated in Connecticut.

On another note, the plan refers to goals in regard to diversion and recycling. While this certainly appears to have good intentions, it must be realized that this may place financial burdens on communities. The SWMP should consider the financial ramifications of these and address potential funding issues.

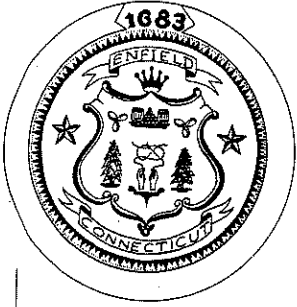
In summary, the issue of providing for the disposal of solid waste is a universal requirement for any society. It is essential that the SWMP address this need for the citizens of Connecticut.

Very truly yours,

Michael A. Milone
Town Manager
Town of Cheshire

Joseph Michelangelo
Town Engineer / Director of Public Works
Town of Cheshire

Exhibit 48



TOWN OF ENFIELD

Office of Town Manager

RECEIVED

SEP 08 2006

OFFICE OF BUREAU CHIEF
MATERIALS MANAGEMENT &
COMPLIANCE ASSURANCE

September 7, 2006

Mr. Michael Harder
Department of Environmental Protection, 4th Floor
79 Elm Street
Hartford, CT 06106

Subject: Comments on Amendments to the State Solid Waste Management Plan

Dear Mr. Harder:

Thank you for the opportunity to provide written comments on the proposed amendments to the State Solid Waste Management Plan. Upon review of the proposed amendments I would like to place on the record the following comment:

The Town of Enfield is supportive and in concurrence with the comments made by the Capitol Region Council of Governments on the proposed amendments to the plan previously forwarded to the Department of Environmental Protection in this matter.

If you have any questions regarding this, please contact me at (860) 253-6350.

Sincerely,

Matthew W. Coppler
Town Manager



TOWN OF MANSFIELD
DEPARTMENT OF PUBLIC WORKS

Lon R. Hultgren, P.E., Director

AUDREY P. BECK BUILDING
FOUR SOUTH EAGLEVILLE ROAD
MANSFIELD, CONNECTICUT 06268-2599
(860) 429-3331 TELEPHONE
(860) 429-6863 FACSIMILE

August 14, 2006

Tessa Gutowski
Department of Environmental Protection
Bureau of Waste Management
79 Elm Street
Hartford, CT 06105-5127

Dear Ms. Gutowski:

On behalf of the Town of Mansfield's Solid Waste Advisory, we support the vision, goals and strategies of the proposed State Solid Waste Management Plan. We are highlighting some of the points from the plan that we believe are most important.

1. We question the accuracy that Connecticut is recycling 30% of its solid waste. For several years DEP reports that we have seen have indicated that the state recycles 23-24%. How is this change explained?
2. We are in complete support of working toward a 49% recycling goal although this is very ambitious. Is DEP ready to devote the resources to realize this goal especially with very few municipal or regional recycling coordinators left in Connecticut?
3. The plan calls for C&D recycling. Our community has considered using the California model where C&D recycling is tied to the building permit. Without verified recycling, the certificate of occupancy cannot be issued. We have not been able to move ahead with this idea since local markets for various C&D materials are not available. We strongly urge DEP to make market development for C&D recycling a high priority.
4. Forming a solid waste management advisory committee is an excellent idea to help the DEP stay focused on its goals.
5. We are pleased that the plan proposes streamlining the permit process so that it facilitates recycling, waste reduction and beneficial use activities instead of hindering them. Facilitating pilot projects that test innovations should be one of DEP's major functions.
6. Make enforcement effective. If a state facility, business, municipality or hauler is in violation of the recycling laws, they should be held accountable. Notices of Violations have little value unless a citation promptly follows continued violations.
7. For years the Town has been testifying for bottle bill changes, mandatory electronics recycling and, more recently, green building design standards. We support raising the bottle deposit to 10 cents, directing escheats to fund recycling and expanding collection to all single serve beverages. We ask that you include under the statutory section of the proposed solid waste plan support of green building design

following LEED standards. Part of the standards includes C&D recycling, materials reuse and using recycled content items.

8. When DEP had a recycling unit, programs were available and there was a wider consciousness about recycling. We support the DEP's staffing to achieve the goals of this plan.

We applaud the work that went into the proposed plan and would like to see DEP carry out its intentions.

Sincerely,

A handwritten signature in cursive script that reads "Virginia Walton".

Virginia Walton
Recycling Coordinator

Cc: Solid Waste Advisory Committee
Lon Hultgren, Director of Public Works
Martin Berliner, Town Manager

Transfer Station Advisory Committee
Town of Thompson
Municipal Building, Riverside Drive, No. Grosvenordale, CT 06255

August 24, 2006

Mr. Michael Harder
DEP, 4th Floor
79 Elm Street
Hartford, CT 06106

Re: Proposed Amendment to the State Solid Waste Management Plan, July 2006

Dear Mr. Harder:

At our August 22, 2006 Meeting, the Transfer Station Advisory Committee reviewed the Proposed Amendment. We have attached our comments on the List of Recommended Strategies.

Thank you for your consideration of our input.

Yours truly,



Al Landry
Moderator

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Waste Management Bureau
Planning & Standards Division

Re: Proposed Amendment to the State Solid Waste Management Plan, July 2006, List of Recommended Strategies

From: Transfer Station Advisory Committee, Town of Thompson

1-2, 2-6, 2-11: Create more education on recycling in schools and statewide for the general population.

1-3: Can DEP work with national chains to minimize fast food packaging and other packaging waste?

1-4: All schools, public libraries and municipal buildings need to meet mandatory recycling regulations and increase their purchases of EPP, especially paper and cardboard. All public schools should institute composting. State funding should be withheld if an entity does not comply with regulations.

2-1: Recommend that bottle deposits be applied to all beverage containers, up to and including one gallon, e.g., liquor and "nip" bottles, juice, water, sports drinks, etc. Raise deposit to twenty-five cents, with a corresponding increase in the handling fee. (The cost of living of five cents when the bottle bill was introduced is roughly twenty-five cents at this time.) Encourage returns and discourage littering/disposal of appropriate containers. Encourage nation wide bottle bill.

5: Outreach: Does this include some formal mechanism to alert municipalities when a new technology becomes available to recycle materials not previously recycled? Each town shouldn't have to constantly do their own research.

7-10: Encourage new strategies for wise waste use. Anything Into Oil, published in Discovery magazine, lists how any product can be recycled into oil. This would solve waste problems and energy needs.

7-16: Enforcement. Add: Fines or withholding of CT state funding for school districts not complying with mandated recycling. Also town halls, libraries, etc.

8-1-2: Capture all unclaimed deposits for environmental projects.

8-1-3: Adequate revenue: Fines could help fund the plan. Consider bigger fines for litterers, polluters, and anyone dumping toxic waste.



OFFICE OF THE MAYOR
TOWN OF WALLINGFORD
CONNECTICUT

WILLIAM W. DICKINSON, JR.
MAYOR

September 7, 2006

RECEIVED
SEP 08 2006
SOUTH MAIN STREET
WALLINGFORD, CT 06492
TELEPHONE 203 294-2070
FAX 203 294-2073

Waste Management Bureau
Planning & Standards Division

Mr. Michael Harder
CT DEP
Office of Planning and Program Development
4th Floor
79 Elm Street
Hartford, CT 06106

RE: Comments to Proposed Amendment to the State Solid Waste Management Plan

Dear Mr. Harder:

The Town of Wallingford recognizes the future needs and challenges facing the State of Connecticut concerning disposal of solid waste. Below are comments regarding the Proposed Amendment to the State Solid Waste Management Plan released by CT DEP in July 13, 2006.

- State of Connecticut must adopt a long-term policy on handling MSW.** Currently, greater than 400,000 tons/year of Connecticut-generated solid waste is disposed of out of state. While this practice is not a problem at this time, any restrictions or surcharges enacted by other states concerning the acceptance of out-of-state MSW could create a hardship for Connecticut. Therefore, the State of Connecticut needs to make a commitment to at least maintain the current disposal capacity and waste disposal facilities within the state. Within the next several years, the current contract for the Wallingford waste-to-energy facility will expire. Under the current contract structure, a large portion of the revenue the project receives comes from the sale of electricity at an above-market rate. A new contract structure could result in the loss of future energy revenues, which would seriously impact the economics and viability of the plant even when considering significant increases to tip fees. Some form of subsidy from the State to such waste-to-energy facilities would ensure the viability of these facilities and keep our MSW disposal capacity at its current level. Examples of subsidies might be a reclassification of energy generated by waste facilities from a Class II to Class I renewable. Class I renewables now have a larger market and would improve the economics of waste-to-energy facilities. Alternatively, the State could continue with the current avoided cost structure of electricity generated and sold by waste-to-energy facilities.
- Expand the list of mandated materials to be recycled.** Recycling rates are unlikely to increase significantly if legislation is not enacted to require more items to be recycled by both the residential and commercial sectors. Items such as plastics #1 and #2 (and possibly other plastic resins), junk mail, boxboard and magazines, as well as organics and electronics should be considered. While Connecticut does not have data available indicating the amount of yard trimmings and food waste

generated within the state, EPA reports that yard trimmings and food wastes make up approximately 24% of the waste stream in the United States. To accommodate such a large portion of the waste stream, facilities to process leaves, brush and food waste will need to be funded and sited within the state.

- **Increasing enforcement to support recycling.** Enhanced enforcement is needed if recycling rates are expected to increase. While it is recognized that enforcement is not an easy task, especially in the residential sector, policies could be developed to allow for the monitoring of the institutional and commercial/business sectors. For instance, inspections of certain businesses for permitting and licensing by health department or liquor licensing personnel could include recycling requirements. These businesses would be subject to enforcement for recycling violations. Institutional facilities such as schools and hospitals could be fined if recycling programs are not implemented. Revenue received from fines should be used to fund recycling programs.
- **Expand bottle bill and utilize escheats.** Expand the present bottle bill to include non-carbonated beverage containers and possibly increase deposit from \$0.05 to \$0.10/container thereby utilizing the private infrastructure already in place. Unclaimed deposit money (escheats) should be utilized to fund reuse/recycling programs and public education.
- **State should provide assistance to standardize recycling programs.** Recycling services offered by municipalities should be standardized throughout the state. Funding to accomplish standardization could be provided through grants or incentives to municipalities. Standardized state-wide programs would simplify recycling for residents and businesses, simplify public outreach, reporting requirements and enforcement.
- **Create new education programs and public awareness campaigns to inform public of recycling requirements.** Aggressive promotion of recycling requirements at the state and local level will be needed to increase recycling rates in the commercial and residential sectors. Development of new programs should be spearheaded by CT DEP as was done in the early 1990's.
- **Create incentives for new recycled products markets.** Recycling rates are unlikely to increase if markets don't exist. Facilitating the development of new products created from recycled materials is needed. Incentives and licensing barriers should be revisited. Look to streamline issuance of permits for materials that have already been granted beneficial use in other states.

Thank you for the opportunity to comment on the Proposed Amendment to the State Solid Waste Management Plan. The Town of Wallingford looks forward to improving reuse/recycling and reducing per capita waste generation now and in the future.

Sincerely,



William W. Dickinson, Jr.
Mayor

Exhibit 41



WASTE MANAGEMENT

4 Liberty Lane West
Hampton, NH 03842

September 7, 2006

Michael Harder
Department of Environmental Protection
Office of Planning and Program Development
4th Floor
79 Elm Street
Hartford, CT 06106

RECEIVED

SEP 08 2006

Waste Management Bureau
Planning & Standards Division

Re: Written Comments On Behalf of:
Waste Management Inc.
Wheelabrator Technologies Inc.
WM Recycle America LLC

Dear Mr. Harder:

On behalf of Waste Management, Inc. ("WMI") and its wholly owned subsidiaries, Wheelabrator Technologies Inc. and WM Recycle America, LLC, I am pleased to have this opportunity to submit comments to the Department regarding the Proposed Amendment to the State Solid Waste Management Plan (the "Draft Plan").

We also thank you for extending to me the opportunity to participate as a member of the "stakeholder's group." It has been a pleasure to participate in the discussions and work with the Department and its consultant as the Draft Plan was developed. WMI stands ready and would be pleased to have the opportunity to continue this participation as a permanent member of the standing advisory committee called for by the Draft Plan.

We hope that the attached comments are helpful and we stand ready to actively participate in the achievement of your ambitious goals. Please do not hesitate to contact me should you have any questions regarding our attached comments. Again, thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert P. Jacques".

Robert P. Jacques
Manager of Business Development
New England Region



WASTE MANAGEMENT

4 Liberty Lane West
Hampton, NH 03842

**Written Comments of Waste Management, Inc.
Wheelabrator Technologies, Inc. & WM Recycle America LLC
Regarding the
*Proposed New Connecticut State Solid Waste Management Plan***

Offered on behalf of:

Bruce Manning, Regional Vice President, Wheelabrator Technologies Inc.

Raymond Lawrence, Market Area Manager, Waste Management Inc.

Matthew Coz, Vice President, Waste Management Recycle America

On behalf of the above-identified companies, we appreciate this opportunity to comment on the Proposed Amendment to the State Solid Waste Management Plan ("Draft Plan"). The importance of this effort and of the State's need for a new, updated and modern plan is self-evident and hopefully will yield dramatic results in the State's ability to reduce and intelligently manage the solid waste that it generates. We compliment the Department for producing a document that is comprehensive and well written, a demonstration of the Department's professional standards.

We are offering our perspective on the Draft Plan and certain suggestions regarding the recommended initiatives. As always, we are anxious to participate and offer our opinions on policies of this magnitude and scope. Generally, we applaud certain aspects of the Draft Plan, specifically the recycling initiatives, and also highlight initiatives we feel should have an increased priority, i.e. providing in-state disposal capacity for construction and demolition (C&D) and bulky wastes. Additionally we are commenting on ash residue disposal capacity, public vs. private ownership of waste management facilities, proposed initiatives for host community involvement, expansion of the solid waste fee, licensing of solid waste collection companies and the permanent Solid Waste Advisory Committee.



Recycling Initiatives

WM Recycle America LLC (“WM RA”) agrees with the well-developed programs outlined in the Draft Plan detailing a renewed commitment by Connecticut to educate the public on recycling and waste reduction opportunities, and expand the Department’s initiatives on reduction and recycling. Of course, the Department will require additional resources to bring this forward. WM RA is encouraged by the Department’s intentions to create new enthusiasm for recycling and we are prepared to provide sophisticated integrated solutions for the processing and marketing of recycled materials. We believe the participation rate in the service area of our Connecticut operations can be significantly improved in a renewed partnership with the State, region, and municipalities.

We offer the following specific comments regarding the recycling and waste reduction initiatives outlined in the Draft Plan:

- WM RA is disappointed that the Draft Plan fails to aggressively support single stream recycling. In our experience, single stream programs offer one of the more meaningful strategies for enhancing the participation rates of residential recycling programs. Of the approximately 75 materials recovery facilities we operate across North America, 25 of them are single-stream. Further, this technology is increasingly selected by our public sector partners due to the tremendous savings it generates in collection costs. At one time, there were significant concerns that the recyclable material obtained from single stream systems would be so undesirable to markets that the approach would be flawed; this is not the case in practice. Single-stream systems have also consistently demonstrated higher participation and recovery rates. We recommend the Draft Plan be amended to include a recommendation that new and expanded facilities be encouraged to use single stream systems.
- The Draft Plan recommends that plastic water bottles be added to the State’s deposit system (Strategy 2-1). Such a change would adversely impact the revenues derived from our recycling program, while further exacerbating the existing complications with escheats. Our Berlin facility serves the TROC region and many other towns in the State, and such a change would reduce revenues to all participants. We recommend as a first step that the plan be revised to call for expansion of educational efforts to emphasize recycling of water bottles, but retain the value of this high-grade material in the “blue bin” stream, thereby helping to support the maintenance and expansion of the recycling programs.
- One of the elements of the Draft Plan (Strategy 2-2) calls for adding PET (#1) and HDPE (#2) to the State’s list of mandatory recyclables. We ask that this be revised to insure that just #1 and #2 containers be included. Although we market approximately 8 Million tons of recycled materials each year and sell into markets



throughout the globe, we have not found commercially viable markets for the wide range of other products made from PET or HDPE. Adding items to the “blue bin” for which there are no viable markets at this time increases collection costs and impairs the financial performance of materials processing facilities, harming public and private participants.

Finally, and with respect to all recycling initiatives, residential, commercial and C&D, we would remind the Department that the achievement of realistic recycling goals is dependant upon markets and the convenience of the infrastructure that feeds them. Absent those elements, mandates and bans only create conflict and confusion. For example, the Department at times issues Notices-of-Violations (“NOV’s”) for the delivery of banned recyclables at disposal facilities. Such enforcement efforts would be more consequential if directed to the generator or the source. As we know, collection technology is such that drivers often cannot see what is in the container before or after it is in the collection vehicle. Additionally, the design and operating levels of our resources recovery facilities often inhibits our ability to safely scrutinize each delivery. Thus, we believe that recycling incentives and enforcement initiatives can only be truly effective when applied at the curb and at the point of generation.

C&D Waste Management Initiatives

The Draft Plan indicates that absent increased source reduction and greater flexibility to promote C&D recycling in Connecticut, the in-State disposal capacity shortfall will increase from an estimated 940,000 tons/year at present to 1.4 million tons/year by FY2024. We believe that addressing this shortfall represents the single greatest disposal challenge in the state today.

However, we are perplexed by the failure of the Draft Plan to suggest any initiative to identify the cause of the dramatic capacity shortfall or to acknowledge the need for the development of additional land disposal capacity in the immediate future. The Draft Plan acknowledges that only 12% of C&D and Bulky waste was disposed in-State last year and that **no** disposal occurred in an appropriately lined, environmentally protected landfill facility in CT. This represents a 100% failure to manage CT’s disposal need for C&D and Bulky Waste in the State. Somehow, a proposed initiative to ban the landfilling of unprocessed C&D waste in an environment with **NO** acceptable landfill disposal capacity rings hollow.

The Plan should propose a high priority initiative to identify the institutional, social, statutory, regulatory and economic constraints that have contributed to the inability to develop any in-state capacity for the management of these materials for the last two decades. Having done so, there should be a commitment to encourage the development



of such facilities without compromising the environmental protections offered by contemporary environmental technologies and controls.

Although we support the Draft Plan's recommendation that any new land disposal facility for oversized MSW/C&D waste be a state-of-the-art, lined, engineered landfill, no one should abide the continued operation of existing facilities that fail to meet that standard. We strongly recommend that the final plan call for a five-year closure or retrofit of all in-State unlined landfills now accepting oversized MSW/C&D waste.

We agree with the Draft Plan's conclusion that Connecticut already faces a significant in-State disposal capacity shortfall for oversized MSW/C&D waste and concur with strategy 3-1, which calls for minimizing the need for additional capacity for these waste streams through "aggressive implementation of source reduction, recycling, composting and other initiatives." Unfortunately, the Draft Plan's initiatives to stimulate the recycling of C&D waste, albeit admirable, are made more illusive by the lack of beneficial use infrastructure in the State. Other neighboring states who have the advantage of some landfill capacity, utilize those facilities for the beneficial use of C&D fines for daily cover, remediated contaminated soils for intermediate cover, recycled products in baseliner and cap construction, etc. The absence of appropriately lined disposal facilities in CT creates obstacles to the beneficial use of a wide range of materials that can only be overcome by initiatives that would create meaningful in-state disposal capacity.

Ash Residue

At several locations in the Draft Plan, the remaining permitted capacity of the Wheelabrator Putnam Landfill has been addressed in acknowledgement of the importance of this facility as an integral component of the State's infrastructure. The Department has estimated that the remaining capacity of the landfill will be consumed by the end of calendar 2019, predicated upon certain assumptions that likely understate the lifespan the facility will enjoy. The highlighted assumptions should be expanded to clearly include the underlying assumption that the estimated lifespan is predicated upon the delivery of CRRA-Hartford ash residue to the Putnam Residue Landfill beginning in 2009. Thus, Putnam's approved capacity is adequate to accommodate five in-State WTE facilities, Wallingford excluded, through 2019.

The fragile nature of these assumptions should also be clearly noted since:

- Ash residue from CRRA's Mid-Connecticut facility has never been delivered to our Putnam Landfill and there is no commitment by CRRA to send this residue to Putnam. In fact, CRRA has publicly stated it would prefer to develop its own landfill.
- No discussions have occurred regarding the delivery of residue from Preston or Wallingford beyond the current 2008 contract period.



- There is no evidence that Covanta, the owner of the Wallingford facility, will choose to close that facility and not have a continuing need for ash disposal capacity.
- There is always a possibility that the Putnam Ash Residue Landfill could expand its capacity at some point before its currently approved capacity is exhausted thereby dramatically increasing its lifespan.

Thus, with regard to Putnam's long term disposal capacity, we ask that the final plan include a statement that the Wheelabrator Putnam Landfill's lifespan could be significantly extended beyond 2019 dependent upon the occurrence of a wide range of events.

Finally, it is noteworthy and disappointing that the Draft Plan fails to recommend any initiatives to explore opportunities for beneficial reuse and recycling of ash residues. In many states (including Massachusetts and New York) ash residue is approved for use as alternative daily cover. We would recommend that a subcommittee of the proposed advisory committee be charged with exploring these options. The final plan should suggest that beneficial reuse of ash residue be considered in landfill applications such as a new engineered landfill for bulky/C&D wastes or residues from the processing and recycling of bulky/C&D wastes.

We would be pleased to work with the State to review this subject in more detail, and recommend the final plan suggest the pursuit of ash residue beneficial reuse and recycling as a high priority initiative.

Public vs. Private Ownership

We were surprised and disappointed to discover that DEP had incorporated into the Draft Plan the CRRA's unfounded suggestion that a pending "ownership change" for Wheelabrator Bridgeport Inc. "has potential adverse impacts to waste management and recycling in the State." While DEP carefully notes it takes no position on this matter, the Draft Plan repeatedly raises this as an item for review in numerous locations throughout the Draft Plan, including the executive summary, sections 2, 4, 5 and Exhibit K. The reader could easily conclude that DEP implicitly endorses that erroneous contention in light of the attention the issue receives in the Draft Plan.

As an initial matter, the information provided by the CRRA regarding the ownership of Wheelabrator Bridgeport LP is false. Although some of the financing of the facility may have been facilitated by the CRRA on behalf of the SCRRA communities, Wheelabrator, the facility owner, made substantial equity contributions to the construction of that facility. Furthermore, Wheelabrator, not the CRRA, pays the continuing debt service on facility.



The Department should also be particularly careful in creating any false impression that the private ownership of facilities might be less desirable than public ownership. The Draft Plan provides no factual information that would suggest that public ownership is beneficial, more cost effective, more environmentally protective, or more sustainable. No other neighboring state has chosen to create a CRRA-like bureaucracy and they are nevertheless able to deliver higher recycling rates, competitive disposal fees, greater opportunities for beneficial reuse of recycled products and better management of bulky and C&D wastes.

If the Department were seeking to take a position on this matter, we would be pleased to engage in those discussions and clearly demonstrate the vastly superior benefits of private sector initiatives and efficiencies. In fact, statements alluding to “adverse impacts” of private ownership seem to be the exclusive jurisdiction of those who would benefit by the perpetuation of public ownership and thus, should have no place in this Plan.

For Connecticut to successfully move forward in reaching new levels of waste reduction, recycling, beneficial use and enhanced environmental management of solid waste, public and private sectors must work together in partnership. We ask that the Draft Plan be modified to remove all references to such unfounded self-serving concerns.

New Landfill Development Process

The Draft Plan (Strategy 3-3) calls for legislative authority to create a fund at the time of application for a new RRF or landfill capacity that the host community could utilize to finance a local advisory committee including the retention of appropriate experts to review the application and participate in the application process. Elected officials and residents from the host community and contiguous communities would be included in this advisory committee.

This proposed initiative was never presented to or discussed by the stakeholders working group. We do not understand what motivated the Department to include this in the Draft Plan, and are not aware of any municipality that has raised a concern with regard to this matter.

We are the only party to have advanced permitting of a landfill in Connecticut in the last 10-15 years to a stage that included action at the municipal level. For neither the Putnam Landfill nor the proposed Plainfield facility (the development of which we recently terminated) did the host community express a desire to undertake advanced engineering studies of the development activity. Yet, after months of public meetings and hearings



before numerous local boards, commissions and committees, both communities provided approvals to our company.

Municipalities are already well equipped to evaluate all local issues, such as conformity with area development and zoning, traffic patterns and impacts, and similar matters. Additionally, we are not aware of any Connecticut municipality where a landfill or resources recovery facility is explicitly a “permit-by-right” in any zone. This means that the local agencies have significant discretion in considering any proposed development application, which often may involve a zone change, special permit application, and inlands wetlands permits. This may explain in part why municipalities have not asked for a provision such as that outlined in DEP’s proposed initiative.

Also, the addition of more “experts” would be redundant with the Department’s current responsibilities since the DEP has demonstrated it is well suited to perform the requisite, detailed environmental and engineering review of the applications associated with a proposed landfill or resources recovery facility. Its credibility in these matters should suffice in any objective process.

The imposition of this additional mandate on applicants would serve as a disincentive to the development of any new RRF or additional landfill capacity, create additional delays in the permitting process and impose new procedural impediments that are unnecessary and redundant. This provision of the Draft Plan will detract from future development efforts by any party, and we ask that it be stricken.

Expansion/Increase of the Solid Waste Fee

Strategies 8-1(1) and 8-1(3) call for extension of the solid waste fee to additional waste streams and also for an increase in the fee amount. We acknowledge the Department, municipalities and regional programs will require additional financial resources to achieve the objectives enumerated in the Draft Plan.

Our request is that any such action be crafted so as to uniformly apply any new fees and charges to all parties in the State and ask that the final plan so indicate.

Also, the services we now deliver to our customers are already subject to sales tax levy and we are concerned about multiple levels of taxation on our services. Ultimately, Waste Management would prefer to see additional funding for these proposed programs come from the General Assembly’s appropriations process, rather than overburdening municipalities or state residents by imposing another fee on services. Furthermore, before any additional fee is assessed we would recommend that a cost-benefit-analysis be performed



Licensing of Solid Waste Collection Companies

Both the Draft Plan (Strategy 7-7), and the Governor's on-going Solid Waste Authority Working Group address the general issue of licensing or regulating the solid waste collection industry.

Waste Management is supportive of trash hauler licensing and stands ready to work with the Department in its effort to create an equitable system, as we understand the need for such licensing procedures. In addition, we understand the Trash Hauling Industry Working Group is reviewing the industry from a best practices standpoint to ensure that there is integrity in the industry, and we support this principle. Nevertheless, while we are in agreement that licensing of haulers is a wise initiative right now, we feel there are some precautions that need to be made in order to make this an equitable process. It is very important, first and foremost, that the licensing is applied equally across the board to all companies. Hence, we are not in opposition to a licensing policy that is implemented equitably and judiciously with a clear and defined charge and purpose.

Permanent Solid Waste Advisory Committee

Strategy 6-3 calls for the establishment of a permanent Solid Waste Advisory Committee to: "...help implement the new plan, revise the plan, identify emerging issues and find solutions."

Waste Management supports this recommendation and would be pleased to have the opportunity to participate as a stakeholder representative of the private sector. We would encourage the Department to clearly define the role and authority of such a committee in the hope that participation would be meaningful.

Waste Management looks forward to continuing its partnership with the State of Connecticut, and to fostering an even stronger collaboration in the future. We are very proud of the quality of services that we provide our customers and will strive to continue to maintain the highest level of standards.

In conclusion, allow us to reiterate our appreciation for the privilege of participating in this project. Connecticut continues to be one of the most regulated states in the nation with regard to the waste industry. Although it is clear that changes need to be made to



meet capacity demands, it is important that alterations to the current system have clear objectives to avoid unintended consequences. We look forward to working with you in any way possible. In Connecticut, WM and our affiliates have consistently enjoyed a strong relationship between the public and private sectors. Waste Management would certainly like to encourage this partnership, and the success of this cooperative is of the utmost importance to us.



**Public Hearing Comments
Regarding the Proposed Amendment to the
Connecticut State Solid Waste Management Plan
Wednesday August 23, 2006**

James J. Hogan III
Director of Government Affairs
WeRecycle!, Inc.
Meriden, CT

Good evening. My name is James Hogan, representing WeRecycle! Inc., an electronics recycling firm in Meriden, CT.

Our review of the proposed Plan leaves us encouraged and optimistic that we can, all of us - the public and private sectors - work together to implement the management strategies as outlined in the proposed Plan.

The Plans "Vision" speaks of a transformation into a system "based on resource management through shared responsibility of everyone involved."

Further, the vision is "toward a system that promotes a reduction in the generation and toxicity of trash, and where wastes are treated as valuable raw materials."

And, to our delight, the statement that: "The role of the State is to implement policies and programs that catalyze all parties to move toward this vision."

We find further encouragement in the statement that "Connecticut will work with all stakeholders in an effort to gain mutual understanding and implement innovative solutions."

As a recycling company in the relatively new electronics recycling field, we fully expect to be challenged in the course of our work and we are encouraged that the DEP has, by the proposed Plan, been asked to "establish permitting of beneficial activities as a high priority for the agency."

I think a concrete example or two might be useful at this time:

Here is a town with a fully permitted transfer station, managing the full range of MSW and recycling, in a professional manner. They wish to now accept electronic waste at their recycling depot, in addition to all the other recyclables already accepted. But, electronic waste was not spelled out as a segregated waste in the original permit application. Consequently, in order to accept electronics for recycling, we were told that the town must endure the lengthy permit process. There is insufficient provision for minor permit modifications via correspondingly minor administrative work.

Another anecdote: Recycling is evolving and can take many forms not yet envisioned. When a company wants to recycle their ceiling tiles, to be a green building, should the neatly packaged old ceiling tiles be regarded as solid waste and should the company storing those tiles



be sited for an activity outside of their permit? What next? Will the old sneakers stored for a sneaker recycling program be termed as hazardous waste? Some of them smelled hazardous.

As I stated, recycling is evolving and exponentially so in the area of electronics recycling. We need to have a regulatory agency that embraces this new vision to move forward and has the where-with-all to change, or be flexible when logic and protection of our environment allow it.

Given the importance and fledgling nature of the electronics recycling field we highly recommend that an electronics recycler serve on your Solid Waste Advisory Committee.

We are pleased to note the intent to "provide support to research, develop, and market recycling processes and products". Economic development programs that assist the recycling movement will increase our chances of long term success.

Finally, we are encouraged, as we hope the administrators and staff at DEP are, as we do have an opportunity here, with this new vision, to meet the challenges outlined so well in this Proposed Solid Waste Management Plan.

Thank you.



Willimantic Waste Paper Company, Inc.

P.O. Box 239 • Recycling Way • Willimantic • Connecticut 06226-0239
Telephone (860) 423-4527 • Fax (860) 456-3155 & (860) 450-7551
www.williwaste.com

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SEP 08 2006

Waste Management Bureau
Planning & Standards Division

September 6, 2006

Mr. Michael Harder
DEP Office of Planning and Program Development
4th Floor
79 Elm Street
Hartford, CT 06106

Subject: **Proposed Solid Waste Plan Comments**

Dear Mr. Harder:

In accordance with the legal notice published regarding the Department's intent to "Amend the State Solid Waste Management Plan", I am providing the below comments as a supplement to my testimony at the August 29th Norwich hearing.

Additionally, please accept our appreciation for the opportunity to have been a member of the Department's stakeholders group. It was helpful for us to gain an understanding of the issues the Department considered in the process of developing the draft plan and we hope our comments and suggestions were beneficial to DEP's staff and consultant.

1. Public vs. Private Sector Discussions

We disagree with CRRA's contention that recycling and waste management programs should be either sponsored by or under the auspices of it or some other public entity.

CRRA does not sponsor recycling services in much of WWP's service area, and this absence has not reduced recycling activities for municipalities in our region – just the opposite. Our experience is that the private sector working directly with municipalities results in more recycling services and opportunities, without CRRA's administrative costs or more limited approach to charges and revenue sharing.

As one example, WWP has accepted mixed paper from its member towns for over two decades and CRRA is only just now starting to do so. Over the years, certain municipalities in CRRA's Mid-Connecticut project have sent us mixed paper for recycling because their system would not accept that material.

Our partnership with two dozen municipalities in eastern Connecticut for fiber recycling services is another example of the efficiency of the private sector working directly with municipalities to increase recycling rates and providing the best financial result for each town. Under this program, the municipalities receive the majority of the revenue from the sales of ONP and OCC they deliver to us, resulting in positive net revenues under typical market conditions. The program is very cost-effective, spans a large geographic area, and implemented without any

CRRA-like administrative overhead costs. Finally, WWP raised the debt associated with implementing the facilities and receives no real estate tax reductions from the host municipality.

We also provide a broader range of scrap metal recycling services to our municipal customers than does CRRA, and began accepting used beverage cartons (aseptic) many years ahead of CRRA's programs. Further, while CRRA promotes its recycling programs as "free", it is well known that in past times when market conditions were not as strong as they are today, any net cost was added to the MSW tip fee. When towns pay more on their MSW tip fee and less or nothing for recycling services, how is their town budget helped? Our tip fees for recycling have always been very low relative to MSW tipping charges, and have declined as markets improved. Our fiber program towns actually realize positive net revenue, a tremendous incentive.

As a business that has always accepted and recycled a much broader range of recyclable materials than do the programs administered by CRRA, we find their allegation that the private sector "picks only the low-hanging fruit" puzzling at best and completely wrong.

While the above discussion is focused on recycling, we could offer similar examples of the efficiency and low-cost waste management and disposal solutions provided by the private sector to municipalities.

We believe that an essential element of a successful mission to drive Connecticut forward in waste reduction and recycling will depend upon an effective partnership between the State, municipalities, and the private sector service providers such as Willimantic Waste Paper Company, Inc., and recommend the final plan be revised to advocate development and implementation of such partnerships.

Connecticut needs the innovation in recycling and waste reduction that only the private sector can deliver. At the same time, municipalities need services at the lowest possible cost, and under contracts that place the risk of financial performance on the service provider. Private industry does this in the normal course where CRRA does not.

We ask that the draft plan be updated to remove even the hint of a concern that direct service arrangements between towns and private industry could be less than ideal. Further, we strongly urge the Department from endorsing any recommendation that CRRA be either a "preferred" or "designated" implementer for our customers.

2. Market Development Effort Needs Private Sector Support

We were disappointed to see that strategy 2-10 calls for the creation of a committee to "facilitate the development, expansion, and creation of markets for recycled materials" that does not appear to have permanent private industry members. We recommend this strategy be modified to include private industry representatives as regular participants in the committee. Private industry offers direct, hands-on experience in selling commodities into local, regional and global markets, and in separating and handling recyclable materials.

3. Markets for Recovered Materials from C&D Waste

The draft plan appears to support the implementation of clean biomass gasification technologies that can beneficially process the acceptable wood fraction from mixed C&D wastes. We support this approach and encourage any additional language in the draft plan that would enhance the benefits of this strategy.

Additionally, we would also like to see the draft plan support the development of markets for beneficial reuse of asphalt shingles that can be recovered from mixed C&D debris, glass, and also fines from advanced C&D processing systems. On this last point, our newly commissioned C&D recycling line separates fines as one of the very first stage operations, without any shredding/grinding of the mixed wastestream having been performed during prior handling stages that could otherwise have increased the concentration of paint or wallboard fragments in the fines stream.

4. Existing & New In-State LF's Cannot Accept Unprocessed C&D Waste

We recommend the draft plan be updated to include a specific strategy that calls for a phased-in requirement that all existing and new landfills in the State only accept C&D materials that have first been processed by a permitted VRF for the removal of recyclable materials.

5. Licensing of Haulers

As the Department already knows, WWP submits all required quarterly reports with respect to tonnages handled at each of our facilities. We do not directly deliver waste out-of-state, so all of the materials we collect in our own vehicles or receive at our facilities are fully reported.

At the same time, we do not believe that even a complex system of hauler licensing and monitoring will yield significantly better or more information on the amount of each wastestream collected in the state and recycled or disposed. Consequently, we do not support the implementation by the Department of a new hauler licensing and regulatory process.

Additionally, we note that the recent charges of wrong-doing by a few selected haulers in other parts of the State underscore the fact that there are already in-place a wide array of laws and regulations, both State and Federal, that can be used to protect the public and suggest these actions support the view that existing laws and regulations are adequate and no new process is required.

6. Increasing the Solid Waste Fee and Expanding Wastestreams Affected

WWP recognizes that each governmental program requires a reasonable level of funding to be successful. We recommend the draft plan acknowledge that any expansion of the solid waste fee

either in amount, applicable wastestreams, or both, would be paid by the parties that deliver wastes to our facilities, including municipalities and the private sector.

7. Container Deposits

The draft plan recommends the amount of the beverage container deposit be increased, that the deposit program be expanded to extend to water bottles, and that "a portion of the escheats be returned to the to the towns or regional recycling operations to help fund their source reduction and recycling programs".

Our requests are as follows:

- a. We recommend keeping water bottles out of the deposit system, and stand ready to work with the State and our participating municipalities to promote increased recycling of this item. Our modern commingled container recycling system recovers water bottles and creates a high-value stream of material, the revenues from which help us deliver low-cost services to our towns. Taking this increasingly important recyclable out of the "blue-bin" will harm our program and member towns as a result;
- b. However, should the Department move ahead and add plastic water bottles to the deposit system notwithstanding our above recommendation, we ask that any legislation associated with this item make necessary changes to allow us to easily redeem deposit containers. That would be a big help in our program and help mitigate the loss of revenue otherwise available from commodity sales; and,
- c. We ask the final plan acknowledge that, at least in Eastern Connecticut, the commingled container program operated by WWP, and which serves 45-50 municipalities, should be fully eligible for participation in any funding program that distributes a portion of the escheats to enhance and improve local activities.

Please do not hesitate to contact me should you have any questions regarding the above comments.

Very truly yours,



Timothy DeVivo

Comments received after close of Public Comment Period
Administrative Consideration

Gutowski, Tessa

From: Duva, Diane
Sent: Monday, September 11, 2006 10:03 AM
To: 'John Phetteplace'
Cc: Belaval, Judy; Isner, Robert; Gutowski, Tessa; Harder, Michael
Subject: RE: Ct Solid Waste Management Plan Amendment

Although Michael Harder, the hearing officer, reminded me that e-mailed comments are not being formerly included as exhibits in the hearing officer's report, he noted that the Department did formally receive similar comments during the public comment period, so this topic will be considered.

We sincerely appreciate your time in documenting these fundamental aspects of PAYT. Simply being able to cite your specific experiences and reference your insights and recommendations is a big help in dialogues with other communities and general discussions of how to improve recycling rates. Thank you.

From: John Phetteplace [mailto:jphetteplace@stonington-ct.gov]
Sent: Friday, September 08, 2006 5:37 PM
To: Duva, Diane
Subject: Ct Solid Waste Management Plan Amendment

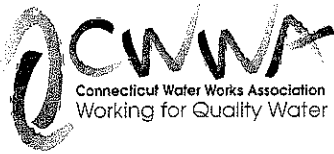
Diane,

Sorry for the delay in getting this to you. My comment for the record is below:

I believe that the endorsement of PAYT is commendable. It is stated that once a PAYT program is established most residents embrace and support it. In Stonington that is the case. However, I believe that in order for more Towns to participate in such programs there must be a significant incentive for residents to move forward. Several recent attempts in our area have failed when put to a vote. Many residents are suspicious of any additional cost and do not believe it will reduce the property tax burden. Many elected officials see them as unpopular and are reluctant to promote them.

When municipal administrators recommend these programs they need significant support from the State. There must be substantial financial incentives for these administrators to succeed at promoting PAYT. Once these programs are in place people generally understand how they work and realize they can control their own costs. However, without first using them, people overestimate what the cost will be and therefore do not support PAYT programs. This makes promotion impossible. If administrators were able to demonstrate a significant tax deduction or other incentive (i.e.: relief from the Solid Waste Assessment) it would go a long way toward convincing people that PAYT is a very effective waste management tool. If you compare recycling rates and waste generation rates between PAYT towns and those without it is clear that PAYT is very effective. Thank You.

John Phetteplace



Comment received after Administrative Case File
Close of Public Comment Period

RECEIVED

SEP 12 2006

Waste Management Bureau
Planning & Standards Division

September 8, 2006

Mr. Michael Harder
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106

RE: Comments – Proposed Amendment to the Connecticut State Solid Waste Management Plan

Dear Mr. Harder:

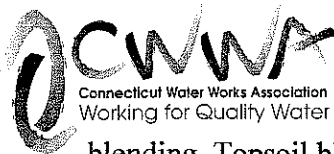
The Connecticut Water Works Association, Inc. (CWWA) is an association of public water supply utilities serving more than 500,000 customers or a population of about 2 1/2 million people located throughout Connecticut.

CWWA respectfully submits the following comments relative to the Proposed Amendment to the Connecticut State Solid Waste Management Plan:

In 2004, CWWA won passage of Section 17 of Public Act 04-151, which provides that “a public water supply company may, by itself or in conjunction with any person or municipality, use solids that are the by-products of water treatment processes provided such use conforms to best management practices and controls described in an operations plan approved in writing by the commissioner.” This measure provides safe and practical alternatives for the disposal and use of public drinking water treatment solids, which has been a long-standing concern in Connecticut.

Prior to the enactment of this legislation, disposal options for water treatment solids were extremely limited, creating an economic burden for water utilities that need to dispose of such residual solids. Disposal options were limited to: 1) landfilling; 2) disposal at a publicly owned treatment works; or 3) delivery to Earthgro, Incorporated for topsoil blending. Due to existing and anticipated capacity limitations on landfills, landfilling is no longer a viable or environmentally desirable option. Publicly-owned treatment works are also not a viable option since most plants are not universally available to all water treatment plants. And, because Earthgro, Inc. is located in the Northeast corner of the state, it is simply not economically feasible for water utilities located in other areas of the state to transport water treatment plant residuals to them for topsoil blending.

To address this problem, the legislature adopted a new law which allows companies to obtain authorization to re-use water treatment plant residual solids for topsoil blending and compost



blending. Topsoil blending, as well as compost blending, has proven to be an environmentally safe and practical alternative for re-use of water treatment plant residuals. In fact, scientific studies conducted nationwide have demonstrated that typical water treatment plant residuals have similar characteristics as natural soil.

By providing that residuals blending and re-use be regulated under the existing General Permit for the Discharge of Water Treatment Wastewater through submittal of an operations plan, Public Act 04-151 provided a practical solution for the regulation and management of residuals re-use. The act also called for the operations plan to describe the best management practices at a facility and include the controls necessary so that water treatment plant residuals can be blended into a compost or topsoil product which meets the quality criteria.

It has come to our attention, however, that in response to an operations plan submitted to the state Department of Environmental Protection by the South Central CT Regional Water Authority, DEP advised that any larger-scale soil blending operations in which the blended product would be sold to the general public would require the issuance of a beneficial use general permit. Development of a beneficial use general permit is a lengthy and costly process that requires complex human health and ecological risk assessments. Consequently, it is unlikely that any new commercial soil blending operation would be authorized by DEP.

To address this concern and to ensure that DEP appropriately implements Public Act 04-151, we urge DEP to recognize water treatment residual solids in the scope of the Solid Waste Management plan and ensure that their re-use is given appropriate consideration with regard to the streamlined strategies and recommendations included in the proposed amendment.

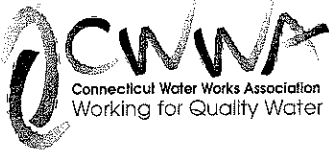
Specifically, we request that the following language be included as a separate bulleted recommendation under the Permitting and Enforcement Section (ES-9) of the Executive Summary:

- Continue and monitor the successful legislatively-created operations plan approval process for the re-use of water treatment residual solids for topsoil blending and compost blending to determine if any further legislative or regulatory changes are needed to enhance re-use opportunities.

In addition, we recommend that DEP amend the list of Recommended Strategies – Proposed Amendment to the Solid Waste Management Plan, July 2006 by adding the following language under Objective 2, Recycling and Composting, Strategy No. 2-17:

- Encourage water treatment residuals re-use by continuing the legislatively-created operations plan approval process pursuant to Public Act 04-151 and identifying any further legislative or regulatory changes needed to enhance re-use opportunities.

And, lastly, we recommend that the following language be included under Objective 7 – Permitting and Enforcement, Strategy No. 7-6 (Page 17):



- Water treatment residuals should be excluded from the permitting process and streamlined via an operations plan consistent with Public Act 04-151.

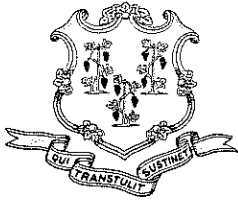
Thank you for providing us with an opportunity to comment. If you have any questions, please contact me at 860-841-7350 or gara@elizabethgara.com

Very truly yours,

A handwritten signature in cursive script that reads 'Elizabeth Gara'.

Elizabeth Gara
Executive Director

(Rev. 090806)



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

RECEIVED

OCT - 3 2006

OFFICE OF BUREAU CHIEF
MATERIALS MANAGEMENT &
COMPLIANCE ASSURANCE

Mr. Michael Harder
Department of Environmental Protection
4th Floor, 79 Elm Street
Hartford, CT 06106

Re: Comments on the State Solid Waste Management Plan
September 12, 2006

Mr. Harder,

The State Solid Waste Management Plan has been reviewed by my staff and me with an eye toward drinking water protection. Other Drinking Water Sections have also provided comments and appear below. We are pleased to learn that the overall vision and goals of the management plan are supportive of drinking water protection in that the focus is on "increased source reduction, reuse, recycling and composting (pg ES-2)". A general comment/concern of the Department of Public Health's Drinking Water Section (DWS) is that the document should stress that the siting of any new facility avoid public water supply watersheds (PWSW) and aquifer protection areas (APA) and take into consideration designated conservation and preservation areas. The importance of adding a comment to this document addressing our siting concern is supported in Chapter 4 which has many statements forecasting "capacity shortfalls" for in state MSWs (see pages 4-1).

Source Water Protection

The overall vision and goals is supportive of drinking water protection in that the focus is on "increased source reduction, reuse, recycling and composting (pg ES-2)". A general comment/concern of the Drinking Water Section (DWS) is that the document should stress that the siting of any new facility avoid public water supply watersheds and aquifer protection areas and take into consideration designated conservation and preservation areas. The importance of adding our siting concern to this document is supported in Chapter 4 which has many statements forecasting "capacity shortfalls" for in state MSWs (see pages 4-1).

Specific sections of this report that lend to the additional mention of siting with the consideration of pws, conservation and preservation areas include:

- Page 5-6 under 5.2.4 *Role of Other State Agencies* does not mention DPH, so we can suggest adding DPH as a partner when siting new facilities.
- Page 3-2 under 3.2 *Guiding Principles, Public Health and Safety*.
- Page 4-2, number 7 *Management of solid Waste Requiring Disposal*, and the 2nd to last paragraph beginning with "New technologies..."
- Page I-6 under *Potential Water Quality Impacts of RRFs* and under the section entitled *In-State Solid Waste disposal - Subtitle D Landfills*.
- Page 4-50 *Opportunities, Priorities and Strategies for Disposal-MSW; and Construction & Demolition Waste/Oversized MSW;*
- Page 4-51 within Strategy 3-3;

Phone:

(860) 509-7333



Telephone Device for the Deaf: (860) 509-7191

410 Capitol Avenue - MS # 51WAT

P.O. Box 340308 Hartford, CT 06134

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Comments received after Public Comment Period 76

- Page 4-60 under *Lack of in-state disposal capacity for C&D related waste*;
- Page 4-61 Avoiding PWSWs and APAs can be listed as a priority under *Priorities for Managing C&D Wastes*;
- Page 4-75 under Strategy 4-3 which discusses Connecticut special waste landfills;
- Page 4-75 under Strategy 4-4
- Page 4-78 under Strategy 4-10

Existing facilities are reportedly are heavily regulated and monitored (the report sites statutes (pg I-6 and others) and see section on enforcement beginning on page 4-95). The DWS would like to see a focus/priority be given to sites that lie within public water supply watersheds and aquifer protection areas added on page 4-100 under *Enforcement Strategies*.

Asbestos

The Asbestos Program has concerns regarding the in-state capacity to handle asbestos containing material (ACM) in Connecticut. Currently, there is only one transfer station and one landfill permitted to accept ACM. These sites are the Logano Transfer Station in Portland and the Manchester Landfill. Earlier this year, there was a period of time when the transfer site in Portland was non-operational. During this time period, there was no permitted transfer station to handle ACM in Connecticut. The result was that ACM was either processed at non-permitted facilities and/or stored at other sites.

The Manchester Landfill is projected to reach capacity by 2015 (assuming a filling rate of 125,000 TPY). Once that facility's capacity is reached, there will be no place to dispose of ACM in Connecticut.


The Asbestos Program feels the DEP Waste Management Plan should address both the ongoing and the future needs of Connecticut related to the transfer and disposal of ACM.

Other Special Wastes

The Department of Public Health is concerned over the disposal of sludge's from drinking water treatment plants. These sludge's are primarily metal hydroxide sludge, with aluminum and iron based compounds being the most common flocculating agent. While the volume of sludge from these type operations is smaller than that of sewage treatment plant sludge's, it is still a substantial amount. Are these type sludge's included under the discussion concerning sewage treatment sludge's or are these considered separate? If they are consider separate from sewage treatment sludge's, does the DEP consider the volume of this type waste to be not of concern, or are the treatment options so limited as to make waste diversion insignificant?

We also have a concern about household waste from private home water treatment systems. These would be spent ion exchange resins and charcoal filters. Homeowners frequently have questions about the proper method of disposal of these items, which are probably being disposed of as MSW. If DEP could address this or propose further study through the Point of Entry Waste Committee we feel it would be time well spent.

Thank you for considering these comments.



Lori Mathieu

Supervising Environmental Analyst, Drinking Water Section

Not entered as Govt
 Comment
 Comments received after close of public
 comment period

Gutowski, Tessa

From: Daniel Williams [dwilliams@septi-chip.com]

Sent: Thursday, September 21, 2006 2:29 PM

To: Gutowski, Tessa

Subject: fw: analysis tire disposal 05-06

State of Connecticut DEP

attn: Tessa Gutowski

Hello Ms. Gutowski,

As per our telephone conversations I am forwarding the report generated by the City of Bridgeport on illegal tire disposal and to have it entered into the public record on the changes being made to the waste management regulations. With the sole solution DEP has relied on being that of Exeter energy in Sterling Connecticut for tire disposal, it seems apparent that The State of Connecticut DEP hasn't a clue as to the seriousness of omitting illegally disposed of scrap tires from the public record as a major concern for the health and public safety for which is the offices purpose. In the day and age when West Nile and Eastern equine encephalitis are on the front page of every newspaper it is the departments responsibility to do it's due diligence on the subject. As you are aware for better than 3 and 1/2 years my company Septi-Chip and myself have forced the DEP to recognize beneficial use of tires in the State as well as achieving the very first historical beneficial use for the same. It is my hope that the department reconsider entering these comments as part of the record in light of the information prepared by the State of Connecticut largest city. My company and State Senator Finch will be providing a legislative solution in 2007 on tires and expect that DEP will support us as well. I also would like to be added to the State of Connecticut DEP statewide advisory committee to aid and provide expertise on the subject as well as provide solutions to streamlining the beneficial use process.

Regards,

Daniel J. Williams

Founder

Septi-Chip 2" Inch Nominal Tire Chip Aggregate for use in Septic systems

"Alternative Aggregate Solutions For Our World's Future!"

203-685-9804

From: "DePrimo, Tony" <DePr1T0@CI.BRIDGEPORT.CT.US>

Sent: Tuesday, September 05, 2006 9:29 AM

To: dwilliams@septi-chip.com

Subject: analysis tire disposal 05-06

◇

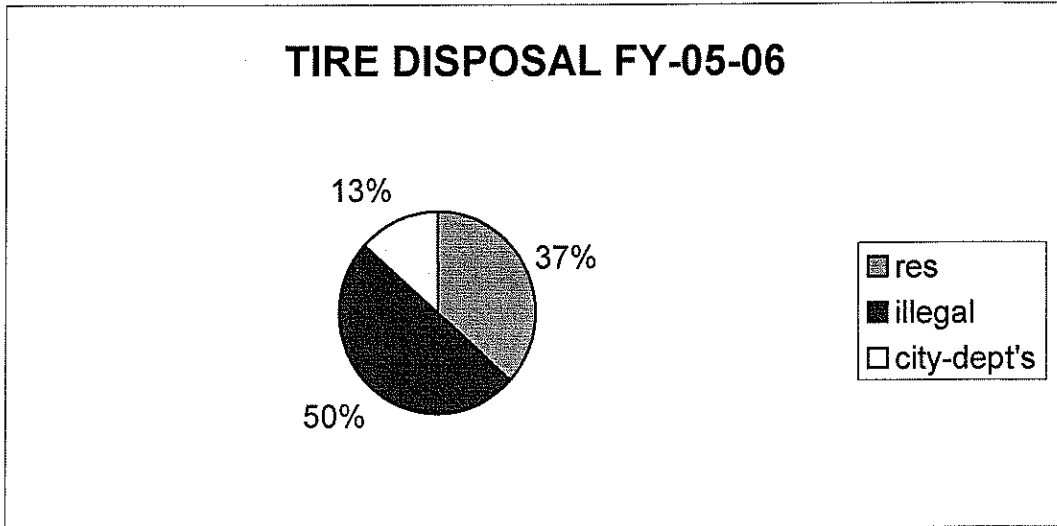
Dan, I hope this data is helpful for you. Any questions/concerns, feel free and give me a call @ 203-576-7753.

T.DePrimo

10/19/2006

TIRE DISPOSAL
FISCAL-YR
05-06

40'YD CON	TIRES/ C-YD	TOTAL/ C-YD	TIRE/L OAD	ESTIMATE /TOTAL- TIRES	TONS/LD	ESTIMATE DISPOSAL/ COST/TIRE	COST/C- YD	COST/FY-05- 06
41	10	1640	400	16400	4	\$1.25	\$12.50	\$20,872.50



graph based on daily operations observing activity
report was conducted based on a 15" tire (21lbs. (most popular size tire for average car)
researched weight of tire/tons-per-load (allowance for rims, 21lbs