

**STATE
ENVIRONMENTAL LAWS AFFECTING
CONNECTICUT AGRICULTURE**

*(See NASDA's website for
Federal Environmental Laws Affecting U.S. Agriculture)*

A Project of the

**National Association of State Departments
of Agriculture Research Foundation**

through the

**National Center for Agricultural Law
Research and Information**



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Table of Contents

This document has two components: the state guide and the federal guide. To complete this guide, please download the federal guide also found on NASDA’s website.

The Project Participants	CT-vi
Disclaimer	CT-vii
Quick Reference Guide	CT-viii
Introduction	CT-1
A. Connecticut Environmental Policy	CT-1
1. Connecticut Statutory Declarations	CT-1
2. Connecticut Department of Environmental Protection	CT-3
a. Duties and Powers	CT-4
b. Discretionary Duties and Powers	CT-5
c. Environmental Violations and Penalties	CT-6
d. Applications	CT-9
e. Emergency Authorizations	CT-10
f. Posting Notice	CT-11
g. Background Checks	CT-11
h. Expedited Enforcement	CT-12
i. Notification Duty of Environmental Professionals	CT-12
j. Notice to Municipalities	CT-12
k. Cease and Desist Orders	CT-12
l. Annual Environmental Plans	CT-13
2. Connecticut Environmental Quality Council	CT-13
3. Connecticut Environmental Protection Act	CT-14
a. Environmental Quality Fund	CT-14
b. Conservation Fund	CT-15
c. Other Fees and Funds	CT-15
B. Connecticut Wetland Laws	CT-16
1. Connecticut Wetland Policy	CT-16
a. Entry Authority	CT-16
b. Permit Applications	CT-17
c. Hearings	CT-18
d. Appeals	CT-19
e. Violations	CT-19
f. Restoration and Enhancement	CT-19
g. Wetlands and Watercourses	CT-20
h. Regulated Uses under the Wetlands and Watercourses Act	CT-21

	i.	Non-Regulated Uses	CT-22
	j.	Prohibited Uses	CT-22
	k.	Considerations	CT-23
	l.	Municipal Regulation	CT-24
	m.	Water Company Notice	CT-24
	n.	Appeals	CT-25
	o.	Violations and Hearings	CT-25
	p.	Orders	CT-25
	q.	Penalties	CT-25
	r.	General Permits	CT-26
	s.	Connecticut Mosquito Control	CT-28
I.		Water Quality	CT-28
	A.	Connecticut Water Pollution Control Laws	CT-29
		1. Connecticut Water Pollution of Waterways	CT-30
		a. Disposal Systems	CT-30
		b. Sewage Discharges	CT-31
		2. Connecticut Water Pollution Control Policy	CT-31
		3. Connecticut Water Pollution Powers of DEP	CT-31
		a. Water Pollution Records	CT-33
		b. Water Quality Standards	CT-33
		4. Connecticut New Discharge Permits	CT-34
		a. Permit Renewals	CT-35
		b. Comment Periods	CT-36
		c. Orders	CT-36
		d. Discharge Categories	CT-37
		e. General Permits	CT-38
		f. Individual Permits	CT-38
		g. Discharge Reviews	CT-39
		h. Orders	CT-40
		i. Land Records	CT-40
		j. Non-Compliance	CT-41
		k. Appeal	CT-42
		l. Enforcement	CT-42
		5. Connecticut Oil Spills	CT-43
		a. Terminal Licenses	CT-44
		b. Nonresidential Underground Storage Tanks	CT-44
		c. Underground Storage Tank Clean-up Account	CT-45
		d. Clean-Up Account Review Board	CT-46
		e. Reimbursement Payments	CT-47
		f. Immunity	CT-48
		g. Discharge and Spill Reporting	CT-49
		h. Business Activity Permits	CT-51
		i. Closure of Hazardous Waste Facilities	CT-53

	j.	Drinking Water Provisions	CT-53
	k.	Clean Water Fund	CT-54
	l.	River Restoration Projects	CT-56
II.	Groundwater		CT-57
	1.	Connecticut Water Resources	CT-57
	a.	Water Resources Policy	CT-57
	b.	Encroachment Areas	CT-58
	c.	Water Resources Plan	CT-59
	d.	Aquifer Protection	CT-60
	e.	Aquifer Appeals	CT-62
	f.	Aquifer Violations	CT-63
	g.	Strategic Monitoring	CT-63
	h.	Encroachment Fees	CT-64
	i.	Dredge and Fill Activities	CT-64
	j.	Dredge and Fill Permits	CT-65
	k.	Dredge and Fill Notice	CT-69
	l.	Dredge and Fill Violations	CT-70
	m.	Certificates of Permission	CT-70
	n.	Dredge and Fill Emergency Authorizations	CT-72
	o.	Dredge and Fill Orders	CT-73
	2.	Connecticut Water Diversion Policy Act	CT-74
	a.	Diversion Registration or Permit	CT-74
	b.	Interbasin Transfer	CT-75
	c.	Diversion Permits	CT-76
	d.	Diversion Appeals	CT-80
	e.	Diversion Reviews	CT-80
	f.	Diversion Violations	CT-80
	g.	Diversion Exemptions	CT-81
	h.	Diversion Emergency	CT-82
	i.	Emergency Violations	CT-82
III.	Air		CT-82
	A.	Air Quality	CT-82
	1.	Connecticut Air Quality Laws	CT-82
	2.	Connecticut Air Regulations	CT-83
	a.	Air General Permits	CT-83
	b.	Individual Air Permits	CT-85
	c.	Operator Permits	CT-85
	d.	Indirect Sources	CT-86
	e.	Payment Insurance	CT-86
	f.	Brush Burning	CT-86
	g.	Air Emission and Registration Fees	CT-86
	h.	Criminal Air Penalties	CT-87

	i.	Air Inspections and Investigations	CT-87
	j.	Air Orders	CT-88
	k.	Air Enforcement and Civil Penalties	CT-89
	l.	Air Emergencies	CT-90
	m.	Air Pollution Exemptions	CT-90
	n.	Air Construction and Operating Permits	CT-91
	6.	Connecticut Air Pollution Prohibitions	CT-91
	7.	Conn. Small Business Stationary Air Source Assistance Program	CT-91
IV.		Solid Waste and Hazardous Waste	CT-92
	A.	Solid Waste Laws	CT-92
		1. Connecticut Solid Waste Policy	CT-92
		a. Solid Waste Prohibitions	CT-94
		b. Solid Waste Violations	CT-94
		c. Solid Waste Construction and Operation Permits	CT-94
		d. Solid Waste Operators	CT-95
		e. Solid Waste General Permits	CT-95
		f. Solid Waste Individual Permits	CT-96
		g. Solid Waste Facilities	CT-96
		h. Solid Waste Orders	CT-97
		i. Solid Waste Appeals	CT-98
		j. Solid Waste Penalties	CT-98
		k. Solid Waste Public Education	CT-98
		2. Connecticut Solid Waste Management Plan	CT-99
		a. Used Batteries and Tires	CT-99
		b. Newsprint	CT-99
		3. Connecticut Solid Waste Recycling	CT-100
		4. Connecticut Solid Waste Management Services Act	CT-100
	B.	Hazardous Waste	CT-101
		1. Connecticut Hazardous Waste Laws	CT-101
		a. Hazardous Waste Policy	CT-101
V.		Pesticides and Chemigation	CT-102
	A.	Connecticut Pesticide Laws	CT-102
		1. Connecticut Pesticide Control Act	CT-102
		a. Pesticide Registration	CT-102
		b. General-Use and Restricted-use Pesticides	CT-104
		c. Experimental-Use Pesticides	CT-105
		d. Imminent Hazard	CT-105
		e. Certified Applicators	CT-106
		f. Operational or Supervisory Commercial Applicators	CT-106
		g. Applications by Air	CT-108
		h. Pesticide Sellers and Dealers	CT-109
		i. Pesticide Records	CT-110

j.	Pesticide Enforcement	CT-111
k.	Pesticide Trade Secrets	CT-112
l.	Pesticide Prohibitions	CT-112
m.	Stop Sale, Seizure, and Condemnation	CT-114
n.	Pesticide Penalties	CT-115
o.	Pesticide Disposal	CT-116
p.	Pesticide Precautions	CT-116
q.	Pesticide Monitoring	CT-116
r.	Notification After Pesticide Applications	CT-117
s.	Pesticide Posted Signage	CT-117
2.	Connecticut Pesticide Advisory Council	CT-118
3.	Connecticut Pesticide Regulations	CT-119
4.	Connecticut Pesticides in State Waters	CT-119
VI.	Protection of Wildlife	CT-120
A.	Connecticut Wildlife Laws	CT-120
1.	Connecticut Endangered Species Policy	CT-120
a.	Essential Habitat	CT-122
b.	Enforcement	CT-122
c.	Exemptions	CT-123
d.	Orders	CT-124
e.	Maps and Records	CT-124
2.	Connecticut Acquisition of Protective Areas	CT-125
3.	Connecticut Natural Area Preserves Advisory Committee	CT-125
4.	Connecticut Elephant Ivory Products	CT-126
VII.	Other Connecticut Statutes Affecting Agriculture	CT-126
A.	Connecticut Right to Farm Law	CT-126
B.	Connecticut Conservation Easement	CT-128
	Appendix A - Agencies	CT-129

The Project Participants

National Association of State Departments of Agriculture Research Foundation

The National Association of State Departments of Agriculture (NASDA) is a nonprofit, nonpartisan association of public officials comprised of the Commissioners, Secretaries, and Directors of the fifty State Departments of Agriculture in the fifty states and the territories of Puerto Rico, Guam, American Samoa, and the Virgin Islands. NASDA's mission is to represent the State Departments of Agriculture in the development, implementation, and communication of sound public policy and programs which support and promote the American agricultural industry while protecting consumers and the environment. The NASDA Research Foundation is a 501(c)(3) nonprofit, tax-exempt corporation for educational and scientific purposes.

National Center for Agricultural Law Research and Information

The National Center for Agricultural Law Research and Information (NCALRI) was created in 1987 under Public Law 100-202, 101 Stat. 1329-30 to address the complex legal issues that affect American agriculture. The NCALRI focuses its efforts on research, writing, publishing, development of library services, and the dissemination of information to the public. The NCALRI is located at the University of Arkansas School of Law in Fayetteville, Arkansas.

Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service (SCS), is a federal agency within the U.S. Department of Agriculture (USDA). NRCS conservationists work with private landowners and operators to help them protect their natural resources.

U.S. Environmental Protection Agency

The U.S. Environmental Protection Agency (EPA) is a federal agency with primary responsibility for implementation of most federal laws designed to protect, enhance, and conserve the nation's natural resources.

Disclaimer

This guide is designed for use by farmers, ranchers, landowners, and their consultants in understanding the effect environmental laws have on agricultural operations. It is not a substitute for individual legal advice. Agricultural producers should always confer with their own attorneys, consultants, or advisors as well as federal, state, and local authorities responsible for the applicable environmental laws.

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Although every effort has been made to ensure the accuracy of the information contained in this book, environmental statutes, regulations, and ordinances are constantly changing. In addition, the overwhelming complexity and extent of environmental law make it impossible for a single book to describe in complete detail and depth all of the environmental laws and regulations impacting agricultural operations. The following material is simply a basic primer on environmental law for agricultural producers. For these reasons, the utilization of these materials by any person constitutes an agreement to hold harmless the authors, the National Center for Agricultural Law Research and Information, the University of Arkansas, the United States Department of Agriculture, the National Association of State Departments of Agriculture Research Foundation, the Natural Resources Conservation Service, and the United States Environmental Protection Agency for any liability, claims, damages, or expenses that may be incurred by any person or organization as a result of reference to, or reliance on, the information contained in this book.

The background research and final documents were completed in July 2002. Updates of the information contained in the guide will occur on an as needed basis and be available on the internet.

Anyone with comments concerning the guide should contact the NASDA Research Foundation at 1156 15th Street, N.W., Suite 1020, Washington, D.C. 20005, or phone (202) 296-9680.

Quick Reference Guide

Producer Note: The following chart is intended as a quick reference guide to permits which may be necessary for a particular operation. If a permit is necessary, refer to the page numbers listed referencing this document for further information and contact the agencies listed in the final column information on applications and procedures for securing a permit for an operation. A list of agencies and contact information is also provided in Appendix A.

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 28-56</i>	Livestock and aquaculture operations, depending on size	National Pollutant Discharge Elimination System (NPDES) permit	U.S. Environmental Protection Agency (U.S. EPA) and Bureau of Water Management within Connecticut Department of Environmental Protection (DEP)
	Wetlands dredge and fill activity or dam or bridge building activities	Section 404 Clean Water Act (CWA) permit	U.S. Army Corps of Engineers with U.S. EPA and Bureau of Water Management within DEP
	Construct or modification of facilities with potential to discharge into navigable waters of the state	Permit to construct (PTC) also required if the facility under construction or modification may exceed established water pollution standards	Bureau of Water Management within DEP
	Water well construction and use	No permit or drilling license required, but construction standards must be followed	Bureau of Water Management within DEP
Groundwater <i>pp. 57-82</i>	Groundwater protection	No permit, but Best Management Practices (BMPs) must be followed	Bureau of Water Management within DEP

Regulatory Area	Type of Activity	Permit Required	Agency
Air Quality <i>pp. 82-91</i>	Construct or modification of facilities with potential to release air emissions	Permit to construct (PTC) also required if the facility under construction or modification may exceed established air pollution standards	Bureau of Air Management within DEP
	General agricultural operations including odor, dust, or flies	No permit required, but may be subject to nuisance suits	U.S. EPA and Bureau of Air Management within DEP
	Burning	Burning permit usually required	Bureau of Air Management within DEP
Solid Waste and Hazardous Waste <i>pp. 92-101</i>	Storage, treatment, and disposal of solid waste	Permit usually required	Bureau of Waste Management within DEP
	Underground storage tanks	Installers must have certification	Bureau of Waste Management within DEP
	Storage, treatment, and disposal of hazardous waste	Permit required for disposal, treatment, or storage activities	Bureau of Waste Management within DEP
Pesticides and Chemigation <i>pp. 102-119</i>	Application and use of pesticides	No permit required, but a license may be required	U.S. EPA and DEP
	Use of pesticides around farmworkers	No permit required, but training and notification is required	U.S. EPA and DEP
	Record keeping	No permit required, but all requirements must be met	U.S. EPA and DEP
Wildlife Protection <i>pp. 120-126</i>	Taking of wildlife	Permit required if endangered or threatened species may be affected	U.S. Fish and Wildlife Service and Bureau of Natural Resources within DEP

STATE ENVIRONMENTAL LAWS AFFECTING CONNECTICUT AGRICULTURE

Producer Note: The information on environmental regulation provided in this guidebook is presented for the purpose of educating agricultural producers on the breadth and scope of environmental laws which may impact their daily production activities. Environmental regulation is a complex area with both federal, state, and often local government involvement. Rapid changes in industrialization, computer-based technology, and market dynamics also affect agricultural producers in a number of ways and present many challenges. Staying informed is the producer's most useful tool for meeting these challenges.

INTRODUCTION

A. Connecticut Environmental Policy

1. Connecticut Statutory Declarations

The state of Connecticut recognizes that the air, water, land, and other natural resources are finite and precious. Because the growing population and expanding economy of the state has a profound impact on the life-sustaining natural environment, it is understood that human activity must be guided to exist in harmony with the system of relationships among the elements of nature. The policy of the state of Connecticut is to conserve, improve and protect its natural resources and environment as well as control air, land, and water pollution in order to enhance the health, safety, and welfare of the people of the state. The state advances the policy of the state by:

- Improving and coordinating the environmental plans, functions, powers, and programs of the state;
- Cooperating with the federal government, regional and local governmental bodies, public and private organizations, and concerned individuals; and
- Managing air, land, and water resources as trustee of the environment for the present and future generations.¹

The state endeavors to use all practicable means and measures:

- To foster and promote the general welfare;

¹ CONN. GEN. STAT. ANN. § 22a-1 (1995).

- To create and maintain conditions under which man and nature can exist in productive harmony; and
- To fulfill the social, economic, and other requirements of present and future generations of Connecticut residents.²

Connecticut statutes direct each state department, institution, or agency to review its policies and practices to insure that they are consistent with the state's environmental policy. When primary recommendations or proposed actions may significantly affect the environment,³ the state actor must make a detailed written evaluation of its environmental impact before deciding whether to undertake or approve such action.⁴ Environmental impact evaluations must set forth:

- Descriptions of proposed action;
- Environmental consequences of the proposed action;
- Any adverse environmental effects which cannot be avoided;
- Any irreversible and irretrievable commitments of resources;
- Alternatives to the proposed action;
- Mitigation measures;
- Analysis of the short term and long term economic, social, and environmental costs and benefits of the proposed action;
- Effects of utilization and conservation of energy resources; and

² CONN. GEN. STAT. ANN. § 22a-1a (1995).

³ The term "actions which may significantly affect the environment" means individual activities or a sequence of planned activities proposed to be undertaken by state actors which could have a major impact on the state's land, water, air, historic structures and landmarks, existing housing, or other environmental resources or could serve on a short term basis to the disadvantage of long term environmental goals. Actions include new state projects and programs but do not include (1) emergency measures undertaken in response to an immediate threat to public health or safety; (2) activities in which state agency participation is ministerial in nature and involves no exercise of discretion on the part of the state actor; (3) previously prepared environmental statements pursuant to other state or federal laws or regulations, (4) emergency correctional facilities, or (5) unit of state system of higher education; *see* CONN. GEN. STAT. ANN. § 22a-1c, 1f (1995 & Supp. 2002).

⁴ CONN. GEN. STAT. ANN. § 22a-1b(a) (1995 & Supp. 2002).

- Effects on any sacred sites or archaeological sites of state of national importance.⁵

Environmental impact evaluations, statements, and comments are reviewed by the Office of Policy and Management (OPM). The OPM makes a written determination available to the public as well as to the state actor on whether the environmental evaluation satisfies the stated environmental policy.⁶

Connecticut's policy position on pollution⁷ of its waters⁸ is that the use of public funds and the granting of tax exemptions for the purpose of controlling and eliminating water pollution is a public use and purpose for which public monies may be expended and tax exemptions granted and that water pollution:

- Is inimical to the public health, safety, and welfare of the inhabitants of the state;
- Is a public nuisance;
- Is harmful to wildlife, fish, and aquatic life; and
- Impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water.⁹

2. Connecticut Department of Environmental Protection

The primary state agency charged with the responsibility of implementing and administering environmental statutes is the Connecticut Department of Environmental Protection

⁵ CONN. GEN. STAT. ANN. § 22a-1b(b) (1995 & Supp. 2002). If the proposed action affects existing state housing, the evaluation must also contain a detailed statement analyzing resulting consequences by income group and race and long-range consistency of the state housing consequences; *see* CONN. Gen. Stat. Ann. § 22a-1b(b)8 (1995 & Supp. 2002).

⁶ CONN. GEN. STAT. ANN. § 22a-1e (1995).

⁷ The term "pollution" means harmful thermal effect or the contamination or rendering unclean or impure or prejudicial to public health of any waters of the state by reason of any wastes or other material discharged or deposited therein by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters; *see* CONN. Gen. Stat. Ann. § 22a-423 (1995 & Supp. 2001). The term "rendering unclean or impure" mean any alteration of the physical, chemical, or biological properties of any of the waters of the state, including, but not limited to, change in odor, color, turbidity or taste; *see* CONN. GEN. STAT. ANN. § 22a-423 (1995 & Supp. 2001).

⁸ The term "waters" means all tidal waters harbors, estuaries, rivers, brooks, watercourses, waterways, wells, springs, lakes, ponds, marshes, drainage systems, and all other surface or underground streams, bodies or accumulations of water, natural or artificial, public or private, which are contained withing, flow through or border upon this state or any portion thereof; *see* CONN. GEN. STAT. ANN. § 22a-423 (1995 & Supp. 2001).

⁹ CONN. GEN. STAT. ANN. § 22a-423 (1995).

(DEP). The DEP has the duty to adopt regulations to implement the state's environmental policy including:

- Specific criteria for determining whether or not a proposed action may significantly affect the environment;
- Enumerating actions subject to the environmental requirements;
- Guidelines for the preparation of environmental impact evaluations; and
- Procedures for state agency review and comment as well as public review and comment.¹⁰

The DEP has jurisdiction over all matters relating to preservation and protection of the air, water, and other natural resources including enforcement of any applicable statute, regulation, order, or permit pertaining to air pollution except assessment of a civil penalty after a final decision in a hearing. The DEP includes an Office of Business Ombudsman that provides information to businesses on environmental programs and requirements including information on permits. The office coordinates programs and serves as a liaison between the DEP and Connecticut businesses.¹¹

a. Duties and Powers

Duties of the DEP include:

- Promoting and coordinating management of water, land and air resources to assure their protection, enhancement and proper allocation and utilization;
- Providing for the protection and management of plants, trees, fish, shellfish, wildlife, and other animal life of all types including the preservation of endangered species;
- Providing for the protection, enhancement, and management of the public forests, parks, open spaces, and natural area preserves;
- Providing for the protection, enhancement, and management of inland, marine, and coastal water resources including wetlands, rivers, estuaries, and shorelines;

¹⁰ CONN. GEN. STAT. ANN. § 22a-1g (1995).

¹¹ CONN. GEN. STAT. ANN. § 22a-2c (1995).

- Providing for the prevention and abatement of all water, land, and air pollution; and
- Provide for control of pests and regulate the activity.¹²

The DEP has authority to order a person¹³ to abate, correct, or remedy any violation, condition, pollution or potential source of pollution and to investigate, study, monitor, or gather data to assure that the violation, condition or pollution is abated, corrected, or remedied.¹⁴

b. Discretionary Duties and Powers

The DEP has discretion to:

- Establish environmental standards, regulations, and fees;
- Make contracts and perform or contract studies;
- Issue, revoke, renew, modify, or deny permits;
- Initiate and receive complaints involving actual or suspected violations of any statute, regulation, permit, or order issued for enforcement;
- Enter premises at all reasonable time without liability for the purpose of inspection and investigation of possible violations;¹⁵
- Conduct hearings, administer oaths, take testimony, and subpoena witnesses and evidence;
- Require posting of sufficient performance bonds; and
- Provide notice that false statements are punishable as criminal offense.
- Construct or repair any dam, flood and erosion control system, or other real asset under DEP control and management in an amount up to five hundred thousand

¹² CONN. GEN. STAT. ANN. § 22a-5 (1995).

¹³ The term "person" mean any individual, firm, partnership, association, syndicate, company, trust, corporation, limited liability company, municipality, agency, or political or administrative subdivision of the state, or other legal entity of any kind; *see* CONN. GEN. STAT. ANN. § 22a-22c (1995).

¹⁴ CONN. GEN. STAT. ANN. § 22a-5a (1995).

¹⁵ Provided any information relating to secret processes or methods of manufacture or production is kept confidential unless lawful exceptions exist; *see* CONN. GEN. STAT. ANN. § 22a-6(a)(5) (1995 & Supp. 2002).

dollars (\$500,000.00) or less, and, with prior approval of the Commissioner of Public Works, make or contract for the making of any alteration, repair, or addition to other real assets in an amount greater than five hundred thousand dollars (\$500,000.00) but less than one million dollars (\$1,000,000.00);

- Require the payment of a fee sufficient to cover the reasonable cost of the search, duplication, and review of records requested under the Freedom of Information Act or a fee for reviewing and acting upon an application for and monitoring compliance with the terms and conditions of any state or federal permit, license, registration, order, certificate, or approval required; and
- Adopt regulations pertaining to activities associated with federal government standards or procedures.¹⁶

Any person or municipality aggrieved by a DEP order to enforce any statute, regulation, permit, or order administered or issued by DEP may request a hearing before the DEP provided the request is lodged with the DEP within thirty days from the date such order is sent.¹⁷

c. Environmental Violations and Penalties

Violators of environmental provisions are liable to the state for the reasonable costs and expenses of the state in detecting, investigating, controlling, and abating such violations. Additionally, violators are also liable to the state for the reasonable costs and expenses of the state in restoring the air, waters, lands, and other natural resources of the state including plant, wild animal, and aquatic life to their former condition or for any damage, temporary or permanent, caused by such violation to the air, waters, lands, or other natural resources of the state including plant, wild animal, and aquatic life and to the public trust.¹⁸

The DEP is responsible for establishing the schedule of civil penalties. Penalties vary according to the activity or conduct involved. The maximum penalty for the following violations is one thousand dollars (\$1,000.00) plus one hundred dollars (\$100.00) each day of violation for failure to:

- File a registration,¹⁹ plan, report, record, permit application, or certification;

¹⁶ CONN. GEN. STAT. ANN. § 22a-6 (1995 & Supp. 2002).

¹⁷ Such hearing shall be conducted in accordance with the procedures provided by Chpt. 54; *see* CONN. GEN. STAT. ANN. § 22a-6(e) (1995 & Supp. 2002). The existence of a general NPDES permit does not affect any authority of DEP that is within accordance of law; *see* Id.

¹⁸ CONN. GEN. STAT. ANN. § 22a-6a (1995 & Supp. 2002).

¹⁹ Other than a registration for a general permit.

- Obtain any certification;
- Display any registration, permit, or order; and
- File any other required information.²⁰

The maximum penalty for the following violations is twenty-five thousand dollars (\$25,000.00) for each day of violation for:

- Deposit, placement, removal, disposal, discharge, or emission of any material including electromagnetic radiation in violation of any environmental provision or related regulation, order, or permit;
- Violation of the terms of any permit or any final DEP order;²¹
- Failure to make an immediate DEP required report; and
- Violation of any provision of the state's hazardous waste program.²²

A wilful violation of any permit condition imposed by the DEP which leads to the destruction or harm to any rare, threatened, or endangered species, subjects the violator to fines up to ten thousand dollars per day. Violations of any hazardous substance provisions follow the penalty amounts established by the federal Emergency Planning and Community Right-To-Know Act of 1986.²³

Factors that the DEP must consider in determining the schedule of fines and enforcement include:

- An assessment necessary to insure immediate and continued compliance;
- The character and degree of impact of the violation on the natural resources of the state especially on any rare or unique natural phenomena;
- The conduct of the person in taking all feasible steps or procedures necessary or appropriate to comply or to correct the violation;

²⁰ CONN. GEN. STAT. ANN. § 22a-6b(a)(1) (1995 & Supp. 2002).

²¹ Except final orders under protest or time for protest and emergency orders and cease and desist orders

²² CONN. GEN. STAT. ANN. § 22a-6b(a)(2 to 6) (1995 & Supp. 2002).

²³ 42 U.S.C. 11001 *et seq.* (1994).

- Any prior violations of DEP statutes, regulations, orders, or permits;
- Economic and financial conditions of the person;
- Any economic benefit derived as a result of the violation;
- Character and degree of injury or interference to public health, safety, or welfare caused by the violation;
- Character and degree of injury, impairment, or interference to reasonable use of property;
- Character and degree of injury, impairment, or interference to the public trust in the air, water, land, and other natural resources of the state; and
- Any other factors consistent with applicable law including voluntary measures taken by such person to prevent pollution or enhance or preserve natural resources.²⁴

In the cases of immediate reporting requirement violations for nuclear waste releases, the following factors are considered:

- Apparent seriousness of the release at the time it first became known;
- Extent of delay or exercise of reasonable care regarding one's knowledge until its reporting; and
- Taking all necessary steps to prevent future violations.²⁵

A final DEP order assessing a civil penalty is subject to appeal in the superior court for the judicial district of New Britain. These cases have precedence in the order of trial. Any civil penalty authorized by environmental statutes become due and payable:

- Upon receipt of a final order in the case of a civil penalty assessment following a hearing;
- On the first day after the expiration of the period in which a hearing may be requested if no hearing is requested; or

²⁴ CONN. GEN. STAT. ANN. § 22a-6b(b)(1 to 10) (1995 & Supp. 2002).

²⁵ CONN. GEN. STAT. ANN. § 22a-6b(b)(11) (1995 & Supp. 2002).

- On the first day after any withdrawal of a request for hearing.²⁶

A person who acts within the terms and conditions of a final DEP order or permit is not subject to a civil penalty; however, a civil penalty assessed in a final DEP order may be enforced in the same manner as a judgment of the Superior Court.²⁷ Assessed penalties may not exceed two hundred thousand dollars (\$200,000.00) unless the amount is set forth by federal law. Ten percent late fees are assessed for annual permit renewal fees.

d. Applications

Applications for any DEP permit or license related to wetlands, air pollution, solid waste, water resources, dams, reservoirs, and water pollution control other than for a general NPDES permit²⁸ must submit a signed statement certifying that the applicant will:

- Publish notice of the application in a newspaper of general circulation in the affected area;
- Provide a certified copy of the notice as it appeared in the newspaper; and
- Notify²⁹ the chief elected official of the municipality in which the regulated activity is proposed.³⁰

The DEP publishes notices of permit and license applications at the applicant's expense in a newspaper of substantial circulation in the affected area indicating DEP's tentative

²⁶ CONN. GEN. STAT. ANN. § 22a-6b(e) (1995 & Supp. 2002).

²⁷ Such orders are served in person or by certified mail, return receipt requested.

²⁸ The following applications are exempt from the required certification and notice statement: (1) application for authorization under a general NPDES permit, (2) application for minor modification permit for major air emission sources, or (3) an application for minor modification permit or license revision under DEP authority; *see* CONN. GEN. STAT. ANN. § 22a-6g(b) (1995 & Supp. 2002).

²⁹ Notification must include: (1) name and mailing address of the applicant and the address of the location of the proposed activity, (2) application number, if applicable, (3) type of permit sought referencing applicable statute or regulation, (4) description of proposed activity, (5) description of the location of the proposed activity and any natural resources affected, (6) name, address, and phone number of any agent where interested parties may obtain copies of the application, and (7) statement that the application is available for inspection at the DEP unless the activity is otherwise exempted from the notice requirement according to other provisions; *see* 22a-6g (1995 & Supp. 2002).

³⁰ CONN. GEN. STAT. ANN. § 22a-6g(a) (1995 & Supp. 2002).

determination. The notice must be published thirty (30) days before the DEP determination to deny or grant the application.³¹

The DEP provides notice of the expiration date of a permit to its holder on or before ninety days prior to the date on which the application for renewal of such permit is due. Untimely renewals of a permit or other license are charged a ten to sixty-five percent (10% to 65%) late charge depending on the number of days late in addition to the annual renewal fee.³²

e. Emergency Authorizations

The DEP has the power to issue an emergency authorization for any of its regulated activities if the authorization is necessary to prevent, abate, or mitigate an imminent threat to human health or the environment as long as the authority is not inconsistent with federal environmental laws.³³ The DEP may also issue a one time temporary authorization for any activity for which the DEP has authority to issue a general permit as long as the activity:

- Would not continue for more than thirty (30) days;
- Doesn't pose a significant threat to human health or the environment; or is otherwise necessary to protect the public interest; and
- Such authorization is not inconsistent with the federal Water Pollution Control Act together with the Rivers and Harbors Act known collectively as the Clean Water Act (CWA),³⁴ the Clean Air Act (CAA),³⁵ or the Resource Conservation and Recovery Act (RCRA).³⁶

³¹ CONN. GEN. STAT. ANN. § 22a-6h(a) (1995 & Supp. 2002). The following applications are exempt from the required notice publication: application for minor modification permit for major air emission sources or an application for minor modification permit or license revision under DEP authority; *see* CONN. GEN. STAT. ANN. § 22a-6h(b) (1995 & Supp. 2002).

³² CONN. GEN. STAT. ANN. § 22a-6j (1995).

³³ CONN. GEN. STAT. ANN. § 22a-6k(a) (1995 & Supp. 2002).

³⁴ 33 U.S.C. § 1251 *et seq.* (1994).

³⁵ 42 U.S.C. § 7401 *et seq.* (1994).

³⁶ 42 U.S.C. § 6901 *et seq.* (1994); *see* CONN. GEN. STAT. ANN. § 22a-6k(b) (1995 & Supp. 2002).

f. Posting Notice

The DEP has authority to require an applicant to post notice of an application for any DEP permit except for a transportation project, the burning of brush, or a burning permit issued by fire officials. If directed to post notice, a sign six feet by four feet (6' x 4') that is legible from the public highway must be erected within three (3) days following the directive. Posted notice must provide the following information:

- Applicant's name;
- Telephone number where an interested person may obtain a copy of the application;
- Procedure to follow to make comments on the application;
- Words stating "For further information contact;" and
- Words "Department of Environmental Protection."³⁷

The sign must remain erect and posted for one hundred and twenty days (120) or until the DEP makes a determination on the application, whichever is shorter. A separate certification regarding the applicant's compliance with this law must be submitted to the DEP on a DEP form. The notice compliance statement requires that applicant also certify that notice was provided to local municipal, health, and environmental officials.³⁸

g. Background Checks

An applicant for any DEP permit may be investigated as to the applicant's practices and patterns of conduct in environmental compliance history as well as criminal history. The DEP may issue, renew, transfer, modify, or revoke any permit registration, certificate, or other license based upon its investigation. The DEP may also include any necessary condition on the permit the DEP determines is necessary to assure an applicant's compliance. The DEP provides an annual report to the governor and the legislature regarding environmental permitting revenues and statistics regarding permit decisions.³⁹

³⁷ CONN. GEN. STAT. ANN. § 22a-6l (1995 & Supp. 2002).

³⁸ CONN. GEN. STAT. ANN. § 22a-6l (1995 & Supp. 2002).

³⁹ CONN. GEN. STAT. ANN. § 22a-6r (1995 & Supp. 2002).

h. Expedited Enforcement

The DEP has discretion to establish a program structured to expedite enforcement for minor violations; however, the violator has only thirty (30) days from the notice of violation to certify to the DEP that the minor violation is corrected. Measures are implemented by the DEP to prevent reoccurrence. Any other compliance actions taken are according to DEP's specified schedule.⁴⁰ After receiving the violator's required certification, the DEP informs the violator within thirty (30) days in writing of its decision whether the action taken by the violator is satisfactory.⁴¹

i. Notification Duty of Environmental Professionals

Certain notification duties are imposed upon environmental professionals, who may, during the performance of their responsibilities involving the investigation or remediation of pollution, discover pollution. Types of pollution that must be reported include:

- Existence of injurious or hazardous substances on or emanating from a parcel of land into a drinking water well causing concentrations greater than those established by groundwater standards; or
- Existence of contamination to soil or waters of the state.⁴²

Furthermore, the owner of the land parcel and the client of the environmental professional also have related notification requirements.

j. Notice to Municipalities

The DEP provides notice to the local municipality regarding any of its actions within the jurisdiction of the municipality when enforcing of environmental provisions.⁴³

k. Cease and Desist Orders

The DEP has authority to issue written cease and desist orders to discontinue, abate, or alleviate violations.⁴⁴ Cease and desist orders are binding upon the person against whom it is issued as well as their agents and independent contractors. Those aggrieved by such orders have

⁴⁰ CONN. GEN. STAT. ANN. § 22a-6s(a) (1995 & Supp. 2002).

⁴¹ CONN. GEN. STAT. ANN. § 22a-6s(b-c) (1995 & Supp. 2002).

⁴² CONN. GEN. STAT. ANN. § 22a-6u (1995 & Supp. 2002).

⁴³ CONN. GEN. STAT. ANN. § 22a-6w (1995 & Supp. 2002).

⁴⁴ CONN. GEN. STAT. ANN. § 22a-7(a) (1995 & Supp. 2002).

an opportunity to be heard provided a request for a hearing is filed with the DEP within ten days of the receipt of the order. Upon request of the DEP, the attorney general institutes an action in the superior court to enjoin any person from violating a DEP order.⁴⁵ The court may require the posting of a surety bond in an appeal from a final DEP decision if probable cause exists to believe that a violation exists. In setting the bond amount, the court must consider the cost of compliance with the DEP decision and the potential harm to the public for noncompliance.⁴⁶ Upon compliance of a DEP order to correct or abate a polluted or environmentally hazardous condition that was recorded on the land records in the town where land records are located, the DEP issues a certificate of compliance to be recorded so that the land may be released.⁴⁷

1. Annual Environmental Plans

The DEP formulates a statewide environmental plan for the management and protection of the quality of the environment and the natural resources of the state and reviews it annually. The plan establishes goals and objectives and describes strategies for their achievement. An advisory board assists the DEP in preparing and revising the annual statewide plans. The advisory board represents the interests of municipalities, environmental groups, business and industry, education, and the public.⁴⁸ Reports that address the achievement of the goals and objectives are provided at an annual conference.

2. Connecticut Environmental Quality Council

Connecticut environmental statutes establish a Council on Environmental Quality (CEQ). The CEQ consists of nine members, five appointed by the governor and four appointed by the legislature.⁴⁹ The CEQ compiles an annual report to the governor regarding:

- Status of the natural resources in the state;
- Current and foreseeable trends;
- Adequacy of available natural resources as to achievable management under population demands and health requirements;
- Evaluation of the effects of all DEP programs;

⁴⁵ CONN. GEN. STAT. ANN. § 22a-7(c) (1995 & Supp. 2002).

⁴⁶ CONN. GEN. STAT. ANN. § 22a-7a (1995).

⁴⁷ CONN. GEN. STAT. ANN. § 22a-7b (1995).

⁴⁸ CONN. GEN. STAT. ANN. § 22a-8 (1995).

⁴⁹ Two appointed by the speaker of the house of representatives and two appointed by the president pro tempore of the senate.

- Ways to address remaining environmental concerns; and
- Progress toward stated DEP goals and objectives.⁵⁰

The CEQ also has authority to receive and investigate citizen complaints on environmental concerns, forward complaints to the appropriate state agency, or initiate a hearing before DEP.⁵¹

3. *Connecticut Environmental Protection Act*

Connecticut's Environmental Protection Act (CEPA)⁵² reinforces the state's policy on environmental or natural resources in that it declares it is in the public's interest to protect the air, water, and other natural resources from unreasonable pollution.⁵³ The statutes allow citizens or any other legal entity in addition to the attorney general to bring court actions for declaratory and equitable relief in superior court against defendants, including the state, for unreasonable acts causing or resulting in pollution in the state's natural resources.⁵⁴

The CEPA also allows civil or criminal penalties for violations beyond monetary fines, e.g., restoration of natural resources, remediation or mitigation of any environmental pollution, augmentation of other projects that enhance the protection or conservation of natural resources, contributions to environmental research or the Special Contaminated Property Remediation and Insurance Fund.⁵⁵ The CEPA allows litigation on environmental matters to be brought before the court.⁵⁶

a. *Environmental Quality Fund*

Connecticut has a fund known as the Environmental Quality Fund. The fund is capitalized with CEPA fees for environmental related permits, licensing, registrations, and

⁵⁰ CONN. GEN. STAT. ANN. § 22a-12(a) (1995).

⁵¹ CONN. GEN. STAT. ANN. § 22a-13 (1995).

⁵² CONN. GEN. STAT. ANN. § 22a-14 to 20 (1995).

⁵³ CONN. GEN. STAT. ANN. § 22a-15 (1995).

⁵⁴ Except that if the action is against the state, it must be brought in the judicial district of Hartford-New Britain, and it may not be brought for pollution on property acquired by the state after the pollution occurred; *see* CONN. GEN. STAT. ANN. § 22a-16 (1995).

⁵⁵ CONN. GEN. STAT. ANN. § 22a-16a (1995).

⁵⁶ The court may appoint a master or referee who can take testimony and make a report to the court on such matters. Costs for the appointment of the master or referee may be apportioned to the parties if justice requires it; *see* CONN. GEN. STAT. ANN. § 22a-17 (1995).

certifications. The environmental quality account within the fund is used by CEPA to administer environmental quality programs authorized by the general statutes.⁵⁷

b. Conservation Fund

Connecticut also has a fund known as Conservation Fund. The fund is capitalized with CEPA new fees and increased fees for environmental related permits, licensing, registrations, and certifications. The conservation account within the fund is used by CEPA to administer conservation and preservation programs authorized by the general statutes.⁵⁸

c. Other Fees and Funds

Monies derived from the rental fees of CEPA controlled property are targeted for maintenance, repair, and improvement in conservation and preservation⁵⁹ programs. The state also designates the collection of certain fees to fund:

- Environmental review teams of the bureau of water management within DEP, the Council on Soil and Water Conservation, and the eight county soil and water conservation districts within the state;
- Endangered species, natural area preserves, and watchable wildlife;
- Administration of Title V of the federal CAA; and
- Reimbursement to the Department of Motor Vehicles for the cost of producing, issuing, renewing, and replacing greenways plus commemorative number plates and the administration of that program.⁶⁰

⁵⁷ CONN. GEN. STAT. ANN. § 22a-27g (1995).

⁵⁸ CONN. GEN. STAT. ANN. § 22a-27h (1995).

⁵⁹ CONN. GEN. STAT. ANN. § 22a-27h(c) (1995).

⁶⁰ 42 U.S.C. § 7401 *et seq.* (1994). CONN. GEN. STAT. ANN. § 22a-27(h, o) (1995).

B. Connecticut Wetland Laws

1. Connecticut Wetland Policy

In Connecticut, the state policy on wetlands⁶¹ sets forth that:

- Much of the former wetlands of the state has been lost or despoiled by unregulated dredging, dumping, filling, and similar activities;
- Remaining wetlands are in jeopardy of being lost or despoiled; and
- Loss or despoilation of wetlands:
 - Adversely affects the overall source of nutrients to finfish, crustacea, and shellfish which, in turn, have significant economic value;
 - Destroys habitat for plants and animals of significant economic value which substantially reduces or eliminates marine commerce, recreation, and aesthetic enjoyment;
 - Disturbs the natural ability of tidal wetlands to reduce flood damage;
 - Adversely affects the public health and welfare; and
 - Substantially reduces the capacity of channels and harbor areas to the detriment of free navigation.⁶²

a. Entry Authority

The DEP is authorized to adopt regulations in accordance with the wetland and watercourse statutes in order to carry out its duties and responsibilities.⁶³ DEP representatives have authority to enter upon any property at reasonable times to carry out statutory wetland and watercourse provisions including to establish and inventory all tidal wetlands within the state for

⁶¹ The term "wetland" means those areas which border on or lie beneath tidal waters, such as, but not limited to banks, bogs, salt marsh, swamps, meadows, flats, or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters, and whose surface is at or below an elevation of one foot above local extreme high water; and upon which may grow or be capable of growing numerous but specifically named plants and grasses; *see* CONN. GEN. STAT. ANN. § 22a-29(2) (1995). The term "person" means any corporation, limited liability company, association or partnership, one or more individuals, and any unit of government or agency; *see* CONN. GEN. STAT. ANN. § 22a-29(4) (1995).

⁶² CONN. GEN. STAT. ANN. § 22a-28 (1995).

⁶³ CONN. GEN. STAT. ANN. § 22a-45(e) (1995).

preparing maps for the entire state.⁶⁴ The DEP provides written notice to all landowners having wetlands located on the landowner's property. The DEP agent or representative may also periodically inspect the wetlands of the state to determine the necessity for revision or correction of such tidal wetlands boundary maps.

The DEP also holds public hearings to hear comments regarding the existence or classification of the identified wetlands. Public notice by newspaper publication is required thirty (30) days prior to the hearing date. Any person aggrieved by a DEP order regarding wetlands may lodge an appeal in the judicial district of New Britain. Mapped or not, certain regulated activities are subject to wetland and watercourse provisions. Regulated activities are prohibited upon any wetland without a permit.⁶⁵ Wetland and watercourse provisions provide criteria for granting, denying, or limiting permits giving due regard to:

- The impacts of regulated activities⁶⁶ on the wetlands of the state;
- Adjoining coastal and tidal resources, navigation, recreation, erosion, sedimentation, water quality, circulation, fisheries, shellfisheries, wildlife, flooding, and other natural disasters; and
- Water-dependent use opportunities as well as informational material describing general categories of regulated activities.⁶⁷

b. Permit Applications

An application to the DEP to conduct regulated activities within or upon a wetland must provide:

- Detailed description of the proposed work and a map showing the the location of the proposed work and the area of wetland directly affected; and

⁶⁴ The boundaries of these wetlands must be shown on aerial photographs such that they represent a class D survey. Such lines shall generally define the areas that are at or below an elevation of one foot above local extreme high water; *see* CONN. GEN. STAT. ANN. § 22a-30 (1995 & Supp. 2002).

⁶⁵ Wetland permits for regulated activities must be obtained prior to conducting any activities; *see* CONN. GEN. STAT. ANN. § 22a-32 (1995 & Supp. 2002).

⁶⁶ The term "regulated activity" means any of the following: draining, dredging, excavation, or removal of soil, mud, sand, gravel, aggregate of any kind or rubbish from any wetland or the dumping, filling or depositing any soil, stones, sand, gravel, mud, aggregate of any kind, rubbish or similar material, either directly or otherwise, and the erection of structures, driving of pilings, or placing of obstructions, whether or not changing the tidal ebb and flow. It does not include activities conducted by the CEPA or under CEPA authority for the purposes of mosquito control, CEPA conservation activities, the construction or maintenance of aids to navigation which are authorized by governmental authority, and the emergency decrees of any duly appointed health officer of a municipality acting to protect the public health; *see* CONN. GEN. STAT. ANN. § 22a-29(3) (1995 & Supp. 2002).

⁶⁷ CONN. GEN. STAT. ANN. § 22a-30 (1995 & Supp. 2002).

- Names of the owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland.⁶⁸

The DEP provides a copy of wetland permit applications to:

- The chief administrative officer in the town or towns where the proposed work is located and
- The chairman of the conservation commission and shellfish commission of the town or towns where the proposed work is located.⁶⁹

Within sixty (60) days after the receipt of an application, the DEP determines whether or not the proposed regulated activity for which a permit is sought is likely to have a significant impact on the wetland.

c. Hearings

Public hearings may be held for all activities, but hearings for nonsignificant impacts may be waived by the CEPA after notice is published in a newspaper having general circulation in each town wherever the proposed work or any part of the work is located.

The CEPA must hold a hearing on an application if a petition on the matter is presented that has been signed by at least twenty-five persons. Adjacent landowners and claimants to water rights in or adjacent to the wetland area at issue must receive written notice and a copy of the wetland permit application fifteen (15) days in advance of a scheduled hearing.

Tentative DEP decisions regarding the permit application are published at least once not more than thirty days and not fewer than ten days before the date set for the hearing in a newspaper having a general circulation in each town where the proposed work or any part of the work is located. All applications and maps and documents relating to the wetland areas are open for public inspection at the DEP office. Any person or persons may appear and be heard at wetland permit hearings.⁷⁰ In granting, denying, or limiting a wetland permit the DEP must consider the effect of the proposed work with reference to public health and welfare, marine fisheries, shellfisheries, wildlife, the protection of life and property from flood, hurricane, and other natural disasters as well as public policy on wetlands and watercourses. If DEP is in the process of acquisition of any tidal wetlands by negotiation or condemnation, it is a sufficient basis for denial of any permit. In granting a permit the commissioner may limit or impose conditions or limitations designed to carry out the wetland public policy. The DEP has

⁶⁸ CONN. GEN. STAT. ANN. § 22a-32 (1995).

⁶⁹ CONN. GEN. STAT. ANN. § 22a-32 (1995).

⁷⁰ CONN. GEN. STAT. ANN. § 22a-32 (1995).

authority to require a surety bond with any amount it feels necessary to secure compliance with the conditions and limitations set forth in an issued permit. The DEP may suspend or revoke a permit if it finds that the applicant has not complied with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the applicant's application. The permit may be suspended if the applicant fails to comply with the terms and conditions.⁷¹

d. Appeals

An appeal of the DEP decision may be lodged in the superior court for the judicial district of New Britain by the applicant or any person or corporation, municipal corporation, or interested community group other than the applicant who has been aggrieved by a DEP order regarding the denial, suspension, or revocation of a permit or the issuance of a permit or conditional permit provided the appeal is lodged within thirty (30) days after publication of the decision.⁷²

e. Violations

Wetland violations conducted with knowledge that the activity is prohibited subject the violator to increased penalties. Penalties may include:

- Cost of restoration of the affected wetland to its condition prior to the violation;
- Fines up to one thousand dollars (\$1,000.00) for each violation and each day of violation.⁷³

The Superior Court has jurisdiction to restrain a continuing violation or if the court finds that the action appealed from is an unreasonable exercise of the police power, it may set aside the order and order damages for the defendant.⁷⁴

f. Restoration and Enhancement

A long-term assignment for the DEP is wetland restoration and enhancement projects, including management of open water marshes, coastal culverts, and tide gates. The purpose of these projects is to restore tidal wetland values using methods consistent with wetland, watercourse, and coastal environmental provisions:

⁷¹ CONN. GEN. STAT. ANN. § 22a-33 (1995).

⁷² CONN. GEN. STAT. ANN. § 22a-34 (1995 & Supp. 2002).

⁷³ CONN. GEN. STAT. ANN. § 22a-35 (1995).

⁷⁴ CONN. GEN. STAT. ANN. § 22a-35 (1995).

- To maximize successful recolonization of tidal wetland vegetation; and
- To maximize long-term control of mosquitoes, mosquito larvae, and mosquito habitats.⁷⁵

g. Wetlands and Watercourses

Many inland wetlands and watercourses have been destroyed or are in danger of destruction because of unregulated use by deposition, filling or removal of material, the diversion or obstruction of water flow, the erection of structures and other uses. Unregulated activity has a significant, adverse impact on the environment and its ecology. Unregulated activities imperil the quality of the environment and adversely affect the ecological, scenic, historic and recreational values and benefits of the state. The preservation and protection of the wetlands and watercourses from random, unnecessary, undesirable, and unregulated uses, disturbances, or destruction is in the public interest and is essential to the health, welfare and safety of Connecticut's citizens. The inland wetlands and watercourses of the state of Connecticut are indispensable, irreplaceable, and fragile natural resources and are interrelated and essential to:

- An adequate supply of surface and underground water;
- Hydrological stability and control of flooding and erosion;
- Recharging and purification of groundwater; and
- Existence of many forms of animal, aquatic, and plant life.⁷⁶

The purpose of wetland and watercourse provisions is to protect the citizens by:

- Making provisions for the protection, preservation, maintenance, and use of inland wetlands and watercourses;
- Minimizing their disturbance and pollution;
- Maintaining and improving water quality in accordance with the highest standards set by federal, state, or local authority;
- Preventing damage from erosion, turbidity, or siltation; preventing loss of fish and other beneficial aquatic organisms, wildlife, and vegetation and the destruction of the natural habitats;

⁷⁵ CONN. GEN. STAT. ANN. § 22a-35a (1995 & Supp. 2002).

⁷⁶ CONN. GEN. STAT. ANN. § 22a-36 (1995).

- Deterring and inhibiting the danger of flood and pollution;
- Protecting the quality of wetlands and watercourses for their conservation, economic, aesthetic, recreational, and other public and private uses and values; and
- Protecting the state's potable fresh water supplies from the dangers of drought, overdraft, pollution, misuse, and mismanagement by providing an orderly process to balance the need for the economic growth of the state and the use of its land with the need to protect its environment and ecology in order to guarantee the continued existence of natural resources for the benefit and enjoyment of the state's citizens.⁷⁷

h. Regulated Uses under the Wetlands and Watercourses Act

The Connecticut Wetlands and Watercourses Act⁷⁸ sets forth the operations and uses that are allowed in wetlands and watercourses including:

- Grazing, farming, gardening, and harvesting of crops and farm ponds of three acres or less provided the area is essential to the farming operation and nurseries, and activities conducted under the authority of the DEP for wetland or watercourse restoration, enhancement, or mosquito control;⁷⁹
- Boat anchorage or mooring;⁸⁰
- Uses incidental to the enjoyment and maintenance of residential property;⁸¹
- Construction and operation of water companies by municipal water supply systems for public water supplies;⁸²

⁷⁷ CONN. GEN. STAT. ANN. § 22a-36 (1995).

⁷⁸ CONN. GEN. STAT. ANN. § 22a-36 to 45 (1995 & Supp. 2002).

⁷⁹ CONN. GEN. STAT. ANN. § 22a-40(a)(1) (1995 & Supp. 2002).

⁸⁰ CONN. GEN. STAT. ANN. § 22a-40(a)(3) (1995 & Supp. 2002).

⁸¹ CONN. GEN. STAT. ANN. § 22a-40(a)(4) (1995 & Supp. 2002).

⁸² CONN. GEN. STAT. ANN. § 22a-40(a)(5) (1995 & Supp. 2002).

- Maintenance relating to any drainage pipe in existence before prohibited by municipal ordinances adopted after July 1, 1974 provided the drainage pipe property is residential and does not contain hydrophytic vegetation.⁸³

i. Non-Regulated Uses

The following operations and uses are permitted as nonregulated uses in wetlands and watercourses provided they do not disturb the natural and indigenous character of the wetland or watercourse through removal or deposition of material, alteration, or obstruction of water flow or pollution of the wetland or watercourse:

- Conservation of soil, vegetation, water, fish, shellfish and wildlife;
- Outdoor recreation areas for organized sports as well as golf courses; and
- Field trials, nature study, hiking, horseback riding, swimming, skin diving, camping, boating, water skiing, trapping, hunting, fishing and shellfishing if not prohibited otherwise.⁸⁴

j. Prohibited Uses

Operations and uses that are specifically not allowed include:

- Road construction or the erection of buildings not directly related to a farming operation;
- Relocation of watercourses with continual flow;
- Filling or reclamation of wetlands or watercourses with continual flow;
- Clear cutting of timber except for the expansion of agricultural crop land; and
- Mining of top soil, peat, sand, gravel, or similar material from wetlands or watercourses for the purposes of sale.⁸⁵

⁸³ The term "maintenance" means the removal of accumulated leaves, soil, and other debris whether by hand or machine while the pipe remains in place; *see* CONN. GEN. STAT. ANN. § 22a-40(a)(6) (1995 & Supp. 2002).

⁸⁴ CONN. GEN. STAT. ANN. § 22a-40(b) (1995 & Supp. 2002). Any dredging or any erection, placement, retention, or maintenance of any structure, fill, obstruction, or encroachment or any work incidental to such activities that is conducted by a state agency which is otherwise regulated does not require any permit; *see* CONN. GEN. STAT. ANN. § 22a-40(c) (1995 & Supp. 2002).

⁸⁵ CONN. GEN. STAT. ANN. § 22a-40(a)(1) (1995 & Supp. 2002).

Furthermore, residential homes for which a building permit has not been issued before July 1, 1987 are not allowed.⁸⁶

k. Considerations

In matters relating to the regulation, licensing, and enforcement of wetland and watercourse provisions, the DEP must take into consideration all relevant facts and circumstances including but not limited to:

- Environmental impact of the proposed regulated activity on wetlands or watercourses;
- Applicant's purpose for the proposed regulated activity and any feasible and prudent alternatives which would cause less environmental impact to wetlands or watercourses;
- Relationship between the short-term and long-term impacts of the proposed regulated activity on wetlands or watercourses and the maintenance and enhancement of long-term productivity of such wetlands or watercourses;
- Irreversible and irretrievable loss of wetland or watercourse resources which would be caused by the proposed regulated activity including the extent to which such activity would foreclose a future ability to protect, enhance, or restore such resources, and any mitigation measures which may be considered as a condition of issuing a permit for such activity including measures to:
 - Prevent or minimize pollution or other environmental damage;
 - Maintain or enhance existing environmental quality; or
 - In order of priority, 1) restore, 2) enhance, and 3) create productive wetland or watercourse resources;
- Character and degree of injury or interference to safety, health, or the reasonable use of property which is caused or threatened by the proposed regulated activity; and
- Impacts of the proposed regulated activity on wetlands or watercourses outside the area where the proposed activity is to be conducted that may inevitable be impacted.⁸⁷

⁸⁶ CONN. GEN. STAT. ANN. § 22a-40(a)(2) (1995 & Supp. 2002).

⁸⁷ CONN. GEN. STAT. ANN. § 22a-41(a) (1995).

When an wetland permit application receives the proper public hearing but the DEP does not determine that a finding of no significant impact (FONSI) exists and that the proposed activity may have a significant impact on wetlands or watercourses, a permit must not be issued unless the DEP finds on the basis of the record that a feasible and prudent alternative to the proposed use or activity does not exist. In making its finding, the DEP must consider the facts and circumstances set forth in the above two paragraphs. In these cases, the findings and the reasons must be stated on the record in writing.⁸⁸ When an application is denied on the basis of a finding that there may be feasible and prudent alternatives which have less adverse impact on wetlands or watercourses than the proposed regulated activity, the DEP must provide in writing and on the record the types of alternatives which the applicant may investigate. The applicant does not have to present alternatives to the proposed regulated or prove entitlement to the permit.⁸⁹

l. Municipal Regulation

In Connecticut, wetlands and watercourses that are located within the territorial limits of the municipality are required to be regulated by the municipality.⁹⁰ The mandated regulation by municipalities includes responsibility to establish the boundaries of inland wetland and watercourse areas.⁹¹ The DEP, however, has the power to revoke a municipality's authority to regulate inland wetlands if, over a period of time, the municipality consistently fails to perform its required duties regarding wetland regulation.⁹²

m. Water Company Notice

Whenever an wetland permit applicant's application is filed and the proposed regulated activity will occur within the watershed of a water company, the applicant must provide written notice by certified mail, return receipt requested, within seven (7) days of the date of submission of the application for a wetland permit to the water company provided that the water company has filed a map showing the boundaries to include the affected area.⁹³

⁸⁸ CONN. GEN. STAT. ANN. § 22a-40(b)(1) (1995).

⁸⁹ CONN. GEN. STAT. ANN. § 22a-40(b)(2) (1995).

⁹⁰ CONN. GEN. STAT. ANN. § 22a-42(a) (1995).

⁹¹ CONN. GEN. STAT. ANN. § 22a-42a (1995).

⁹² CONN. GEN. STAT. ANN. § 22a-42d (1995).

⁹³ CONN. GEN. STAT. ANN. § 22a-42f (1995).

n. Appeals

Any person aggrieved by any DEP regulation, order, decision or action regarding wetlands and watercourses, including any person owning or occupying land which abuts any portion of land or is within a radius of ninety (90) feet of the wetland or watercourse at issue including DEP itself or a district or municipality, may appeal to a superior court for the judicial district where the land affected is located. Appeals from the superior court decision may be heard by the Appellate Court after proper certification.⁹⁴

o. Violations and Hearings

Violations of wetland and watercourse provisions, related regulations, orders, or permits result in penalties. The DEP provides notice of violation by sending its order to cease and desist by certified mail. Within ten (10) days of issuance of the notice, the DEP must hold a hearing to allow the alleged violator an opportunity to be heard and show cause why the order should not remain in effect. The DEP must consider the facts presented at the hearing and within ten days of the completion of the hearing notify the person by certified mail either that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The original order is effective upon issuance and remains in effect until the agency affirms, revises or withdraws the order. The issuance of this order does not delay or bar another DEP actions. The DEP may file a certificate of this order in the office of the town clerk of the town where the land is located in order to record the certificate on the land records. After its recording, the certificate may only be released upon a DEP compliance order.

p. Orders

The DEP has authority to issue cease and desist orders for any wetland and watercourse violation if the municipality in which such activity, facility, or condition is located has failed to enforce DEP inland wetlands regulations.

q. Penalties

Any person who commits, takes part, or assists in wetland and watercourse violation is subject to a civil penalty up to one thousand dollars (\$1,000.00) for each offense and each day of violation in Superior Court. The court may also issue orders directing that the violation be corrected or removed and assess all costs, fees, and expenses in connection with the court action as well as assessed damages against the violator together with reasonable attorney's fees for the DEP, municipality, district, or person which brought such action.⁹⁵

⁹⁴ CONN. GEN. STAT. ANN. § 22a-43 (1995 & Supp. 2002).

⁹⁵ All penalties collected pursuant to this section shall be used to restore the affected wetlands or watercourses to their condition prior to the violation, wherever possible, (2) to restore other degraded wetlands or watercourses, (3) to inventory or index wetlands and watercourses of the state, or (4) to implement a comprehensive training program on

Penalties for willful or knowing violations are increased to include imprisonment. The penalty may consist of a fine up to one thousand dollars (\$1,000.00) for each of violation or imprisonment up to six (6) months or both. Subsequent violations impose fines up to two thousand dollars (\$2,000.00) for each day of violation or imprisonment up to one (1) year or both.⁹⁶

r. General Permits

The DEP may issue a general permit for any minor activity regulated wetland and watercourse provisions⁹⁷ if the activity would only cause minimal environmental effects when conducted separately and would cause only minimal environmental effects cumulatively. Such activities may include:

- Routine minor maintenance and routine minor repair of existing structures;
- Replacement of existing culverts;
- Installation of water monitoring equipment including staff gauges, water recorders, and water quality testing devices;
- Survey activities including excavation of test pits and core sampling;
- Maintenance of existing roadway sight lines;
- Removal of sedimentation and unauthorized solid waste by hand or suction equipment;
- Placement of erosion and sedimentation controls;
- Extension of existing culverts and stormwater outfall pipes; and
- Safety improvements with minimal environmental impacts within existing rights-of-way of existing roadways.⁹⁸

inland wetlands for DEP; *see* CONN. GEN. STAT. ANN. § 22a-44(a) (1995 & Supp. 2002).

⁹⁶ CONN. GEN. STAT. ANN. § 22a-44(b - c) (1995 & Supp. 2002).

⁹⁷ Except for any activity covered by an individual NPDES permit when the activity is conducted by an instrumentality of the state or except a regional or local board of education conducting an activity for which a general permit has been issued.

⁹⁸ CONN. GEN. STAT. ANN. § 22a-45 (1995).

General permits must clearly define the activity covered and may include such conditions and requirements as the DEP deems appropriate including management practices, verification requirements, and reporting requirements. The DEP prepares an annual list of general permit holders that it makes available to the public.

The DEP may issue, revoke, suspend, or modify a general permit. The procedural steps in issuing a permit are as follows:

- Publication of a notice of the DEP intent to issue a general permit in a newspaper with substantial circulation in the affected area or areas;
- Acceptance of comments during a thirty day period following the notice publication during which interested persons may submit written comments concerning the intended permit issuance;
- Scheduling and holding a public hearing when a petition signed by at least twenty-five persons is received in opposition to the permit issuance;
- Issuance of the general permit after the comment period unless the DEP elects not to issue the permit; and
- Notice publication of the permit issued in a newspaper having substantial circulation in the affected area or areas.⁹⁹

Subsequent to the issuance of a general permit, the DEP may also require any instrumentality of the state to apply for an individual NPDES permit for all or any portion of the activities covered by the general permit, if the DEP determines the purposes and policies of wetland and watercourse sections would be best served by doing so, however, the DEP must notify the instrumentality in writing that an individual permit is required. The notice sent to the instrumentality must include a brief statement of the reasons for the decision and a statement that the general permit as it applies to the individual activity terminated on the issue date of the notification.¹⁰⁰ Any person may request that the DEP issue, modify, or revoke a general permit.

Any owner of wetlands and watercourses who is denied a license in connection with a regulated activity affecting wetlands and watercourses is entitled to a revaluation of the property to reflect the fair market value of it with respect to the restriction placed upon it by the denial of the license or permit provided written application is made to the assessor of the municipality.¹⁰¹

⁹⁹ CONN. GEN. STAT. ANN. § 22a-45a(a - b) (1995).

¹⁰⁰ CONN. GEN. STAT. ANN. § 22a-45a(c) (1995).

¹⁰¹ CONN. GEN. STAT. ANN. § 22a-45 (1995).

s. *Connecticut Mosquito Control*

The DEP is authorized to adopt regulations and issue orders concerning the elimination of mosquitoes and mosquito-breeding places. The DEP or its agents may enter upon any land, tidal wetland, and inland wetland or watercourse to ascertain if mosquitoes breed there or to survey, drain, fill, or treat the area or to make any excavation or structure necessary to eliminate mosquito breeding on the land.¹⁰² When funds have been provided by appropriation by the state for the elimination of mosquitoes or mosquito-breeding places, the DEP may perform or cause the performance of such work except filling, draining, excavation, installation, or erection of any structure or any other permanent alteration of private property may not be conducted without the consent of the landowner. The DEP may take, hold, purchase, condemn, or otherwise control any real property or interest in real property as it determines is necessary to abate a threat of disease to humans or animals from insect vectors. Whenever the DEP is unable to agree with the owner of any property as to the compensation to be paid for the taking of the property, the DEP may initiate condemnation proceedings.¹⁰³ The DEP is authorized to keep and maintain any lands drained under its authority in a drained condition.¹⁰⁴ Any person who obstructs the work of examining, surveying or ditching or otherwise treating mosquito-breeding areas, or obstructing any ditch, canal, drain, or natural outlet of any marsh-forming and mosquito-breeding areas may be fined up to one hundred dollars (\$100.00) or imprisoned up to ninety (90) days or both.¹⁰⁵ In an emergency situation, the DEP in conjunction with Public Health (PH) may establish a contingency plan for the spraying of larvicide to control mosquitoes when an outbreak of infectious disease in any human or animal population occurs due to mosquito infestation.¹⁰⁶

I. **WATER QUALITY**

Producer Note: In order for agricultural producers to maintain compliance with water quality legislation, they must be aware of not only federal water quality standards, NPDES permit requirements, wetland permits, and oil spill liability issues but also state water quality standards, state permit requirements, state and local nonpoint source pollution programs, and state environmental liability issues but also whether there are any waters requiring special protection in their area. The states take active roles in ensuring that agricultural producers comply with environmental requirements.

¹⁰² CONN. GEN. STAT. ANN. § 22a-45b (1995 & Supp. 2002).

¹⁰³ CONN. GEN. STAT. ANN. § 22a-45b (1995 & Supp. 2002).

¹⁰⁴ CONN. GEN. STAT. ANN. § 22a-45c (1995).

¹⁰⁵ CONN. GEN. STAT. ANN. § 22a-45c (1995).

¹⁰⁶ CONN. GEN. STAT. ANN. § 22a-45d (1995).

A. Connecticut Water Pollution Control Laws

Pollution of the waters of the state is prohibited. Any discharge of any treated or untreated wastes in violation of water quality statutes and related regulations is also prohibited.¹⁰⁷

The term "waters" means all tidal waters, harbors, estuaries, rivers, brooks, watercourses, waterways, wells, springs, lakes, ponds, marshes, drainage systems, and all other surface or underground streams, bodies, or accumulations of water, natural or artificial, or public or private which are contained within or flow through or border upon Connecticut or any portion of the state. The term "pollution" means harmful thermal effect¹⁰⁸ or the contamination or rendering unclean or impure¹⁰⁹ or prejudicial to public health of any waters of the state by reason of any wastes or other material discharged or deposited by any public or private sewer or otherwise so as directly or indirectly to come in contact with any waters.

The DEP must establish and adopt regulations in accordance with the water pollution control statutes and establish procedures, criteria, and standards that are appropriate for determining if a discharge:

- Would cause pollution to the waters of the state; and
- Any treatment system employed for the discharge is adequate to protect the waters of the state from pollution.

Furthermore, the DEP must adopt regulations for its procedures, criteria, and standards that it uses which may include schedules of activities, prohibitions of practices, operating, and maintenance procedures, management practices, and other measures to prevent or reduce pollution of the waters of the state. In adopting such procedures, criteria, and standards the DEP must consider best management practices.¹¹⁰ The regulations must specify the circumstances

¹⁰⁷ CONN. GEN. STAT. ANN. § 22a-427 (1995).

¹⁰⁸ The term "harmful thermal effect" means any significant change in the temperature of any waters resulting from a discharge of magnitude of which temperature change does or is likely to render such waters harmful, detrimental, or injurious to public health, safety, or welfare or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses or to livestock, wild animals, birds, fish, or other aquatic life; *see* CONN. GEN. STAT. ANN. § 22a-423 (1995 & Supp. 2002).

¹⁰⁹ The term "rendering unclean or impure" means any alteration of the physical, chemical, or biological properties of any of the waters of the state including change in odor, color, turbidity, or taste; *see* CONN. GEN. STAT. ANN. § 22a-423 (1995 & Supp. 2002).

¹¹⁰ The term "best management practices" means those practices which reduce the discharge of waste into the waters of the state and which have been determined by the DEP to be acceptable based on technical, economic, and institutional feasibility; *see* CONN. GEN. STAT. ANN. § 22a-430(b) (1995 & Supp. 2002).

under which procedures, criteria, and standards for activities other than treatment will be required.

1. Connecticut Water Pollution of Waterways

a. Disposal Systems

The DEP has the responsibility of examining all existing or proposed disposal systems, and compelling their operation in a manner which conserves and protects the natural resources and environment of Connecticut as well as protects the public health, safety, and welfare.¹¹¹ Disposal systems must not be built or operated until the construction plan or design and the method of its operation is filed with the DEP and approved. No such system or facility may be extended or replaced until the plan for the change is approved. However, this prohibition does not apply to disposal systems of municipalities treating a discharge for which a permit has been issued under other statutes.¹¹²

CEPA disposal system regulations may include provisions for:

- Minimum design and construction requirements;
- Retention by DEP of authority for certain types of facilities or environmentally sensitive areas; and
- Identity of municipalities and regional sewer authorities¹¹³ having delegated DEP authority.¹¹⁴

¹¹¹ CONN. GEN. STAT. ANN. § 22a-416(a) (1995 & Supp. 2002).

¹¹² In those situations, municipalities or regional sewer authorities may be delegated the authority of DEP to review and approve plans and specifications for the design and construction of sanitary sewers.

¹¹³ The terms "class I", "class II", "class III" and "class IV" mean the classifications of wastewater treatment plants provided for in DEP regulations. The DEP may establish requirements for the presence of approved operators at pollution abatement facilities although applicants for class I and class II certificates must only be required to pass the relevant standardized national examination prepared by the Association of Boards of Certification for Wastewater Treatment Facility Operators. Applicants for class III and class IV certificates are only required to pass the relevant standardized national examination prepared by the Association of Boards of Certification for Wastewater Treatment Facility Operators supplemented with additional questions submitted by the DEP. Operators with certificates issued by the commissioner prior to May 16, 1995 are not required to be reexamined. Any applicant for certification who passed either the examination prepared and administered on December 8, 1994 by the DEP or the examination prepared by the Association of Boards of Certification for Wastewater Treatment Facility Operators administered on December 8, 1994 by the DEP may be issued the appropriate certificate; *see* CONN. GEN. STAT. ANN. § 22a-416(d) (1995 & Supp. 2002).

¹¹⁴ CONN. GEN. STAT. ANN. § 22a-416(b - c) (1995 & Supp. 2002).

b. Sewage Discharges

The discharge of any sewage into any waters of the state which are tributary to an existing water supply impoundment or any proposed water supply impoundment identified in the long-range plan for management of water resources is prohibited. Furthermore, discharges of any sewage or any other effluent which is less than tertiary treated into the Salmon River or any of its tributaries is unlawful.¹¹⁵

2. *Connecticut Water Pollution Control Policy*

The Connecticut Legislature declares that:

- Pollution of the waters of the state is contrary to public health and the safety and welfare of the citizens of Connecticut and, thus, is considered a public nuisance;
- Water pollution is harmful to wildlife, fish, and aquatic life, and it impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water; and
- Use of public funds and the granting of tax exemptions for the purpose of controlling and eliminating such pollution is a public use and purpose for which public moneys may be expended and tax exemptions granted.¹¹⁶

3. *Connecticut Water Pollution Powers of DEP*

In addition to other powers it holds, the water pollution control statutes give the DEP the following powers and duties:

- General supervision authority for the administration and enforcement of water pollution statutes;
- Duty to develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;
- Duty to advise, consult, and cooperate with other state agencies, the federal government, other states, interstate agencies, and affected groups, political subdivisions, and industries in furtherance of water pollution control;
- Duty to submit plans for the prevention and control of water pollution and to render reports and accounts to the U.S. Environmental Protection Agency (U.S.

¹¹⁵ CONN. GEN. STAT. ANN. § 22a-417 (1995).

¹¹⁶ CONN. GEN. STAT. ANN. § 22a-422 (1995).

EPA) in order to qualify the state and its municipalities for grants from the United States government;

- Duty to encourage or conduct studies, investigations, research, and demonstrations;
- Duty to collect and disseminate information relating to water pollution and its causes, prevention, control, and abatement;
- Duty to issue, modify, or revoke orders prohibiting or abating pollution of the waters of the state or to require the construction, modification, extension, or alteration of pollution abatement facilities or monitoring systems or adopt other remedial measures as necessary to prevent, control, or abate pollution;
- Duty to hold such hearings as may be required under state water pollution control statutes and the federal law provided the DEP has the power to issue notices by certified mail, administer oaths, take testimony, and subpoena witnesses and evidence;
- Duty to require the submission of plans, specifications, and other necessary data and inspect the construction of pollution abatement facilities and monitor disposal systems in connection with the issuance of permits or other approvals;
- Duty to issue, reissue, continue, revoke, transfer, modify, or deny permits or orders with discretionary decision making for the discharge of any water, substance, or material into the waters of the state or for approval of the installation, modification, or operation of pollution abatement facilities or monitoring systems;
- Duty to require proper maintenance and operation of monitoring and disposal systems;
- Duty to exercise all incidental powers necessary to carry out the purposes of this chapter and the federal CWA:
- Duty to adopt regulations to implement water pollution control statutes and to comply with the federal CWA and the federal Safe Drinking Water Act (SDWA); and
- Upon the receipt of a written complaint by the DPH, the chief executive officer of a municipality, the warden or any of the burgesses of a borough, a committeeman of a fire district, or a local or district director of health to the DEP, the duty to either investigate or order the person who caused or reasonably may be suspected to have caused the pollution and to investigate all points of existing or potential waste discharge which occur and may result in pollution of the waters of the state.¹¹⁷

¹¹⁷ CONN. GEN. STAT. ANN. § 22a-424 (1995 & Supp. 2002).

a. Water Pollution Records

The DEP has authority to require any person or municipality to maintain all records relating to pollution, possible pollution, or the operation of pollution abatement facilities that it determines is necessary to carry out state water pollution control statutes and the federal CWA. The DEP or authorized agent has the authority to access to water pollution control records and examine and copy them including any memoranda pertaining to the records unless the recordkeeper furnishes copies of the records requested.¹¹⁸

b. Water Quality Standards

The DEP must establish and adopt standards of water quality applicable to the various waters or segments of waters of the state according to the federal CWA and for the purposes of:

- Qualifying the state for available federal grants and
- Providing clear and objective public policy statements to improve the water resources of the state;¹¹⁹

Standards of quality must:

- Include interstate waters within the state and other waters within the state as the DEP determines is necessary;
- Protect the public health and welfare and promote the economic development of the state;
- Preserve and enhance the quality of state waters for present and prospective future use for public water supplies, propagation of fish and aquatic life as well as wildlife, recreational purposes, agricultural uses, industrial uses, and other legitimate uses; and
- Correspond to health standards as established by the DPH.¹²⁰

Water pollution control statutes require that DEP conduct a public hearing prior to adopting, amending, or repealing standards of water quality. Notice of hearings must specify the waters for which standards will be adopted, amended, or repealed. The time, date, and place of

¹¹⁸ CONN. GEN. STAT. ANN. § 22a-425(a) (1995).

¹¹⁹ No standard of water quality adopted may encourage or allow any wastes to be discharged into any of the waters of the state without having first received the treatment available and necessary for the elimination of pollution.

¹²⁰ CONN. GEN. STAT. ANN. § 22a-426 (1995).

the hearing is published at least twice in a newspaper having a general circulation in the area affected during the thirty-day period preceding the hearing date. The chief executive officer of each municipality is given notice by DEP via certified mail. Prior to the hearing the DEP must make available to any interested person any information possessed by the DEP as to the waterbody at issue and allow any interested person the opportunity to submit any written material. At the hearing, any person has the right to make a written or oral presentation. A full transcript or recording of each hearing is made and kept in DEP files.¹²¹

Effective dates of water quality standards and regulations are established by the DEP. Additionally, the DEP must monitor the quality of all the waters of the state to demonstrate the results and effectiveness of DEP programs to abate pollution.¹²² Notice of new adoptions, amendments, or repeals are published in the Connecticut Law Journal.¹²³

4. Connecticut New Discharge Permits

Discharges of any water, substance, or material into the waters of the state are unlawful unless the discharge activity is covered with a DEP permit.¹²⁴ Applications for a discharge permit must be submitted on a DEP form, accompanied by a fee, and include information as the DEP may require.¹²⁵

The DEP, at least thirty days before approving or denying a permit application for a discharge, must publish notice once in a newspaper with substantial circulation in the affected area with the name of the applicant; the location, volume, frequency, and nature of the discharge; the DEP's tentative decision on the permit application; and any other additional information the DEP determines is necessary to comply with the federal CWA

There is a comment period following the public notice during which interested persons and municipalities may submit written comments. After the comment period, the DEP makes a final determination either that the discharge would not cause pollution of any of the waters of the state and issues a permit for such discharge or that the discharge would cause pollution of the

¹²¹ CONN. GEN. STAT. ANN. § 22a-426(b) (1995).

¹²² CONN. GEN. STAT. ANN. § 22a-426(d) (1995).

¹²³ CONN. GEN. STAT. ANN. § 22a-426(c) (1995).

¹²⁴ The following types of discharges of process water may not use a general permit but must instead secure an individual permit: timber products processing; electroplating; iron and steel manufacturing; inorganic chemical manufacturing; textile mills; petroleum refining; pulp, paper and paperboard; steam electric power plants; leather tanning and finishing; coil coating including can making; electrical and electronic components; metal finishing; copper forming; aluminum forming; pharmaceuticals and manufacturing; nonferrous metals manufacturing; battery manufacturing; plastics molding and forming; nonferrous metals forming; pesticides; metal molding and casting; organic chemicals, and plastics and synthetic fibers manufacturing; *see* CONN. GEN. STAT. ANN. § 22a-430b (1995).

¹²⁵ CONN. GEN. STAT. ANN. § 22a-430(a) (1995 & Supp. 2002).

waters of the state and deny the application. Applicants that are denied approval receive notification of the denial and DEP reasons for the denial. If the DEP determines other water quality information is required, it may impose additional conditions in order to protect the water quality. If the DEP finds that the proposed system to treat the discharge will protect the waters of the state from pollution, then DEP notifies the applicant of permit approval, and when the applicant has installed a system in full compliance with the approval, the DEP issues a permit for the applicant's discharge. If the proposed system to treat such discharge will not protect the waters of the state, the DEP promptly notifies the applicant that its application is denied and the reasons for the denial.

Discharge permits issued for water pollution control are effective up to five (5) years. Permits must:

- Specify the manner, nature, and volume of discharge;
- Require proper operation and maintenance of any pollution abatement facility;
- Be renewable for periods up to five (5) years if in accordance with procedures and requirements established by the DEP; and
- Be subject to any other requirements and restrictions the DEP determines is necessary to comply fully with state water pollution statutes, the federal CWA and the federal Safe Drinking Water Act.¹²⁶

a. Permit Renewals

An application for a renewal of a permit must be filed with the DEP at least one hundred eighty days before the expiration of such permit. The DEP, at least thirty days before approving or denying an application for renewal of a permit, must publish notice once in a newspaper with a substantial circulation in the area affected that includes:

- Applicant's name;
- Location, volume, frequency, and nature of the discharge;
- Tentative DEP decision on the application; and
- Any additional information the DEP determines is necessary to comply with the federal CWA.¹²⁷

¹²⁶ CONN. GEN. STAT. ANN. § 22a-430(c) (1995 & Supp. 2002).

¹²⁷ CONN. GEN. STAT. ANN. § 22a-430(c) (1995 & Supp. 2002).

b. Comment Periods

A comment period follows the public notice during which interested persons and municipalities may submit written comments. After the comment period, the DEP must make a final determination to:

- Allow continuance of the existing discharge because it would not cause pollution of the waters of the state and, thus, renew the discharge;
- Allow continuance of the existing system to treat the discharge because it would protect the waters of the state from pollution and, thus, renew the discharge permit;
- Not allow the continuance of the existing system to treat the discharge even with modifications because it would not protect the waters of the state from pollution, in which case, prompt notification must be sent to the applicant that the application is denied and the reasons for the denial; or
- Allow the continuance because modification of the existing system or installation of a new system would protect the waters of the state from pollution and, thus, renew the discharge permit.¹²⁸

c. Orders

If the DEP finds that any person or municipality has initiated, created, or originated or is maintaining any discharge into the waters of the state without a permit or in violation of a permit, an order may issue to abate pollution must include a time schedule for the accomplishment of the necessary steps leading to the abatement of such pollution, or the DEP may request that the attorney general bring an action in the superior court for the judicial district of Hartford to enjoin the discharge until the person or municipality receives a discharge permit from the DEP or complies with a DEP permit. Any action brought by the attorney general on these matters has precedence in the order of trial.¹²⁹

¹²⁸ Such renewed permit may include a schedule for the completion of the modification or installation to allow additional time for compliance with the final effluent limitations in the renewed permit provided (I) continuance of the activity producing the discharge is in the public interest; (II) the interim effluent limitations in the renewed permit are no less stringent than the effluent limitations in the previous permit; and (III) the schedule would not be inconsistent with the federal Water Pollution Control Act. No permit may be renewed unless the DEP determines that the treatment system adequately protects the waters of the state from pollution; *see* CONN. GEN. STAT. ANN. § 22a-430(c) (1995 & Supp. 2002).

¹²⁹ CONN. GEN. STAT. ANN. § 22a-430(d) (1995 & Supp. 2002).

d. Discharge Categories

The DEP has authority to establish and define categories of discharges in DEP regulations including the categories such as residential swimming pools, small community sewerage systems, household, small commercial disposal systems,¹³⁰ and clean water discharges. The DEP also has authority to delegate its power to issue permits and other discharge approvals to any other state agency, water pollution control authority, municipal building official or municipal or district director of health.¹³¹

In establishing such categories the DEP must consider:

- Whether the size and character of each discharge in such category is likely to cause significant pollution to the waters of the state;
- Whether DEP or other permit authority possesses knowledge and training concerning disposal systems for the discharge; and
- Whether the source of each discharge in such category is likely to be within the jurisdiction of DEP or the alternate permit authority.

Any permit denied or order issued regarding the permit is subject to a hearing and an appeal.¹³²

The DEP defines discharges which constitute household and small commercial subsurface disposal systems but delegates the permitting and any other necessary discharge approvals of these discharge categories to the DPH. The DPH then in turn establishes minimum requirements for household and small commercial subsurface disposal systems and procedures for the issuance of such permits or approvals by the local director of health or a sanitarian.¹³³ Any permit granted by the DPH or a director of health or registered sanitarian is equivalent to a permit issued by the DEP.

The DEP may issue permits for discharges from solid waste disposal areas and subsurface sewage disposal systems for periods up to thirty (30) years and for other discharges up to ten (10) years as long as the permits are not inconsistent with the federal CWA.

¹³⁰ Small commercial disposal systems includes those subsurface disposal systems with a capacity of five thousand gallons per day or less.

¹³¹ CONN. GEN. STAT. ANN. § 22a-430(e) (1995 & Supp. 2002).

¹³² CONN. GEN. STAT. ANN. § 22a-430(f) (1995 & Supp. 2002).

¹³³ CONN. GEN. STAT. ANN. § 22a-430(g) (1995 & Supp. 2002).

e. General Permits

A general permit may regulate within a geographical area a category of discharges which:

- Involve the same or substantially similar types of operations;
- Involve the same type of wastes;
- Require the same effluent limitations, operating conditions, or standards;
- Require the same or similar monitoring; and
- In the opinion of the DEP are more appropriately controlled under:
 - A general permit;
 - Stormwater discharges; or
 - A category of discharges not requiring a permit under the federal CWA.¹³⁴

f. Individual Permits

The DEP may require an individual permit:

- When the discharger is not in compliance with the conditions in the general permit;
- When a change has occurred in the availability of a demonstrated technology or practice for the control or abatement of pollution applicable to the discharge;
- When effluent limitations and conditions are promulgated by the U.S. EPA or exist outside parameters established by the DEP for discharges covered by the general permit;
- When a water quality management plan containing requirements applicable to such discharges is approved by the U.S. EPA;
- When circumstances have changed since the issuance of the general permit so that the discharger is no longer appropriately controlled under the general permit;

¹³⁴ CONN. GEN. STAT. ANN. § 22a-430b(a) (1995 & Supp. 2002).

- When a temporary or permanent reduction or elimination of the authorized discharge is necessary so that the discharger is no longer appropriately controlled under the general permit;
- When the discharge is a significant contributor of pollution;¹³⁵ or
- When process waterwater discharge sources receive written notice¹³⁶ from the DEP that an individual permit is required because certain requirements are not met.¹³⁷

The DEP compiles a list of all persons or municipalities which are in significant noncompliance and makes it available to the public.¹³⁸

g. Discharge Reviews

The DEP has authority to periodically investigate and review discharge sources operating pursuant to any order, permit, directive, registration, or decision issued by the water resources commission or the DEP. If the DEP determines that there has been any substantial change in the manner, nature, or volume of such discharge which will cause or threaten pollution to any of the waters of the state, or if the DEP finds that the operation or the system treating such discharge no longer insures or adequately protects against pollution, the DEP may issue an order to abate the pollution. The order must include a time schedule for the accomplishment of the necessary steps of abatement. The DEP may also issue an order to the person or municipality responsible for such source of discharge requiring the submission of information describing the manner, nature, and volume of its discharge.¹³⁹

¹³⁵ Provided that in making this determination, the DEP may consider the location of the discharge with respect to waters of the state, the size of the discharge, the quantity and nature of the pollution discharged to waters of the state, cumulative impacts of discharges covered by the general permit and other relevant factors.

¹³⁶ The notice includes a brief statement of the reasons for the DEP decision, an application form, a statement setting forth a time for the person or municipality to file the application, and a statement that on the effective date of the individual permit the general permit as it applies to the individual permittee shall automatically terminate. The DEP may grant additional time upon the request of the applicant. If the affected person or municipality does not submit a complete application for an individual permit within the time frame set forth in the DEP notice or as extended by the DEP in writing, then the general permit as it applies to the affected person or municipality automatically terminates; *see* CONN. GEN. STAT. ANN. § 22a-430b(c) (1995).

¹³⁷ CONN. GEN. STAT. ANN. § 22a-430b(e) (1995).

¹³⁸ CONN. GEN. STAT. ANN. § 22a-430c (1995).

¹³⁹ CONN. GEN. STAT. ANN. § 22a-431 (1995).

h. Orders

If the DEP finds that any person has established a facility or created a condition or is maintaining any facility or condition which reasonably can be expected to create a source of pollution to the waters of the state, the DEP may issue an order to the person to take the necessary steps to correct such potential source of pollution. Any person who receives an order pursuant to this section has the right to a hearing and an appeal. If the DEP determines that the recipient of any such order fails to comply, the DEP may request the attorney general to bring an action in the superior court for the judicial district of Hartford to enjoin the person from maintaining such potential source of pollution to the waters of the state or to take the necessary steps to correct the potential source of pollution. Any action brought by the attorney general pursuant to these statutes has precedence in the order of trials. Although an innocent landowner is not held liable except through the imposition of a lien against the contaminated real estate,¹⁴⁰ mere ownership of real property is sufficient basis for imposing liability under the statute.¹⁴¹

Whenever the DEP issues an order to abate pollution to a person, to correct potential sources of pollution, or to correct a violation of hazardous waste regulations and the DEP finds that the person is not the owner of the land from which such source of pollution or potential source of pollution emanates, the DEP may issue a parallel order to the owner of such land or send a certified copy of the first order, by certified mail, return receipt requested, to the owner at his last known post office address with a notice that the first order will be filed on the land records in the town where the land is located. When the DEP issues such an order to an owner, the owner and the person causing such pollution are jointly and severally liable. The landowner is entitled to receive all DEP notices and orders and has rights to participate in any proceedings, hearings, and appeals. An innocent landowner is not liable except through imposition of a lien against the contaminated real estate for any assessment, fine, or other costs imposed by the state under water pollution statutes in any enforcement or cost recovery action when the legal action becomes final and is no longer subject to appeal.¹⁴²

i. Land Records

When the DEP issues an order to correct potential sources of pollution or to abate pollution, the DEP must file a certified copy of the order on the land records in the town where the land is located. The order constitutes notice to the landowner's heirs, successors, and assigns. When the pollution source attains compliance, the DEP issues a certificate showing that compliance is achieved. The DEP then files a certificate of compliance so that it may be

¹⁴⁰ Under section CONN. GEN. STAT. ANN. § 22a-452a (1995 & Supp. 2002).

¹⁴¹ CONN. GEN. STAT. ANN. § 22a-432 (1995).

¹⁴² CONN. GEN. STAT. ANN. § 22a-433 (1995).

recorded on the land records wherein the noncompliance order was previously recorded. A certified copy of the certificate is sent to the landowner at his last-known post-office address.¹⁴³

The DEP has authority to file a notice upon land records if the land has water from a well that is determined to create unacceptable risks of injury to the health or safety of persons using the water for drinking or other personal or domestic uses. When the water no longer presents a risk or when the local or district director of health, in accordance with the Connecticut Well Drilling Code verifies that the well has been properly abandoned, the DEP must file a notice to that effect on the land records wherein the notice of unacceptable risks of injury was previously recorded.¹⁴⁴

j. Non-Compliance

If any person or municipality fails to comply with any DEP order to abate pollution, fails to request a hearing, and fails to request a timely appeal, the DEP may request the attorney general to bring legal action in the superior court for the judicial district of Hartford to enjoin the pollution and order compliance. Legal actions brought by the attorney general on matters involving water pollution control have precedence in the order of trials.¹⁴⁵

CEP orders to abate pollution are sent by certified mail, return receipt requested, and deemed issued upon their deposit in the mail. Any person aggrieved by an order to abate pollution or a decision denying an application, a NPDES permit, or any DEP decision without a prior hearing may request a hearing before the DEP provided the request is within thirty (30) days from the date of the order or decision sent by the DEP. The DEP has no authority to grant a request for a hearing beyond the thirty (30) day period. The DEP must consider the facts presented including:

- Technological feasibility; and
- Rebuttal or other evidence presented.¹⁴⁶

The DEP then revises or resubmits the order to inform the person whether the previous order has been affirmed and remains in effect. The request for a hearing is necessary in order to request an appeal. After granting and holding a hearing, the DEP may modify an issued order by agreement or extend the preestablished time schedule if the DEP determines that modification or extension is advisable or necessary. The modification or extension of an order is not considered a new

¹⁴³ CONN. GEN. STAT. ANN. § 22a-434 (1995 & Supp. 2002).

¹⁴⁴ CONN. GEN. STAT. ANN. § 22a-434a (1995).

¹⁴⁵ CONN. GEN. STAT. ANN. § 22a-435 (1995).

¹⁴⁶ CONN. GEN. STAT. ANN. § 22a-436 (1995 & Supp. 2002).

order but is deemed to be a revision of an existing order. The request for a hearing cannot be based upon the modification or extension.¹⁴⁷

k. Appeal

Any person who is aggrieved by a DEP decision related to water pollution control other than an order to abate pollution may, after a hearing before the DEP appeal from the final decision based on evidence presented in the hearing to the superior court for the judicial district of Hartford. The appeal has precedence in the order of trials.¹⁴⁸

l. Enforcement

Violators of water pollution control provisions may be fined up to twenty-five thousand dollars (\$25,000.00) for each offense and each day of an offense. Upon a complaint of the DEP, the attorney institutes a civil action in the superior court for the judicial district of Hartford to recover a penalty. In determining the amount of any penalty, the court may consider the nature, circumstances, extent, and gravity of the violation, prior history of violations, the economic benefit resulting from the violation, and any other factors deemed appropriate by the court. A continuing violation does not accrue during the time when a hearing on the abatement order or an appeal is pending.¹⁴⁹

A violation that is committed with criminal negligence may be fined up to twenty-five thousand dollars (\$25,000.00) per day for each day of violation, imprisoned up to one (1) year, or both. Subsequent violations have increased penalties and carry a fine up to fifty thousand dollars (\$50,000.00) per day for each day of violation, imprisonment up to two (2) years, or both.¹⁵⁰ A violation that is committed with knowledge that the acts or activities are prohibited may be fined up to fifty thousand dollars (\$50,000.00) per day for each day of violation, imprisoned up to three (3) years, or both. Subsequent knowing violations carry a fine up to one hundred thousand dollars (\$100,000.00) per day for each day of violation, imprisonment up to ten (10) years, or both.¹⁵¹ Any person who knowingly makes false statements, representations, or certifications in any application, record, report, plan, or other document filed or required to be maintained or who falsifies, tampers with, or knowingly renders any monitoring device or method inaccurate may be fined up to twenty-five thousand dollars (\$25,000.00) for each

¹⁴⁷ CONN. GEN. STAT. ANN. § 22a-436 (1995 & Supp. 2002).

¹⁴⁸ CONN. GEN. STAT. ANN. § 22a-437(a) (1995 & Supp. 2002).

¹⁴⁹ CONN. GEN. STAT. ANN. § 22a-438(a) (1995 & Supp. 2002).

¹⁵⁰ CONN. GEN. STAT. ANN. § 22a-438(b) (1995 & Supp. 2002).

¹⁵¹ CONN. GEN. STAT. ANN. § 22a-438(c) (1995 & Supp. 2002).

violation, imprisoned up to two years (2) for each violation, or both.¹⁵² Any person who wilfully or with criminal negligence discharges gasoline in violation of water pollution control provisions may be fined up to fifty thousand dollars (\$50,000.00) per day for each day of violation, imprisoned up to three (3) years, or both. Subsequent violations carry increased penalties including fines up to one hundred thousand dollars (\$100,000.00) per day for each day of violation, imprisonment up to ten (10) years, or both.¹⁵³

5. *Connecticut Oil Spills*

Whenever there is discharge, spillage, uncontrolled loss, oil seepage, or filtration of petroleum or chemical solid, liquid, or gaseous products, or hazardous wastes¹⁵⁴ upon land into any of the waters of the state or into any offshore or coastal waters which could result in pollution of the waters of the state, damage to beaches, wetlands, stream banks, or coastal areas or damage to sewers or utility conduits or other public or private property which may constitute an emergency, the DEP may contain and remove or otherwise mitigate by whatever method the DEP considers best and most expedient under the circumstances. The DEP has authority to establish programs and adopt regulations as necessary to carry out water pollution control provisions involving oil and petroleum products.¹⁵⁵ The DEP also:

- Determines the person responsible for causing such discharge, spillage, uncontrolled loss, seepage, or filtration and
- Sends notice, in writing, to the chief executive officer of the affected municipality and the local director of health where the discharge event occurs.¹⁵⁶

¹⁵² CONN. GEN. STAT. ANN. § 22a-438(d) (1995 & Supp. 2002).

¹⁵³ CONN. GEN. STAT. ANN. § 22a-438(e) (1995 & Supp. 2002).

¹⁵⁴ The term "oil or petroleum" means oil or petroleum of any kind or in any form including but not limited to waste oils and distillation products such as fuel oil, kerosene, naphtha, gasoline and benzene, or their vapors; the term "chemical liquids" means any chemical, chemical solution or chemical mixture in liquid form; the term "solid, liquid or gaseous products" means any substance or material including but not limited to hazardous chemicals as defined in CONN. GEN. STAT. ANN. § 29-336 (1995), flammable liquids as defined in section CONN. GEN. STAT. ANN. § 29-320 (1995), explosives as defined in CONN. GEN. STAT. ANN. § 29-343 (1995), liquefied petroleum gas as defined in § 43-36, hazardous materials designated in accordance with the Hazardous Materials Transportation Act at 49 U.S.C. § 1801 *et seq.* (1994) and hazardous substances designated in accordance with § 311 of the federal CWA; *see* CONN. GEN. STAT. ANN. § 22a-448 (1995 & Supp. 2002).

¹⁵⁵ CONN. GEN. STAT. ANN. § 22a-449(c) (1995 & Supp. 2002).

¹⁵⁶ CONN. GEN. STAT. ANN. § 22a-449(a) (1995 & Supp. 2002). The DEP notification is sent no later than twenty-four hours after the DEP becomes aware of the contamination; *see Id.*

a. Terminal Licenses

The DEP has authority to license terminals in the state for the loading or unloading of oil or petroleum or chemical liquid, solid, or gaseous products including hazardous wastes and adopt regulations to identify these terminals and to protect the public health and safety. Licenses are valid up to three (3) years unless they are revoked by the DEP. A fee is charged for the license and each renewal in an amount sufficient to cover the reasonable costs to the state of inspecting and licensing such terminals.

The DEP has authority to set forth regulations for the establishment and maintenance of proper operating conditions and suitable equipment to contain a discharge event. The DEP must periodically inspect all hoses, gaskets, tanks, pipelines, and other equipment used in connection with the transfer, transportation, or storage of oil, petroleum or chemical solid, liquid or gaseous products, or hazardous wastes to ensure that they are in good operating condition, and order the renewal of any such equipment found unfit for further use. The operation of any oil or petroleum type terminal in Connecticut is prohibited unless it is licensed by the DEP. Violators may be fined up to five thousand dollars (\$5,000.00) per day during any period of unlicensed operation.¹⁵⁷

b. Nonresidential Underground Storage Tanks

The DEP in consultation with the department of Public Safety (PS) establishes regulations involving standards and criteria for the nonresidential underground storage of oil, petroleum, and chemical liquids which include standards and criteria for the design, installation, operation, maintenance, and monitoring of these underground facilities and handling of their contents. Notification to DEP is required before installation. Notification for each tank installed must be accompanied by a small fee.¹⁵⁸ A small fee for the inspection of each nonresidential underground storage facility may also be charged but not more than one once every five years.¹⁵⁹ Fees for installing and inspecting nonresidential underground storage facilities are deposited in the state's general fund.¹⁶⁰

¹⁵⁷ CONN. GEN. STAT. ANN. § 22a-449(b) (1995 & Supp. 2002).

¹⁵⁸ CONN. GEN. STAT. ANN. § 22a-449(d) (1995 & Supp. 2002).

¹⁵⁹ CONN. GEN. STAT. ANN. § 22a-449(f) (1995 & Supp. 2002). The fee in 2001 for installing is fifty dollars (\$50.00) and the fee for inspecting is fifty dollars (\$50.00); *see Id.*

¹⁶⁰ CONN. GEN. STAT. ANN. § 22a-449(f) (1995 & Supp. 2002).

c. Underground Storage Tank Clean-up Account

The underground storage tank¹⁶¹ petroleum clean-up account is capitalized by one-third of the taxes imposed under § 12-587 until the fund exceeds fifteen million dollars (\$15,000,000.00). Capitalization is then suspended until the account falls below five million dollars (\$5,000,000.00).¹⁶²

Connecticut established an account known as the "underground storage tank petroleum clean-up account". The account is one of the accounts capitalized under the Environmental Quality Fund. The account is used by the DEP to provide money for reimbursement or payment to responsible parties.¹⁶³

- For reimbursement of supply goods or services or both;
- For costs, expenses, and other obligations paid or incurred as a result of releases or suspected releases;
- For costs of investigation of releases and suspected releases; and
- For third party claims for bodily injury, property damage, and damage to natural resources.¹⁶⁴

A subaccount exists within the underground storage tank petroleum clean-up account that is known as the "residential underground heating oil storage tank system clean-up subaccount." The account is used solely for reimbursements for the remediation of contamination attributed to residential underground heating oil storage tank systems. The DEP provides an annual report to the Connecticut General Assembly regarding the underground storage tank program including

¹⁶¹ The term "underground storage tank system" means an underground storage tank and any associated ancillary equipment and containment system; *see* CONN. GEN. STAT. ANN. § 22a-449a (1995 & Supp. 2002).

¹⁶² CONN. GEN. STAT. ANN. § 22a-449b (1995).

¹⁶³ The term "responsible party" means any person or entity, including the state and any political subdivision of the state, which owns or operates an underground storage tank or underground storage tank system from which a release emanates; *see* CONN. GEN. STAT. ANN. § 22a-449a (1995 & Supp. 2002).

¹⁶⁴ Reimbursement for releases that are less than ten thousand dollars (\$10,000.00) or more than one million dollars (\$1,000,000.00) are not applicable except for releases which were reported to the DEP prior to December 31, 1987. Reimbursement for releases where more than five hundred thousand dollars (\$500,000.00) was expended by the responsible party to remediate such release prior to June 19, 1991, the responsible party must bear all costs which are less than ten thousand dollars (\$10,000.00) or more than three million dollars (\$3,000,000.00). The DEP is allocated two million dollars (\$2,000,000.00) annually for administrative costs. CONN. GEN. STAT. ANN. § 22a-449c(a) (1995 & Supp. 2002).

the extent to which it is used and the extent of the state's liability for environmental remediation as a result of the program.¹⁶⁵

d. Clean-Up Account Review Board

An Underground Storage Tank Petroleum Clean-Up Account Review Board exists to review applications for reimbursements and payments from underground storage tank petroleum clean-up account. The board reviews applications for reimbursement or payment for clean-up of releases based on:

- If a release occurred;
- If damage resulted from the release; and
- The amount of any damage.¹⁶⁶

The board also has authority to order payment from the residential underground heating oil storage tank system clean-up subaccount to registered contractors for reasonable costs associated with the remediation of a residential underground heating oil storage tank system. Payment is based on established guidelines. The board is authorized to:

- Hold hearings, administer oaths, subpoena witnesses, and subpoena documents;
- Designate an agent to perform necessary duties except the duty to render a final decision to order reimbursement or payment from the account; and
- Provide by notice that any false statement made is punishable violation.¹⁶⁷

The board consists of the Commissioners of DEP and Revenue Services, the Secretary of the OPM and the State Fire Marshal or their designees and one member representing each of the following interests: the Connecticut Petroleum Council, the Service Station Dealers Association, the public, the Independent Connecticut Petroleum Association, the Connecticut Gasoline Retailers Association, a municipality with a population greater than one hundred thousand (100,000), a municipality with a population of less than one hundred thousand (100,000), a small manufacturing company which employs fewer than seventy-five persons (75) experienced in the delivery, installation, and removal of residential underground petroleum storage tanks and remediation of contamination from such tanks, and a licensed environmental professional experienced in investigating and remediating contamination involving underground petroleum

¹⁶⁵ CONN. GEN. STAT. ANN. § 22a-449j(b) (1995 & Supp. 2002).

¹⁶⁶ CONN. GEN. STAT. ANN. § 22a-449d(a) (1995 & Supp. 2002).

¹⁶⁷ CONN. GEN. STAT. ANN. § 22a-449d(a) (1995 & Supp. 2002).

storage tanks.¹⁶⁸ The board establishes guidelines for determining what costs are considered reasonable and qualify for payment. The board must also establish requirements for financial assurance, training, and performance standards for registered underground storage tank contractors.¹⁶⁹

e. Reimbursement Payments

The DEP adopts regulations after consultation with the members of the Underground Storage Tank Clean-up Account review board which set forth reimbursement and payment procedures. These regulations also include provisions for:

- Notification of eligible parties;
- Records required for claims;
- Interim reimbursements and payments;
- Reimbursement and payment for costs, expenses, and obligations incurred in connection with releases or suspected releases.¹⁷⁰

Responsible parties who are determined not to be liable for the release may apply to the Underground Storage Tank Petroleum Clean-Up Account Review Board for reimbursement for costs paid and payment of costs incurred as a result of a release, or a suspected release, including costs of investigating the release.¹⁷¹

If a person or entity, other than a responsible party, claims to have suffered damage or personal injury from a release and the responsible party denies there was a release or does not apply to the board for payment of such claim, the person or entity holding such claim may apply to the board for payment for such damage or personal injury. The board must order reimbursement or payment from the account for any cost¹⁷² paid or incurred if:

¹⁶⁸ CONN. GEN. STAT. ANN. § 22a-449d(b) (1995 & Supp. 2002).

¹⁶⁹ CONN. GEN. STAT. ANN. § 22a-449d(c) (1995 & Supp. 2002).

¹⁷⁰ CONN. GEN. STAT. ANN. § 22a-449e (1995).

¹⁷¹ CONN. GEN. STAT. ANN. § 22a-449f (1995 & Supp. 2002).

¹⁷² After July 5, 1989.

- Costs were incurred after July 5, 1989;
- The responsible party was or would have been required to demonstrate financial responsibility for the underground storage tank or system under federal law¹⁷³
- After the release, if any, the responsible party incurred a cost, expense, or obligation for investigation, cleanup, or third party claims;¹⁷⁴
- The board determines that the cost is for damage that was incurred as a result of the release; and
- The responsible party notified the board of the release as soon as practicable.¹⁷⁵

The review board must render its decision not more than ninety (90) days after receipt of an application from a responsible party or a third party.¹⁷⁶ The attorney general may institute an action in the superior court for the judicial district of Hartford to recover the amounts specified in this section from the responsible party.¹⁷⁷

f. Immunity

Immunity from civil actions initiated by the state is provided for costs related to any spill or release events that are attributable to a residential underground heating oil storage tank system if the person:

- Provided for the removal or replacement of such system between July 1, 1999 and January 1, 2002 and

¹⁷³ If the state is the responsible party, the board may order payment from the account without regard to whether the state was or would have been required to demonstrate financial responsibility under federal law; *see* 40 CFR Part 280.90 *et seq.* and CONN. GEN. STAT. ANN. § 22a-449f(a) (1995 & Supp. 2002).

¹⁷⁴ Third party claims are required to be finally adjudicated or settled with the prior written approval of the board before an application for reimbursement or payment is made; *see* CONN. GEN. STAT. ANN. § 22a-449f(a) (1995 & Supp. 2002).

¹⁷⁵ CONN. GEN. STAT. ANN. § 22a-449f(a) (1995 & Supp. 2002).

¹⁷⁶ In the case of a second or subsequent application, the board must render its decision within forty-five (45) days after receipt of such application; a copy of the board's decision is sent to the applicant or responsible party and the DEP by certified mail, return receipt requested; the DEP or any person aggrieved by the decision of the board may request a hearing provided the request is within twenty (20) days from the date of the decision; a copy of the affirmed or modified decision is sent to the applicant or responsible party by certified mail, return receipt requested; *see* CONN. GEN. STAT. ANN. § 22a-449f(c) (1995 & Supp. 2002). Any person aggrieved by the board's decision or the DEP may appeal to the superior court provided the appeal is lodged within twenty (20) days of the date of the DEP decision; *see* CONN. GEN. STAT. ANN. § 22a-449g (1995 & Supp. 2002). (1995 & Supp. 2002).

¹⁷⁷ CONN. GEN. STAT. ANN. § 22a-449f(b) (1995).

- Provided notice and documentation of such removal or replacement to the DEP.¹⁷⁸

A person is deemed to not be liable for removal costs or damages which result from actions taken or omitted to be taken when the person is in the course of rendering care, assistance, or advice to prevent, minimize, or mitigate a discharge of oil to the surface waters of the state provided that the person's care, assistance, or advice is consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or the DEP. However, the immunity provided does not apply to a responsible party; to personal injury or wrongful death; to grossly negligent or wilful misconduct actions; or to negligence in the operation of a motor vehicle on a public highway.¹⁷⁹

g. Discharge and Spill Reporting

Discharge, spill,¹⁸⁰ loss, seepage, or filtration events which possess the potential threat to human health or the environment must immediately report the event to the DEP. Information required by the report includes:

- Location;
- Quantity;
- Type of substance, material, or waste;
- Date of event;
- Cause of event;
- Release source and name and address of the owner of source; and
- Name and address of reporter and relationship to owner of release source.¹⁸¹

¹⁷⁸ Immunity applies to subsequent owners of property where removal or replacement occurred; immunity does not apply when the person fails to discontinue the use of or to remove a residential underground heating oil storage tank system within the time period specified; *see* CONN. GEN. STAT. ANN. § 22a-449j(a) (1995 & Supp. 2002). Removals and replacements must be conducted in accordance with CONN. GEN. STAT. ANN. § 22a-449m (1995 & Supp. 2002). Only contractors registered with the DEP may remove or replace these tanks if contaminated soil or water is to be remediated and the costs are to be paid out of the clean-up account; *see* CONN. GEN. STAT. ANN. § 22a-449k (1995 & Supp. 2002).

¹⁷⁹ CONN. GEN. STAT. ANN. § 22a-457b(b) (1995).

¹⁸⁰ The term "spill" means the discharge, spillage, uncontrolled loss, seepage, or filtration of oil, petroleum, chemical solids, liquids, or gaseous products, or hazardous waste; *see* CONN. GEN. STAT. ANN. § 22a-452c (1995).

¹⁸¹ CONN. GEN. STAT. ANN. § 22a-450 (1995 & Supp. 2002).

Liability may be imposed if a person negligently causes pollution, contamination, or an emergency upon any land or in waters of the state which results in potential threat to human health or the environment through the maintenance, discharge, spillage, uncontrolled loss, seepage, or filtration of oil, petroleum, and chemical solids, liquids or gaseous products or hazardous wastes or deemed hazardous wastes. Liability may be imposed up to one and a half (1 ½) times the cost and expenses incurred in investigating, containing, removing, monitoring or mitigating the pollution or contamination including legal expenses and court costs. If the pollution or contamination or emergency is wilfully caused liability may be imposed two times the cost and expenses incurred including a ten percent (10%) administrative cost plus ten percent (10%) annum interest on the actual costs. Cost to recover legal expenses and court costs are five percent (5%) of actual costs plus ten percent (10%) annum interest beginning on the date costs were sought from the responsible party.¹⁸² If the responsible party does not contain and remove or mitigate the pollution or contamination causing the potential threat to human health or the environment, the DEP may do so and then request that the attorney general bring a civil action to recover the costs and expenses or if the responsible person is unknown, the DEP can request federal clean-up funds under the CWA.¹⁸³ The Connecticut emergency spill response account within the Environmental Quality Fund may also be used for clean-up costs and expenses. The DEP provides the Connecticut General Assembly with an annual report regarding use of this account.¹⁸⁴ The DEP has authority to impose a lien upon the real estate on which pollution or contamination occurred if necessary to recover the costs incurred by the DEP for containment, removal, or mitigation of the pollution or contamination.¹⁸⁵ Connecticut recognizes the innocent landowner defense¹⁸⁶ and does not impose liability upon an innocent landowner except through the imposition of a lien against the real estate for containment, removal, or mitigation costs. The determination of an innocent landowner includes:

¹⁸² CONN. GEN. STAT. ANN. § 22a-451(a) (1995 & Supp. 2002).

¹⁸³ CONN. GEN. STAT. ANN. § 22a-451(b-c) (1995 & Supp. 2002).

¹⁸⁴ CONN. GEN. STAT. ANN. § 22a-451a (1995).

¹⁸⁵ CONN. GEN. STAT. ANN. § 22a-452a(a) (1995 & Supp. 2002). The DEP files the lien in the land records of each town where the real estate is located, and the DEP mails a copy of the lien certificate to the responsible party and persons holding an interest in the real estate; *see* CONN. GEN. STAT. ANN. § 22a-452a(b - c) (1995 & Supp. 2002). A mortgagee that acquires title by virtue of a foreclosure or tender of a deed in lieu of foreclosure is not liable for any pollution or contamination beyond the value of the real estate if it occurred prior to the date of acquisition of title by the mortgagee; *see* CONN. GEN. STAT. ANN. § 22a-452b (1995).

¹⁸⁶ The term "innocent landowner" means a person holding an interest in real estate, other than a security interest, where the real estate is subject to a spill or discharge and the spill or discharge is caused by an act of God, an act of war, an act or omission of a third party other than an employee, agent or lessee of the landowner, or a person in a contractual relationship with the landowner unless there was a reasonably foreseeable threat of pollution or the landowner knew or had reason to know of the act or omission and failed to take reasonable steps to prevent the spill or discharge or a person who acquires an interest in real estate, other than a security interest, after the date of a spill or discharge if the person is not otherwise liable; *see* CONN. GEN. STAT. ANN. § 22a-452d(1) (1995).

- Any specialized knowledge or experience of the person;
- Consideration paid for the person's interest in the real estate compared to the value of such interest if the real estate were not polluted;
- Commonly known or reasonably ascertainable information about the real estate;
- Obviousness of the presence or likely presence of the spill or discharge; and
- Ability to detect such spill or discharge by appropriate inspection.¹⁸⁷

The DEP represents the state in its relations with the federal government and with any municipality or regional or interstate authority in all matters relating to oil, petroleum, or chemical solids, liquids, or gaseous products or hazardous wastes pollution, contamination, or emergency resulting from the discharge or spill events. The DEP has authority to enter into agreements, coordinate supervisory activities, and share reasonable costs. The DEP may contract with any person for such protective and cleanup services as required.¹⁸⁸ The DEP is responsible for developing and implementing an oil spill contingency planning program that includes coordination with local officials.¹⁸⁹

h. Business Activity Permits

The business of collecting, storing, or treating waste oil, petroleum, or chemical liquids and solids, or hazardous wastes or acting as a contractor to contain or remove or otherwise mitigate the effects of discharge or spill events including municipalities and regional authorities must obtain a written DEP permit.¹⁹⁰ The business of transporting hazardous waste also requires a DEP permit.¹⁹¹ The operation of a hazardous waste landfill or incinerator requires various DEP

¹⁸⁷ CONN. GEN. STAT. ANN. § 22a-452e(a) (1995).

¹⁸⁸ CONN. GEN. STAT. ANN. § 22a-453 (1995).

¹⁸⁹ CONN. GEN. STAT. ANN. § 22a-453a (1995).

¹⁹⁰ A five hundred dollar (\$500.00) annual fee is required to transport hazardous waste and a fee of fourteen thousand dollars (\$14,000.00) is required to treat waste oil, petroleum, and chemical products; *see* CONN. GEN. STAT. ANN. § 22a-454(a) (1995 & Supp. 2002). Only the following hazardous wastes are allowed in hazardous waste land disposal facilities: metal hydroxide sludge generated from the treatment of electroplating, metal finishing operation waste waters, other metal hydroxide sludge approved by the DEP, hazardous waste sludge or residue resulting from a DEP designated recycling operation when the residue cannot reasonably be incinerated or otherwise managed, hazardous waste spills, fly ash, residue from waste-to-energy facilities, or municipal waste water treatment sludge approved by the DEP; *see Id.*

¹⁹¹ CONN. GEN. STAT. ANN. § 22a-454(c) (1995 & Supp. 2002).

permits with various fees depending on the particular activity involved.¹⁹² All DEP permits specify the term of validity and clearly define the activity covered. The permit may include conditions and requirements the DEP determines are appropriate.

The DEP publishes a notice of its intent to issue a general permit in a newspaper with substantial circulation in the affected area. A comment period of thirty (30) days is allowed during which interested persons may submit written comments to the DEP. The DEP then publishes notice of the issuance or its decision not to issue a general permit in the same manner. The DEP may subsequently revoke, suspend, or modify a general permit in response to a person's request to the DEP that the permit issued be modified, suspended, or revoked.¹⁹³

Subsequent to the issuance of a general permit, the DEP may require the permit holder to apply for and obtain an individual permit if the DEP determines that an individual permit would better protect the land, air, and waters of the state from pollution. The DEP may require an individual permit:

- When the permit owner or operator is not in compliance with the conditions of the general permit;
- When a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollution applicable to the activity;
- When circumstances have changed since the time of the issuance of the general permit so that the activity is no longer appropriately controlled under the general permit;
- When a temporary or permanent reduction or elimination of the authorized activity is necessary; or
- When a relevant change has occurred in the applicability of the federal Resource Conservation and Recovery Act (RCRA).¹⁹⁴

¹⁹² CONN. GEN. STAT. ANN. § 22a-454(d) (1995 & Supp. 2002).

¹⁹³ CONN. GEN. STAT. ANN. § 22a-454(e)(3). (1995 & Supp. 2002)

¹⁹⁴ In making the determination to require an individual permit, the DEP may consider the location, character, size of the activity, and any other relevant factors. The DEP may require an individual permit only if the permit holder has been notified in writing that a permit application is required. This notice must include a brief statement of the reasons for this decision, an application form, a statement setting a time for the permit holder to file the application, and the effective date the general permit automatically terminates; *see* CONN. GEN. STAT. ANN. § 22a-454(e)(3) (1995 & Supp. 2002).

i. Closure of Hazardous Waste Facilities

Hazardous waste treatment, storage, or disposal facilities which are subject to groundwater monitoring requirements must pay a fee of five hundred dollars annually during its operating and postclosure period.¹⁹⁵ Closure of these facilities requires fee payment of two thousand five hundred dollars (\$2,500.00) at the time it submits closure/postclosure plans to the DEP.¹⁹⁶ Generators that generates one thousand (1,000) kilograms or more of hazardous waste or one (1) kilogram or more of acutely hazardous waste in any calendar month must pay an annual fee of fifty dollars (\$50.00) to the DEP.¹⁹⁷ Hazardous waste landfills, incinerators, and storage, treatment, or land treatment facilities must pay an annual fee of one thousand dollars (\$1,000.00).¹⁹⁸

j. Drinking Water Provisions

If the DEP determines that pollution of the groundwaters has occurred or can reasonably be expected to occur and the DPH determines that the extent of pollution creates or can reasonably be expected to create an unacceptable risk of injury to the health or safety of persons using such groundwaters as source of water for drinking or other personal or domestic uses, the DEP must arrange for the short-term provision of potable drinking water to those residential buildings and schools affected by such pollution until the DEP issues an order providing for short-term supply or a long-term supply of potable drinking water.¹⁹⁹ However, the DEP cannot issue the order if the basis of the order is solely that the person is the owner of the land from which the source of pollution or potential source of pollution emanates.²⁰⁰ If the DEP determines that pollution of the groundwaters has resulted due to proper application of a pesticide application while the person was engaged in agriculture,²⁰¹ the DEP may issue the order to the manufacturer of the pesticide or another responsible person. If the DEP determines that a person engaged in agriculture has caused or can reasonably be expected to cause pollution of the

¹⁹⁵ CONN. GEN. STAT. ANN. § 22a-454b (1995).

¹⁹⁶ CONN. GEN. STAT. ANN. § 22a-454a (1995).

¹⁹⁷ CONN. GEN. STAT. ANN. § 22a-454c(a) (1995).

¹⁹⁸ CONN. GEN. STAT. ANN. § 22a-454c(b) (1995).

¹⁹⁹ CONN. GEN. STAT. ANN. § 22a-471(a)(1) (1995).

²⁰⁰ CONN. GEN. STAT. ANN. § 22a-471(d) (1995).

²⁰¹ The term “person engaged in agriculture” means a person operating a farm that produces agricultural products grossing one thousand dollars (\$1,000.00) or more per year during which pesticides were applied to an agricultural product or to the land; *see* CONN. GEN. STAT. ANN. § 22a-471b (1995 & Supp. 2002).

groundwaters by pesticides, the DEP may cause the person to submit to DEP and implement an approvable plan to minimize the potential contamination.²⁰²

The exemption from DEP potable drinking water orders for persons engaged in agriculture does not apply if the person fails to maintain the proper pesticide application records²⁰³ or has not developed and implemented the contingency plan²⁰⁴ that requires records to be maintained for less than three (3) years.²⁰⁵

k. Clean Water Fund

Connecticut has established a fund called the "Clean Water Fund."²⁰⁶ Within the Clean Water Fund, there are several accounts: a water pollution control federal revolving loan account,²⁰⁷ a water pollution control state account,²⁰⁸ a Long Island Sound clean-up account,²⁰⁹ a

²⁰² CONN. GEN. STAT. ANN. § 22a-471(f)(2) (1995). A pesticide is considered properly applied if at the time of the application the pesticide was licensed by or registered with the state and federal government and was applied in a manner consistent with the pesticide labeling, consistent with applicable state and federal statutes and regulations at the time of the application, consistent with any approvals or recommendations of the federal, state or local government, including any limitations, warnings, or conditions of such approvals or recommendations, and consistent with generally accepted agricultural management practices at the time of application taking into account any special geological, hydrological, or soil conditions of which the farmer was aware or reasonably should have been aware; *see* CONN. GEN. STAT. ANN. § 22a-471f(3) (1995).

²⁰³ Pesticide records must be kept for twenty (20) years and include: (1) the name of the applicator, (2) the kind and amount of the pesticide used, (3) the date and place of the application, (4) the crop and amount of acreage treated, (5) the manufacturer and product registration number assigned by the U.S. EPA, and (6) the invoice or purchase receipt of the pesticide; *see* CONN. GEN. STAT. ANN. § 22a-471a(d) (1995). (1995)

²⁰⁴ The plan must include provisions for integrated pest management, if available, proper amounts, and rates of pesticide applications, calibration of equipment, and timing and frequency of pesticide application; *see* CONN. GEN. STAT. ANN. § 22a-471a(e).

²⁰⁵ CONN. GEN. STAT. ANN. § 22a-471a(b) (1995).

²⁰⁶ The fund is capitalized by proceeds of notes, bonds, or other obligations issued by the state; federal capitalization grants and awards or other federal assistance received by the state pursuant to Title VI of the federal CWA; funds appropriated by the General Assembly; payments received from any municipality in repayment of project loans; interest or other income earned on the investment of moneys in the water pollution control federal revolving loan account; additional monies made available; and moneys forfeited to the state by permit violation penalties involving a discharge into a municipal sewage treatment system; *see* CONN. GEN. STAT. ANN. § 22a-477(b) (1995).

²⁰⁷ Amounts in the water pollution control federal revolving loan account of the Clean Water Fund are available to the DEP to provide financial assistance to municipalities for construction of eligible water quality projects and for purposes authorized by Title VI of the federal CWA; *see* CONN. GEN. STAT. ANN. § 22a-477(g) (1995).

²⁰⁸ Amounts in the water pollution control state account of the Clean Water Fund are available to be invested by the Treasurer of the state to earn interest; for the DEP to make grants to municipalities in a project funding agreement; for the DEP to make loans to municipalities in a project funding agreement for planning and developing eligible projects prior to construction and permanent financing; for the DEP to make loans to municipalities for eligible water quality

drinking water federal revolving loan account,²¹⁰ a drinking water state account,²¹¹ and a river restoration account.²¹²

projects; for the DEP to pay the costs of environmental studies and surveys to determine water pollution control needs and priorities and to pay the expenses in administering the program; for the payment of costs for administration and management of the Clean Water Fund; for the Treasurer of the state to pay debt service on bonds of the state issued to fund the Clean Water Fund or for the purchase or redemption of such bonds; for the DEP to make grants to municipalities for the development and installation of structural improvements to secondary clarifier operations, and for other purposes of the Clean Water Fund and the related program; *see* CONN. GEN. STAT. ANN. § 22a-477(h) (1995).

²⁰⁹ The Long Island Sound clean-up account shall be available to be invested by the Treasurer of the state to earn interest; for the DEP to make grants to municipalities for combined sewer projects that impact Long Island Sound; for the DEP to make grants to municipalities for eligible water quality projects where the DEP requires nutrient removal to protect Long Island Sound; for the DEP grants to agencies, institutions, or persons to conduct research related to Long Island Sound; for the DEP to provide funds for sediment, dredging, and disposal activities for Long Island Sound and necessary studies, physical improvements to coves, embayments, coastal wetlands, and salt marshes in physical proximity to Long Island Sound, and harbor water quality programs to enhance the sediment and water quality of harbors, coves, embayments, and wetlands of Long Island Sound; for the DEP to provide funds for the restoration and rehabilitation of tidal coves, embayments, and salt marshes degraded by physical modification, development, or pollution following a feasibility assessment; for the DEP to provide funds for laboratory development to aid analysis of water quality samples collected as part of the Long Island Sound ambient monitoring program; for the DEP to make grants to municipalities for waste water treatment facilities which discharge into coastal waters for interim improvements to remove total nitrogen from discharges; and for the DEP to provide grants on a competitive basis for demonstration projects to reduce nonpoint source pollution of Long Island Sound; *see* CONN. GEN. STAT. ANN. § 22a-477(j) (1995 & Supp. 2002).

²¹⁰ Amounts in the drinking water federal revolving loan account of the Clean Water Fund are available to the DEP to provide financial assistance to any recipient for construction of eligible drinking water projects approved by the DPH and for any other purpose authorized by the federal Safe Drinking Water Act or other related federal acts; *see* CONN. GEN. STAT. ANN. § 22a-477(s) (1995 & Supp. 2002).

²¹¹ Amounts in the drinking water state account of the Clean Water Fund are available to be invested by the State Treasurer to earn interest; for the DEP to make grants to recipients in a manner provided under the federal Safe Drinking Water Act in the amounts and in the manner set forth in a project funding agreement; with the concurrence of the DPH for the DEP to make loans to recipients in amounts and in the manner set forth in a project funding agreement for planning and developing eligible drinking water projects prior to construction and permanent financing; with the concurrence of the DPH and the DEP to make loans to recipients, for terms not exceeding twenty (20) years, for an eligible drinking water project; with the concurrence of the DPH for the DEP to pay the costs of studies and surveys to determine drinking water needs and priorities and to pay the expenses of the DEP and the DPH in undertaking such studies and surveys and in administering the program; for the payment of costs as agreed to by the DPH after consultation with the Secretary of the OPM for administration and management of the drinking water programs within the Clean Water Fund; provided such amounts are not required for the purposes of such fund, for the State Treasurer to pay debt service on bonds of the state issued to fund the drinking water programs within the Clean Water Fund or for the purchase or redemption of such bonds; and for any other purpose of the drinking water programs within the Clean Water Fund and the related program; *see* CONN. GEN. STAT. ANN. § 22a-477(t) (1995 & Supp. 2002).

²¹² Amounts in the river restoration account shall be available to be invested by the Treasurer of the state to earn interest; for the payment of costs incurred by the DEP for the administration and management of its rivers protection programs; for the DEP to provide assistance to river committees established by municipalities for purposes of protection of rivers; for the DEP to make grants to municipalities or such river committees for the physical improvement and restoration of rivers degraded by modification, development, or pollution including actions to restore water quality,

l. River Restoration Projects

The DEP is responsible for maintaining a priority list of eligible river restoration projects and a system setting priority for making project grants. In establishing such priority list and ranking system, the DEP must consider all relevant factors including the public health and safety; protection of environmental resources; attainment of state water quality goals and standards; funds expended on water quality improvements; consistency with basin planning; and state and federal statutes and regulations. In dispersing funds from the Rivers Restoration Account, the DEP gives priority to providing matching funds for riparian zone restoration projects funded under the federal Agricultural Conservation Program.²¹³ The priority list of eligible river restoration projects includes a description of each project, its purpose, and an explanation of the manner in which priorities were established.²¹⁴

Each year the DEP makes grants to municipalities and river committees established for river protection in the order of priority. The funding of a project is pursuant to a project funding agreement between the state acting through the DEP, and the municipality, river commission, or river committee undertaking the project.²¹⁵

In providing such financial assistance to recipients, amounts may be used only by the DEP to make loans to recipients at an interest rate not exceeding one-half the rate of the average net interest cost as determined by the last previous similar bond issue by the state of Connecticut as determined by the State Bond Commission.²¹⁶

The DEP maintains a priority list of eligible water quality projects and establishes the system setting the priority for project grants, grant account loans, and project loans. In establishing such priority list, the DEP considers relevant factors including: public health and safety; protection of environmental resources; population affected; attainment of state water quality goals and standards; consistency with the state plan of conservation and development; state and federal regulations; and the formation of municipalities' local housing partnerships.

provide minimum stream flows, or restore or enhance the recreational, economic, or environmental value of rivers and riverfront land; and for the payment of costs incurred by the DEP for the physical improvement and restoration of rivers degraded by modification, development, or pollution including actions to restore water quality, provide minimum stream flows, or restore or enhance the recreational, economic, or environmental value of rivers and riverfront lands by such things as planting vegetation, removing physical impediments to river access, stabilizing stream banks, deepening stream channels, installing fish ladders, and removing sediment; and for the DEP to make grants to provide matching funds for riparian zone restoration projects funded under the federal Agricultural Conservation Program pursuant to 16 U.S.C. § 590g *et seq.* (2000); *see* CONN. GEN. STAT. ANN. § 22a-477(a), (m) (1995 & Supp. 2002).

²¹³ Pursuant to 16 U.S.C. § 590g *et seq.* (2000).

²¹⁴ CONN. GEN. STAT. ANN. § 22a-477(n)(1) (1995 & Supp. 2002).

²¹⁵ CONN. GEN. STAT. ANN. § 22a-477(n)(2 - 3) (1995 & Supp. 2002).

²¹⁶ CONN. GEN. STAT. ANN. § 22a-477(s) (1995 & Supp. 2002).

The priority list of eligible water quality projects includes a description of each project, its purpose, impact, cost, construction schedule, and an explanation of its priorities.²¹⁷

II. GROUNDWATER

1. *Connecticut Water Resources*

a. *Water Resources Policy*

Connecticut declares its water resource policy as follows:

- To preserve and protect water supply watershed lands and prevent degradation of surface water and groundwaters;
- To protect groundwater recharge areas critical to existing and potential drinking water supplies;
- To make water resources conservation a priority in all decisions;
- To conserve water resources through technology, methods, and procedures designed to promote efficient use of water and to eliminate the waste of water;
- To prevent contamination of water supply sources or reduction in the availability of future water supplies;
- To balance competing and conflicting needs for water equitably and at a reasonable cost to all citizens; and
- To reduce or eliminate the waste of water through water supply management practices.²¹⁸

The DEP is designated the shore erosion agency of the state for the purpose of cooperating with the Beach Erosion Board of the federal Department of Defense pursuant to the federal River and Harbor Act. The DEP carries out investigations and studies of conditions along the shoreline, harbors, rivers, and islands within territorial waters of the state to promote and encourage the healthful recreation of Connecticut citizens. The DEP identifies economical and effective methods for preventing and correcting shore erosion and damage to public and private property from storms, erosion, and ravages of the sea.²¹⁹

²¹⁷ CONN. GEN. STAT. ANN. § 22a-478(a) (1995 & Supp. 2002).

²¹⁸ CONN. GEN. STAT. ANN. § 22a-380 (1995 & Supp. 2002).

²¹⁹ CONN. GEN. STAT. ANN. § 22a-337 (1995).

b. Encroachment Areas

The DEP establishes lines along tidal and inland waterways including flood-prone areas considered for stream clearance, channel improvement, or flood control measures demarcating the area beyond which no obstruction or encroachment may be placed unless it is authorized by the DEP.

The DEP issues permits for placing encroachments in this area and the DEP bases its decision upon its findings of the proposed encroachment effect upon the flood-carrying and water storage capacity of the waterways and flood plains, flood heights, hazards to life and property, and the protection and preservation of the natural resources and ecosystems of the state with due consideration given to the results of similar encroachments constructed along the reach of waterway.²²⁰

The position of the lines may vary so as to minimize the area of land to be regulated. The lines must equitably affect riparian properties and interests.²²¹ Lines are established after DEP publishes notice and a public hearing is held. Written notice is mailed to all known affected property owners. If lines run through existing structures causing a nonconforming use of the area, the structure must be replaced or repaired by permit. The DEP may establish types of structures which may be reconstructed within the area without a permit. Existing structures or encroachments within the lines that constitute a hazard to life and property in the event of flood may be taken by the DEP and removed.²²² Any person aggrieved by the imposition of the lines may appeal in the judicial district of Hartford.²²³ However, an exception exists for agricultural uses of the land within the stream channel encroachment lines. The exception includes fences but not farm buildings and farm structures.²²⁴

Minor activities²²⁵ may be allowed in the encroachment area after obtaining a general permit from the DEP. Activities not covered by a general permit must be covered by an individual permit or the activity is considered a violation.

²²⁰ CONN. GEN. STAT. ANN. § 22a-342 (1995 & Supp. 2002).

²²¹ CONN. GEN. STAT. ANN. § 22a-343 (1995).

²²² CONN. GEN. STAT. ANN. § 22a-345 (1995).

²²³ CONN. GEN. STAT. ANN. § 22a-344 (1995 & Supp. 2002).

²²⁴ CONN. GEN. STAT. ANN. § 22a-349 (1995).

²²⁵ Minor activities include routine minor maintenance and routine minor repair of existing structures; replacement of existing culverts; installation of water monitoring equipment; removal of unauthorized solid waste; extension of existing culverts and stormwater outfall pipes; placement of greenhouses or hoopouses lacking concrete foundations; construction of irrigation and utility lines; and safety improvements with minimal environmental impacts within existing rights-of-way of existing roadways; *see* CONN. GEN. STAT. ANN. § 22a-349a (1995).

The penalty for placing any obstruction, encroachment, or hindrance within any stream channel encroachment line without a permit or for maintaining any obstruction, encroachment or hindrance placed without a permit results in a fine up to one thousand dollars (\$1,000.00) for each violation and each day of violation. A violation of any term or any condition on a permit is also subject to the same penalty. The DEP may request the attorney general to bring a civil action against the violator in the superior court for the judicial district of Hartford to recover the fine. The DEP may also request the attorney general to enjoin and abate the encroachment as it is considered a nuisance.²²⁶

c. Water Resources Plan

The DEP, the DPH, and the OPM²²⁷ has the responsibility of establishing a continuing planning process. These agencies prepares and periodically update a state-wide long-range plan for the management of the water resources of the state that is submitted to the general assembly. The water resources plan:

- Identifies the quantities and qualities of water that could be available to specific areas under feasible distribution;
- Identifies present and projected demands for water for specific areas;
- Recommends utilization of surface and subsurface water for their greatest benefits;
- Makes recommendations for major engineering works or special districts which may be necessary including the need, timing, and general cost;
- Recommends land use and other measures when appropriate to insure the desired quality and abundance of water;
- Takes into account desired recreational, agricultural, industrial, and commercial use of water bodies; and
- Seeks to incorporate regional and local plans and programs for water use, management, and sewerage facilities.²²⁸

²²⁶ CONN. GEN. STAT. ANN. § 22a-346 (1995).

²²⁷ The OPM acts as the contractor to implement a water works program; *see* CONN. GEN. STAT. ANN. § 22a-353 (1995).

²²⁸ CONN. GEN. STAT. ANN. § 22a-352 (1995).

d. Aquifer Protection

The DEP establishes standards for two levels of modeling. The DEP also maps the location of well field areas, zones of contribution, and recharge areas within aquifers.²²⁹ The DEP identifies and inventories land uses overlying the mapped zones of contribution and recharge areas of the aquifers.²³⁰ The DEP develops regulations for aquifer protection areas in conjunction with an advisory committee that includes DPH and the Public Utilities Control Authority or their designees, members of the public, and representatives of businesses affected by the regulations including agriculture, environmental groups, municipal officers, and water companies. The regulations establish best management practice standards for activities within aquifer protection areas, a schedule for compliance of nonconforming activities, procedures for exempting activities, and requirements for design and installation of groundwater monitoring within aquifer protection areas.²³¹ The DEP implements a groundwater education program in conjunction with the University of Connecticut Cooperative Extension Service.²³²

The Connecticut policy on drinking water from underground aquifers states that:

- Aquifers are an essential natural resource and a major source of public drinking water;
- Reliance on groundwater increases because opportunities for development of new surface water supplies are diminishing due to the rising cost of land and increasingly intense development;
- Numerous drinking water wells have been contaminated by certain land use activities, and other wells are threatened;
- Protection of existing and future groundwater supplies demands greater action by state and local government;
- A groundwater protection program requires identification and delineation of present and future water supplies in stratified drift aquifers supplying drinking water wells;
- A comprehensive and coordinated system of land use regulations should be established that includes state regulations protecting public drinking water wells located in stratified drift aquifers;

²²⁹ CONN. GEN. STAT. ANN. § 22a-354b (1995).

²³⁰ CONN. GEN. STAT. ANN. § 22a-354e (1995).

²³¹ CONN. GEN. STAT. ANN. § 22a-354i (1995 & Supp. 2002).

²³² CONN. GEN. STAT. ANN. § 22a-354k (1995).

- Municipalities with existing or proposed public drinking water wells in stratified drift aquifers should designate aquifer protection agencies; and
- The state should provide technical assistance and education programs on aquifer protection to ensure a plentiful supply of public drinking water for present and future generations.²³³

The DEP may require persons engaged in agriculture on land located within an aquifer protection area and whose annual gross sales from agricultural products during the preceding calendar year were two thousand five hundred dollars (\$2,500.00) or more to submit a farm resources management plan. The plan is developed by a technical team established within the soil and water conservation district where the aquifer protection area is located. In developing the farm resources management plan, the following entities must be consulted: the DEP, the College of Agriculture and Natural Resources at The University of Connecticut, the Connecticut Agricultural Experiment Station, the Soil Conservation Service, the state Agricultural and Conservation Committee, and any other person or agency the conservation district deems appropriate. Persons engaged in agriculture that are in substantial compliance with an approved plan is exempt from any regulations adopted by a municipality in which the land is located.²³⁴

Regulations that are adopted that involve farm resources management plans must include:

- A priority system and procedures for determining whether a farm management plan is required;
- Assigned priority for the preparation of a plan;
- Best management practices;²³⁵
- Restrictions and prohibitions for manure management;
- Storage and handling of pesticides;
- Reduced use of pesticides through pest management practices;
- Integrated pest management;
- Fertilizer management;

²³³ CONN. GEN. STAT. ANN. § 22a-354g (1995).

²³⁴ CONN. GEN. STAT. ANN. § 22a-354m(a - c) (1995 & Supp. 2002).

²³⁵ In adopting the best management practices, restrictions, and prohibitions, the DEP must consider existing state and federal guidelines or regulations affecting aquifers and agricultural resources management; *see* CONN. GEN. STAT. ANN. § 22a-354(m) (1995).

- Management of underground and above-ground storage tanks; and
- Criteria and procedures for submission and review of farm resources management plans and subsequent amendments of such plans.²³⁶

Boundaries of aquifer protection areas may not be challenged unless the challenge is based on the failure of the aquifer protection agency to properly delineate the boundaries according to the DEP regulations.²³⁷

Each municipality where an aquifer protection area is located establishes an entity to act as the aquifer protection agency within its jurisdictional area.²³⁸ The aquifer protection agency then establishes its regulations for aquifer protection.²³⁹ Each aquifer protection agency may require a permit, a certificate for zoning or subdivision, special permit, special exception, variance, or other documentation to conduct regulated activities. A fee for reviewing an application may be required.²⁴⁰ Nonetheless, the DEP maintains ultimate authority to grant, deny, limit, or modify a permit for any regulated activity in an aquifer protection area, for anyone holding an individual NPDES²⁴¹ permit or a permit issued under RCRA,²⁴² for any public utility service company, any large quantity waste generator, or an state instrumentality.²⁴³

e. Aquifer Appeals

Persons aggrieved by a decision involving aquifer protection may appeal provided the appeal is lodged within fifteen (15) days after the publication of the decision in the superior court for the judicial district where the land affected is located. Notice of appeal must be served upon the aquifer protection agency and the DEP. The court's order on a motion to dismiss is a final judgment for appeal provided it is lodged within seven (7) days of the court's final judgment.²⁴⁴

²³⁶ CONN. GEN. STAT. ANN. § 22a-354m(d) (1995 & Supp. 2002).

²³⁷ CONN. GEN. STAT. ANN. § 22a-354n (1995).

²³⁸ The DEP may revoke its authority delegated to a municipality to regulate aquifer protection areas if the municipality consistently fails to perform its duties; *see* CONN. GEN. STAT. ANN. § 22a-354t (1995).

²³⁹ CONN. GEN. STAT. ANN. § 22a-354n (1995).

²⁴⁰ CONN. GEN. STAT. ANN. § 22a-354p (1995 & Supp. 2002).

²⁴¹ For a discharge permit; *see* 33 U.S.C. § 1251 *et seq.* (1994).

²⁴² For a treatment, storage, or disposal facility; *see* 42 U.S.C. § 6901 *et seq.* (1994)

²⁴³ CONN. GEN. STAT. ANN. § 22a-354p(g)(1) (1995 & Supp. 2002).

²⁴⁴ CONN. GEN. STAT. ANN. § 22a-354q (1995).

f. Aquifer Violations

Violation of the regulations of an aquifer protection agency subjects the violator to a cease and desist order issued by the agency. The order, however, does not preclude other legal actions that may be brought against the violator by the DEP or the attorney general including a civil penalty up to one thousand dollars (\$1,000.00) for each violation and each day of violation. Costs, fees, and expenses in connection with the legal action including reasonable attorney fees may be allowed against the violator.²⁴⁵ Wilful or knowing acts that constitute violations have increased penalties. These violations subject the violator to fines up to one thousand dollars (\$1,000.00), imprisonment up to six (6) months, or both. Subsequent violations result in fines up to two thousand dollars (\$2,000.00), imprisonment up to one (1) year, or both.²⁴⁶

The DEP administers an incentive program that publicly recognizes users of land located within an aquifer protection areas who demonstrate successful and committed efforts to protect drinking water supplies by implementing innovative approaches to groundwater protection.²⁴⁷ The DEP in conjunction with the DPH and water companies make an annual report on the status and progress water resource programs including the aquifer protection areas.²⁴⁸

g. Strategic Monitoring

The DEP in consultation with the DPH, water companies, and business and industry is responsible for developing a strategic groundwater monitoring plan to be implemented in aquifer protection areas.²⁴⁹ The DEP in consultation with the DOA and the cooperative extension service at the University of Connecticut inventories agricultural land uses overlying the mapped aquifer protection areas. The inventory includes the type and size of any agricultural operation and existing farm resource management practices.²⁵⁰ The DEP, after studying the distribution of open space within the state, assists in coordinating public acquisition of water company owned lands when acquisition is less costly than the continued monitoring and enforcement of approved sales or changes in use of those lands. Water utility lands acquired by the DEP must be put into dedicated ownership and may not otherwise be sold except by a special act of the general assembly.²⁵¹

²⁴⁵ CONN. GEN. STAT. ANN. § 22a-354s(a - b) (1995).

²⁴⁶ CONN. GEN. STAT. ANN. § 22a-354s(c) (1995).

²⁴⁷ CONN. GEN. STAT. ANN. § 22a-354u (1995).

²⁴⁸ CONN. GEN. STAT. ANN. § 22a-354x (1995).

²⁴⁹ CONN. GEN. STAT. ANN. § 22a-354aa (1995).

²⁵⁰ CONN. GEN. STAT. ANN. § 22a-354bb. (1995)

²⁵¹ CONN. GEN. STAT. ANN. § 22a-355 (1995).

The DEP has the responsibility to estimate the cost of continued study and mapping of groundwater recharge principles as they relate to water quality and land use with particular emphasis on the identification of vertical and horizontal transport of biological and chemical contaminants within water supply watersheds.²⁵²

h. Encroachment Fees

Activities or structures which uses or occupies less than five thousand five hundred square feet (5,500 sq. ft.) in water surface area based on the perimeters of the project must be accompanied by a fee equal to forty cents per square foot, however, the fee may not be less than three hundred fifty dollars (\$350.00). Each application for a permit for any structure or activity which uses or occupies five thousand five hundred square feet (5,500 sq. ft.) or more but less than five (5) acres in water surface area based on the perimeters of the project must be accompanied by a fee of two thousand two hundred dollars (\$2,200.00) plus five cents (\$0.05) per square foot for each square foot in excess of five thousand five hundred square feet (5,500 sq. ft.). Each application for a permit for any structure or activity which uses or occupies five (5) or more acres in water surface area based on the perimeters of the project must be accompanied by a fee of twelve thousand eight hundred fifteen dollars (\$12,815.00) plus three hundred fifty dollars (\$350.00) per acre for each acre in excess of five (5) acres. Each application for a mooring area or multiple mooring facility, regardless of the area to be occupied by moorings, must be accompanied by a fee of three hundred fifty dollars (\$350.00) provided that such mooring areas or facilities do not include fixed or floating docks, slips or berths. Application fees for aquaculture activities shall not be based on ariel extent. The DEP may waive or reduce fees for a tidal wetlands or coastal resource restoration or enhancement activity,²⁵³ experimental activities or demonstration projects, nonprofit academic activities, or public access activities²⁵⁴ in tidal, coastal or navigable waters.²⁵⁵

i. Dredge and Fill Activities

The DEP regulates dredging, the placement of fill, work incidental to dredging and filling, and the erection of structures in the tidal, coastal, or navigable waters of the state waterward of the high tide line. Decisions made by the DEP must give due regard to:
Indigenous aquatic life, fish, and wildlife;

- Prevention or alleviation of shore erosion and coastal flooding;

²⁵² CONN. GEN. STAT. ANN. § 22a-356 (1995).

²⁵³ The term "resource restoration or enhancement activity" means an action taken to return a wetland or coastal resource to a prior natural condition or to improve the natural functions or habitat value of such resource, however, it does not include actions required pursuant to a DEP enforcement action; *see* CONN. GEN. STAT. ANN. § 22a-361(a) (1995).

²⁵⁴ The term "public access activities" means activities whose principal purpose is to provide or increase access for the general public to tidal, coastal, or navigable waters including boardwalks, boat ramps, observation areas, and fishing piers; *see* CONN. GEN. STAT. ANN. § 22a-361(a) (1995).

²⁵⁵ CONN. GEN. STAT. ANN. § 22a-361(a) (1995).

- Use and development of adjoining uplands;
- Improvement of coastal and inland navigation;²⁵⁶
- Use and development of adjacent lands and properties;
- Interests of the state including pollution control, water quality, recreational use of public water and management of coastal resources; and
- Proper regard for the rights and interests of all persons concerned.²⁵⁷

The DEP has authority to adopt regulations to carry out dredge and fill permitting provisions. The regulations must establish the procedures for reviewing and acting upon applications for permits, certificates of permission, and emergency authorizations. The regulations must give due regard to the impact of the regulated activities and their use on the tidal, coastal, or navigable waters of the state, adjoining coastal, and tidal resources, tidal wetlands, navigation, recreation, erosion, sedimentation, water quality and circulation, fisheries, shellfisheries, wildlife, flooding and other natural disasters, and water-dependent use opportunities.²⁵⁸

Dredging, filling, erecting any structure, obstruction, encroachment or any activities related to the listed activities including the maintenance of any structure in the tidal, coastal, or navigable waters of the state waterward of the high tide line without a DEP certificate or permit for such activities is a violation except in cases of emergency authorization.

j. Dredge and Fill Permits

The DEP may issue a general permit for minor regulated activities provided the activity would:

- Cause minimal environmental effects when conducted separately;
- Cause only minimal cumulative environmental effects;
- Not be inconsistent with dredge and fill provisions and public policy;

²⁵⁶ The DEP, after consultation with the Department of Transportation (DOT), may consider any sunken or grounded vessel, scow, lighter, or similar structure lying within the tidal, coastal, or navigable waters of the state to be an encroachment; *see* CONN. GEN. STAT. ANN. § 22a-359(b) (1995).

²⁵⁷ CONN. GEN. STAT. ANN. § 22a-359(a) (1995).

²⁵⁸ The regulations may also provide for consideration of local, state, and federal programs affecting tidal, coastal, and navigable waters of the state and the development of adjacent uplands and set forth informational material describing general categories of regulated activities for the purpose of providing permit applicants with a more explicit understanding of the regulations; *see* CONN. GEN. STAT. ANN. § 22a-361(c) (1995).

- Be consistent with the Coastal Management Act; and
- Constitute an acceptable encroachment into public lands and waters.

Minor activities may include routine minor maintenance and routine minor repair of existing structures, fill, obstructions, encroachments, or excavations; substantial maintenance consisting of rebuilding, reconstructing, or reestablishing to a preexisting condition and dimension of a structure, fill, obstruction, encroachment, or excavation; maintenance dredging of areas which have been dredged and continuously maintained as serviceable; activities allowed pursuant to a perimeter permit; the removal of structures, derelict vessels, debris, rubbish, or similar discarded material or unauthorized fill material; minor alterations or amendments to authorized activities consistent with the authorization for such activities; activities which have been required or allowed by an order of the DEP; open water marsh management by or under the supervision of the DPH or DEP; conservation activities of or under the supervision or direction of the DEP; construction of individual residential docks which do not create littoral or riparian conflicts, navigational interference, or adverse impacts to coastal resources which are not located in tidal wetlands and which extend no further than forty (40) feet waterward of mean high water or to a depth of minus four (4) feet mean low water, whichever point is more landward; installation of scientific measuring or monitoring devices; survey activities including excavation of test pits and core sampling and driving of test pilings; construction of utility lines; aquacultural activities; and installation and removal of small seasonal structures including floats and moorings. Activities covered by a general permit do not require an individual permit or certificate except in some circumstances.²⁵⁹

A general permit clearly defines the activity covered and may include such conditions and requirements the DEP deems appropriate. The general permit may require the registration of the proposed activity and prior approval by the DEP. Registrations and applications for approval under the general permit must be submitted on DEP forms. A general permit may include conditions specific to the proposed activity to ensure consistency with the requirements for the general permit.

Alternatively the DEP may issue a general permit in accordance with the following procedures:

- The DEP publishes notice of its intent to issue a general permit in a newspaper having a substantial circulation in the affected area or areas;

²⁵⁹ Special circumstances include when: (A) the permittee is not in compliance with the conditions of the general permit; (B) an individual permit or certificate is appropriate because of circumstances specific to the site; (C) circumstances have changed since the time the general permit was issued so that the permitted activity is no longer acceptable under the general permit; or (D) a change has occurred in relevant law. The DEP may require an individual permit or certificate under this section only if the affected person has been notified in writing that an individual permit or certificate is required, and the notice must include a brief statement of the reasons for the DEP decision; *see* CONN. GEN. STAT. ANN. § 22a-361(d)(3) (1995).

- The DEP allows a comment period of thirty (30) days following publication of its notice during which interested persons may submit written comments concerning the permit to the DEP;
- The DEP holds a public hearing if it receives a petition signed by at least twenty-five persons during the comment period;
- The DEP publishes notice of any permit issued in a newspaper having substantial circulation in the affected area or areas;
- Any person may request that the DEP issue, modify, or revoke a general permit in accordance with this subsection.²⁶⁰

The DEP prepares a list of general permit holders annually which is available to the public.²⁶¹

Subsequent to the issuance of a general permit, the DEP may require any person whose activity is or may be covered by the general permit to apply for and obtain an individual permit or certificate if the DEP determines that the activities must be covered by an individual permit is necessary to assure consistency with DEP stated purposes and policies and the Coastal Management Act. The DEP may require an individual permit in certain cases.²⁶²

Provided a general permit was issued for aquaculture activities by the DEP, no permit or certificate is required for the placement, maintenance, or removal of:

- Individual structures used for aquaculture including cages or bags located on designated state or municipal shellfish beds and the structures create no adverse impacts on coastal resources or navigation over their location or
- Buoys used to mark such structures.²⁶³

The removal of sand, gravel, or other material lying waterward of the mean high water mark of the tidal, coastal or navigable waters of the state covered by a permit must not be used

²⁶⁰ CONN. GEN. STAT. ANN. § 22a-361(d)(2) (1995).

²⁶¹ CONN. GEN. STAT. ANN. § 22a-361(d)(1) (1995).

²⁶² CONN. GEN. STAT. ANN. § 22a-361(d)(2) (1995).

²⁶³ CONN. GEN. STAT. ANN. § 22a-361(d)(5) (1995).

for any for any beneficial or commercial use²⁶⁴ except upon payment to the state of a fee of two dollars (\$2.00) per cubic yard. However, no fee is assessed for such activities that:

- Are located on land which is not owned by the state;
- Use of sand, gravel, or other materials for beach restoration projects; or
- Ultimately dispose of sand, gravel, or other materials that do not result in an economic benefit to any person.²⁶⁵

The DEP may require a permit holder before taking any sand, gravel, or other material covered by a permit to deposit a surety sum with the state treasurer or post bond with sufficient surety for the protection of any person, firm, or corporation that may claim damage from the taking of sand, gravel, or other material.²⁶⁶

k. Dredge and Fill Notice

At least thirty (30) days before approving or denying an application for a permit must provide notice or require the applicant to provide notice by certified mail, return receipt requested to the DOT, the chief executive officer and the chairmen of the planning, zoning, harbor management, and shellfish commissions of each town in which the structure or activity is to be located or performed, and to the owner of each franchised oyster ground and the lessee of each leased oyster ground.

Public notice must provided by publishing once in a newspaper having a substantial circulation in the area affected and provide the name of the applicant; the location and nature of the proposed activities; the tentative decision regarding the application; and any additional information the DEP deems necessary. A comment period follows the public notice during which interested persons may submit written comments. After notice and the comment period the DEP may approve, modify, or deny the application. The DEP provides notice of the decision to the applicant and the same persons set forth above by certified mail, return receipt requested. If the DEP requires the applicant to provide the notice specified, the applicant must certify to the DEP that the notice was provided in accordance with the requirements no later than twenty days after the notice was provided.²⁶⁷

²⁶⁴ The term "beneficial or commercial use" includes sale or use of sand, gravel, or other materials for construction, aggregate, fill, or landscaping; *see* CONN. GEN. STAT. ANN. § 22a-361(e) (1995).

²⁶⁵ CONN. GEN. STAT. ANN. § 22a-363(e) (1995).

²⁶⁶ CONN. GEN. STAT. ANN. § 22a-361(f) (1995).

²⁶⁷ CONN. GEN. STAT. ANN. § 22a-361(b) (1995).

l. Dredge and Fill Violations

Violation of dredge and fill provisions carry civil penalties up to one thousand dollars (\$1,000.00) for each offense and each day of violation. The DEP may request the attorney general to bring a civil action in the superior court for the judicial district of Hartford to seek recovery of the civil penalty.²⁶⁸ Violators of dredge and fill provisions may also be fined up to fifty dollars (\$50.00), imprisoned up to thirty (30) days, or both.²⁶⁹ Upon DEP request, the attorney general institutes the proceedings to collect any assessment.

A violation of the terms or conditions of a certificate, permit, or authorization is considered a public nuisance. Upon request by the DEP, the attorney general institutes proceedings to enjoin or abate any nuisance.²⁷⁰

m. Certificates of Permission

Routine maintenance of certain structures, fill, obstructions, or encroachments plus those in place prior to June 24, 1939, when continuously maintained and serviceable since that date, is exempt from the requirement of obtaining certificates of permission or dredge and fill permits. An application for a certificate of permission for dredge and fill activities must be accompanied by a fee of two hundred dollars.²⁷¹ The following activities may be eligible for a certificate of permission:

- Substantial maintenance or repair of existing, authorized structures, fill, obstructions, or encroachments;
- Substantial maintenance of any structures, fill, obstructions or encroachments in place prior to June 24, 1939 when continuously maintained and serviceable since that date;
- Maintenance dredging of areas which have been dredged and continuously maintained and serviceable;
- Activities allowed pursuant to a perimeter permit that requires authorization by the DEP;
- Removal of derelict structures or vessels;

²⁶⁸ CONN. GEN. STAT. ANN. § 22a-361a (1995).

²⁶⁹ CONN. GEN. STAT. ANN. § 22a-363 (1995).

²⁷⁰ CONN. GEN. STAT. ANN. § 22a-362 (1995).

²⁷¹ CONN. GEN. STAT. ANN. § 22a-363c (1995).

- Minor alterations or amendments to permitted activities consistent with the original permit;
- Minor alterations or amendments to activities completed prior to June 24, 1939;
- Placement of temporary structures for water-dependent uses,
- Open water marsh management and conservation activities undertaken by or under the supervision of the DEP; and
- Placement or reconfiguration of piers, floats, docks, or moorings within existing waterward boundaries of recreational marinas or yacht clubs which have been authorized.²⁷²

The DEP may also issue a certificate of permission for activities which have been completed prior to January 1, 1980 for which permits, certificates or emergency authorizations are now required and which were conducted without such permit, certificate, or emergency authorization provided the applicant demonstrates that the activity does not interfere with navigation or littoral or riparian rights and does not cause adverse impacts on coastal resources. In determining the eligibility of activities conducted without prior authorization, the DEP may consider whether:

- Applicant acquired his real estate interest in the site after the date of the unauthorized activity;
- Applicant is not otherwise liable for the unauthorized activity as a result of actions taken prior to the acquisition; and
- Applicant did not know and had no reason to know of the unauthorized activity.²⁷³

In general, the DEP may authorize the maintenance of unauthorized activities as described. Unauthorized activities which are ineligible for certificates of permission may be subject to applicable enforcement actions by the commissioner.²⁷⁴

The DEP must issue a certificate of permission if the eligible proposed activity is consistent with a permit issued or the activity was in place prior to June 24, 1939 and continuously maintained and serviceable since such time. If the eligible proposed activity does

²⁷² CONN. GEN. STAT. ANN. § 22a-363b(a) (1995).

²⁷³ CONN. GEN. STAT. ANN. § 22a-363b(b) (1995).

²⁷⁴ CONN. GEN. STAT. ANN. § 22a-363b(b) (1995).

not have a permit or has not received any prior permits, the DEP must determine if the information provided is sufficient to determine if the proposed activity complies with the applicable standards and criteria.

The DEP may issue a certificate of permission if he finds that the information indicates compliance with all applicable standards and criteria, or it may require the submittal of a complete application for a permit if it finds that the information is not sufficient to indicate compliance with the standards and criteria. If the DEP finds that changes in conditions or circumstances associated with a permitted structure, fill, obstruction or encroachment are likely to result in significant impacts to the environment or coastal resources, it may require an application for an individual permit.

If the DEP finds that the structure, fill, obstruction or encroachment is not in substantial compliance with the permit or authorization under which a certificate of permission is requested, and is not consistent with applicable standards and criteria, a certificate of permission may not be issued.

The DEP must issue a certificate of permission within forty-five (45) days of its receipt of a request for a certificate of permission or notify the person making such request that additional information is required or an application for a permit is required or the structure, fill, obstruction or encroachment is not eligible for a certificate of permission. If the DEP requests additional information from an applicant, the DEP must make a determination on the application no later than ninety (90) days from the date of receipt of the request for a certificate of permission. If the DEP fails to respond within forty-five (45) days of receipt of a request, the certificate of permission is deemed to be approved except that no certificate of permission for dredging, activities located within tidal wetlands or activities conducted without prior authorization may be deemed approved by virtue of a failure to respond.²⁷⁵

The DEP must not issue a certificate of permission for a pound net, weir, or similar fish harvesting structure that was not utilized prior to June 6, 2001. The DEP may issue a general or individual permit provided it does not receive a petition signed by twenty-five (25) or more persons during the public comment period and it holds a public hearing on the permit application.²⁷⁶

n. Dredge and Fill Emergency Authorizations

When situations occur which may result in immediate, unforeseen, and unacceptable hazards to life, health, or welfare or significant loss of property and corrective action otherwise requiring a permit or a certificate of permission for dredge and fill type activities has not been sought, the DEP must expeditiously review a request by the affected property owner, the

²⁷⁵ CONN. GEN. STAT. ANN. § 22a-363b(d) (1995).

²⁷⁶ CONN. GEN. STAT. ANN. § 22a-363b(e) (1995).

authorized person, or the appropriate federal, state, or local authority for the issuance of an emergency authorization to take corrective action the DEP deems necessary. The DEP must approve or deny the request and, if approved, establish the duration of the emergency authorization. An emergency authorization may be extended for a specified period of time if, after all reasonable efforts by the applicant, the emergency has not been abated or for other reasonable cause. Upon the expiration of an emergency authorization, a complete application for a general or individual dredge and fill type permit or a request for a certificate of permission for the continuation of the activities performed under the emergency authorization must be submitted. Any work, structure, fill, obstruction or encroachment authorized on an emergency basis for which an application or request is not received within thirty (30) days after the expiration of the emergency authorization is considered unauthorized and subject to enforcement. This includes activities for the repair or reconstruction of structures, fill, obstructions, or encroachments damaged or destroyed by an act of nature or casualty when the activity is necessary to avoid further economic damage to ongoing commercial activities provided the DEP is notified of the damage by the property owner or authorized person and the owner or authorized person proposes corrective action within fifteen (15) days of the causative event. Failure to continuously maintain a structure, fill, obstruction, or encroachment is not grounds for emergency authorization.²⁷⁷ When the responsible person cannot be determined, the littoral owner is deemed to be the responsible party except in cases of abandoned vessels upon the landowner's property.²⁷⁸

o. Dredge and Fill Orders

Upon the issuance of a DEP order to a person to discontinue, remove, abate, or alleviate within a reasonable time a condition that constitutes an imminent and substantial hazard to public safety or navigation or a condition likely to cause imminent and substantial damage to the environment and the person subsequently fails to comply, the DEP may remove, abate, or alleviate the condition and assess reasonable costs and expenses incurred against the responsible person.

If the DEP finds after an investigation that a person is conducting or is about to conduct an activity for which a certificate, permit, or authorization is required without obtaining the proper document, the DEP may issue a written cease and desist order upon the person without a prior hearing. The order is effective immediately and the person must discontinue, abate, or alleviate the condition or activity. The DEP holds a hearing within ten (10) days of the issuance of the order to provide the person with an opportunity to be heard and show that either no certificate, permit, or authorization was required or required certificates, permits, or authorizations were obtained. The DEP makes a new decision based on the evidence presented

²⁷⁷ Hidden physical or structural damage is excluded from the continuous maintenance requirement; *see* CONN. GEN. STAT. ANN. § 22a-363d (1995).

²⁷⁸ CONN. GEN. STAT. ANN. § 22a-363e (1995).

at the hearing within ten (10) days of the close of the hearing or the filing of related legal briefs.²⁷⁹

2. *Connecticut Water Diversion Policy Act*

Connecticut recognizes that the waters of Connecticut are a precious, finite, and invaluable resource upon which there is an ever increasing demand for present, new, and competing uses. Because an adequate supply of water for domestic, agricultural, industrial, recreational, and for fish and wildlife uses is essential to the health, safety, and welfare of the people of Connecticut, the state declares that diversion²⁸⁰ of the waters of the state is permitted only when diversion is:

- Found to be necessary;
- Compatible with long-range water resource planning, proper management, and use of the water resources of Connecticut; and
- Is consistent with Connecticut's policy of protecting its citizens against harmful interstate diversions and with the state plan of conservation and development.²⁸¹

a. Diversion Registration or Permit

Diversions are required to be registered with the DEP. Registration information requires the location, capacity, frequency, and rate of withdrawal or discharge of the diversion and a description of the water use and water system utilized.

Any diversion which is not registered is subject to permit requirements.²⁸² Transfers of permits without written DEP approval are prohibited.²⁸³ Information required for a diversion permit application includes:

- The need for the diversion;
- The reasons for the diversion;

²⁷⁹ CONN. GEN. STAT. ANN. § 22a-363f (1995).

²⁸⁰ The term "diversion" means any activity which causes, allows, or results in the withdrawal from or the alteration, modification, or diminution of the instantaneous flow of the waters of the state; the term "divert" means to engage in any act of diversion; *see* CONN. GEN. STAT. ANN. § 22a-367(2 - 4) (1995).

²⁸¹ CONN. GEN. STAT. ANN. § 22a-366 (1995).

²⁸² Within ten (10) days after filing an application for a diversion permit, the applicant must notify the chief executive officer of the town or towns in which the diversion will take place; *see* CONN. GEN. STAT. ANN. § 22a-370 (1995).

²⁸³ CONN. GEN. STAT. ANN. § 22a-368 (1995).

- The use of the diverted water;
- A description of the existing water system where the diversion is proposed;
- The locations of withdrawals and discharges of water the applicant proposes to divert;
- The quantity, frequency, and rate of water the applicant proposes to divert;
- The length of time for which the diversion permit is sought;
- The effect of the proposed diversion on public water supplies, water quality, wastewater treatment needs, flood management, water-based recreation, wetland habitats, waste assimilation, agriculture, fish and wildlife, and low flow requirements;
- The alternatives, if any, to the proposed diversion including a study of cost factors, feasibility, and environmental effects of such alternatives;
- Conservation measures instituted by the applicant prior to the application; and
- The applicant's long-range water conservation plan²⁸⁴ to be implemented or continued after the issuance of a permit.²⁸⁵

b. Interbasin Transfer

In a proposed interbasin transfer, the DEP may request the applicant to file an environmental impact report on the transfer which considers the effect of the transfer on present and future water uses in the proposed donor basin; includes a plan for meeting water supply needs and demands in the donor basin for a minimum of twenty-five years; and analyzes the alternative solutions to the water supply or wastewater problem including comparative cost analysis of the proposed transfer relative to alternative measures. In making a request for an environmental impact report, the DEP must indicate which aspect of the report described above is required with the application.²⁸⁶

²⁸⁴ The plan must provide for the identification of and cost effectiveness of distribution system rehabilitation to correct sources of lost water; measures which encourage proper maintenance and water conservation; a public information program to promote water conservation including industrial and commercial recycling and reuse; and contingency measures for limiting water use during seasonal or drought shortages; *see* CONN. GEN. STAT. ANN. § 22a-369(9) (1995).

²⁸⁵ CONN. GEN. STAT. ANN. § 22a-369(1 - 9) (1995).

²⁸⁶ CONN. GEN. STAT. ANN. § 22a-369(10) (1995).

c. Diversion Permits

The DEP may issue a general diversion permit for any minor activity unless:

- The activity is covered by an individual permit; or
- The DEP determines that the activity would:
 - Cause minimal environmental effects when conducted separately;
 - Cause only minimal cumulative environmental effects; and
 - Have no adverse effect on existing or potential uses of water for potable water supplies, hydropower, flood management, water-based recreation, industry, or waste assimilation.²⁸⁷

These activities may include diversions which were eligible for registration but were not registered; backup wells, provided such wells are not used to increase the quantity of water diverted from a permitted or registered well-field; transferring water from one distribution system or service area to another distribution system or service area or the installation of the capacity to transfer water in anticipation of a water supply emergency for public water supply; and collection and discharge of runoff including stormwater runoff and skimming of flood flows from a watershed area less than or equal to one (1) square mile.

Any person conducting an activity for which a general permit has been issued must not be required to obtain an individual permit except in certain conditions discussed below. A general permit shall clearly define the activity covered and may include such conditions and requirements the DEP deems appropriate including management practices, verification requirements, and reporting requirements. The general permit may require a person conducting the activity under the general permit to report the activity on a DEP form before the activity is covered by the general permit.²⁸⁸

The DEP must prepare an annual list of holders of general diversion permits and make it available to the public.

Regarding the issuance, renewal, modification, revocation, or suspension of general diversion permits, the following procedures apply:

- The DEP must publish its intent to issue a general diversion permit in a newspaper having a substantial circulation in the affected area or areas;

²⁸⁷ CONN. GEN. STAT. ANN. § 22a-378a(a) (1995).

²⁸⁸ CONN. GEN. STAT. ANN. § 22a-378a(a) (1995).

- The DEP must allow a comment period of thirty days following publication of such notice during which interested persons may submit written comments concerning the permit to the DEP and the DEP must hold a public hearing if it receives a petition signed by at least twenty-five persons within the comment period;
- The DEP may not issue the general permit until after the comment period; and
- The DEP must publish notice of any issued permits in a newspaper having substantial circulation in the affected area or areas; and
- Any person may request that the commissioner issue, modify, or revoke a general diversion permit.²⁸⁹

Subsequent to the issuance of a general diversion permit, the DEP may require a person to apply for an individual permit for any or all of the activities covered by the general diversion permit, if the DEP determines the purposes and policies of diversion provisions would be best served by requiring an individual permit. The DEP may require an individual permit under this subsection only if the affected person has been notified in writing that an individual permit is required. The DEP notice must include a brief statement of the reasons for the DEP decision and a statement that the general permit is terminated as of the date of the notice.²⁹⁰

A general diversion permit requires that a person intending to conduct an activity covered by a general permit must give written notice at least sixty (60) days before initiating the covered activity to the inland wetlands agency, zoning commission, planning commission, and conservation commission of any municipality which will or may be affected by such activity as well as to the DEP which must make notices available to the public. The general diversion permit specifies the information which must be contained in the notice. Those notified may submit written comments to the DEP regarding the intended activity no later than twenty-five (25) days before the date the activity is proposed to begin.²⁹¹

Each person holding a diversion permit authorizing a consumptive use of waters of the state must pay an annual fee of five hundred dollars (\$500.00) to the DEP. The DEP may adopt regulations to prescribe the amount of the fees required.²⁹²

²⁸⁹ CONN. GEN. STAT. ANN. § 22a-378a(b) (1995).

²⁹⁰ CONN. GEN. STAT. ANN. § 22a-378a(c) (1995).

²⁹¹ CONN. GEN. STAT. ANN. § 22a-378a(d) (1995).

²⁹² CONN. GEN. STAT. ANN. § 22a-379 (1995).

The DEP must review diversion permit applications²⁹³ within one hundred twenty (120) days of its receipt and determine whether additional information is required. The applicant must provide the information or request that the application be deemed complete as is. If additional information is not furnished, the DEP notifies the applicant the application is complete by certified mail, return receipt requested. The notice also provides the time, date, and location of any public hearing to be held on the application. The DEP publishes notice²⁹⁴ of the application and a concise description of the proposed diversion. The DEP holds a public hearing before acting on the application except when the DEP determines the diversion is necessary or will not significantly affect long-range water resource management or the environment, and will not impair proper management and use of the water resources of the state. Under these parameters, the DEP may waive the requirement for a hearing after publishing notice of its tentative decision regarding the application and its intent to waive the requirement for a hearing in a newspaper having general circulation in the area where the proposed diversion will take place or have effect unless a petition signed by at least twenty-five (25) persons is filed with the DEP after DEP publishes notice of its intent. When a petition is properly filed the DEP, the DEP must hold a hearing. Notice of the time, date, and location of the hearing along with a concise description of the proposed diversion and the tentative DEP determination must be published at the applicant's expense at least twice in a newspaper with general circulation in the area where the proposed diversion will take place or have effect at intervals of not less than two days and not less than twenty (20) days prior to the hearing. Notice must also be provided to certain state officials not less than twenty (20) days prior to the hearing.²⁹⁵

The DEP must make a decision on the diversion permit application within one hundred and twenty days (120) of the close of the hearing either granting or denying the application or

²⁹³ Each application for a permit must be accompanied by a fee. Consumptive use of more than fifty thousand (50,000) gallons but less than five hundred thousand (500,000) gallons within any twenty-four (24) hour period requires a one thousand two hundred dollar (\$1,200.00) fee. Consumptive use of five hundred thousand (500,000) gallons or more but less than two million (2,000,000) gallons in any twenty-four (24) hour period requires a two thousand five hundred dollar (\$2,500.00) fee. Two million (2,000,000) gallons or more in any twenty-four (24) hour period requires a four thousand dollar (\$4,000.00) fee. The fee for nonconsumptive use where the tributary watershed area above the point of diversion is one-half square mile or smaller is one thousand two hundred dollars (\$1,200.00); where the tributary watershed area above the point of diversion is larger than one-half square mile but smaller than two square miles, the fee is two thousand five hundred dollars (\$2,500.00), and where the tributary watershed area above the point of diversion is two square miles or larger, the fee is four thousand dollars (\$4,000.00); *see* CONN. GEN. STAT. ANN. § 22a-372(e) (1995).

²⁹⁴ Notice is provided to the governor, the attorney general, the speaker of the house of representatives, the president pro tempore of the senate, the secretary of the OPM, the DPH, Economic and Community Development, the chairperson of the public utility control authority, chief executive officer and chairpersons of the conservation commissions and wetlands agency of the municipality in which the proposed diversion will take place or have effect and to any person who has requested notice of such activities; *see* CONN. GEN. STAT. ANN. § 22a-371(d) (1995).

²⁹⁵ The DEP may continue the hearing on such additional dates as may be necessary. Notice of the continuance is by announcement by the DEP or the designated hearing officer prior to the close of a scheduled session. The application and all other documents related to the proceedings are available to the public at the DEP office during business hours prior to the close of the hearing; *see* CONN. GEN. STAT. ANN. § 22a-372(a-b). Officials are listed in footnote 286.

granting it upon terms, limitations, or conditions set forth in the permit including provisions for monitoring, schedule of diversion, duration of permit, and reporting requirements.²⁹⁶ The DEP must fully state its reasons for the decision. All relevant facts and circumstances may be considered including:

- The effect of the proposed diversion on related needs for public water supply including existing and projected uses, safe yield of reservoir systems, and reservoir and groundwater development;
- The effect of the proposed diversion on existing and planned water uses in the area affected such as public water supplies, relative density of private wells, hydropower, flood management, water-based recreation, wetland habitats, waste assimilation, and agriculture;
- Compatibility of the proposed diversion with the policies and programs of the state of Connecticut dealing with long-range planning, management, allocation, and use of the water resources of the state;
- The relationship of the proposed diversion to economic development and the creation of jobs;
- The effect of the proposed diversion on the existing water conditions considering watershed characterization, groundwater availability potential, evapotranspiration conditions, and water quality;
- The effect, including thermal effect, on fish and wildlife as a result of flow reduction, alteration, or augmentation caused by the proposed diversion;
- The effect of the proposed diversion on navigation;
- Whether the water to be diverted is necessary and whether such water can be derived from other alternatives including but not limited to conservation;
- Consistency of the proposed diversion with action taken by the attorney general; and
- The interests of all municipalities which would be affected by the proposed diversion.²⁹⁷

²⁹⁶ CONN. GEN. STAT. ANN. § 22a-373(a) (1995). If a decision is not made within the one hundred twenty days (12) required, the application is deemed granted; *see* CONN. GEN. STAT. ANN. § 22a-373(d) (1995).

²⁹⁷ CONN. GEN. STAT. ANN. § 22a-373(b) (1995).

In making a decision on an application, the DEP must consider capital expenditures and other resource commitments made prior to July 1, 1982 in connection with a proposed diversion. However, expenditures or commitments are not binding in favor of a proposed diversion, a proposed diversion recommended in any water supply plan, or a coordinated water system plan prepared in the same manner as a proposed diversion not recommended in any such plan.²⁹⁸

d. Diversion Appeals

Any person aggrieved by a DEP diversion decision or by the return of an application by DEP as incomplete may appeal by filing a petition in the superior court for the judicial district of New Britain.²⁹⁹

e. Diversion Reviews

The DEP may periodically investigate and review diversion permits. If the DEP determines that there is any violation of the terms, limitations, or conditions of the permit, the permit may be suspended or revoked. The DEP may also request the attorney general to bring an action to enjoin a violation.³⁰⁰ The DEP prepares an inventory of registered diversions and prepares a report for the General Assembly which includes: an inventory of diversion registrations filed on or before July 1, 1983; an inventory of the withdrawal quantities acknowledged for the diversion registration; and an identification of those diversion registrations which are planned to be used by the registrants.³⁰¹

f. Diversion Violations

When a person violates any diversion provision or related regulations, the DEP may request the attorney general to bring an action in the superior court for the judicial district of Hartford to enjoin a person from continuing a violation.³⁰² A violator must forfeit up to one thousand dollars (\$1,000.00) for each offense and each day of violation. The attorney general, upon request of the DEP, institutes a civil action to recover the forfeiture if necessary.³⁰³

²⁹⁸ CONN. GEN. STAT. ANN. § 22a-373(c) (1995).

²⁹⁹ CONN. GEN. STAT. ANN. § 22a-374 (1995).

³⁰⁰ CONN. GEN. STAT. ANN. § 22a-375(a) (1995).

³⁰¹ CONN. GEN. STAT. ANN. § 22a-375(b) (1995).

³⁰² All actions brought by the attorney general pursuant to the diversion provision have precedence in the order of trial; *see* CONN. GEN. STAT. ANN. § 22a-376(a) (1995).

³⁰³ CONN. GEN. STAT. ANN. § 22a-376(b) (1995).

Any false statement, representation, or certification made in any application, record, report, plan, or other document filed or required to be maintained with the knowledge that it is false or who falsifies, tampers with, or knowingly renders inaccurate any monitoring or method required to be maintained is subject to fines up to ten thousand dollars (\$10,000.00).³⁰⁴

g. Diversion Exemptions

The following diversions are exempt from registration and permit requirements:

- One or more wells joined in one system whose combined maximum withdrawal does not exceed fifty thousand (50,000) gallons of water during any twenty-four hour period;
- The maximum withdrawal of fifty thousand (50,000) gallons of surface water during any twenty-four (24) hour period;
- NPDES discharges covered by permit;
- Storm drainage systems which collect the surface water runoff from an area of less than one hundred (100) acres;
- Water for fire emergency purposes;
- Diversions within extensions and relocation of water supply system distribution mains;
- Roadway crossings or culverts which allow for continuous flow or passage of an existing watercourse; and
- Diversions directly related to routine maintenance and emergency repairs of dams.³⁰⁵

The DEP may adopt regulations that define and establish additional exempt categories or classes of diversions which would not by themselves or in combination with each other have a substantial effect on the long-range planning for and allocation of the water resources of the state.³⁰⁶

³⁰⁴ CONN. GEN. STAT. ANN. § 22a-376(c) (1995).

³⁰⁵ CONN. GEN. STAT. ANN. § 22a-377(a) (1995).

³⁰⁶ CONN. GEN. STAT. ANN. § 22a-377(b) (1995).

h. Diversion Emergency

If a water supply emergency has been declared, the DEP has the power to temporarily suspend a permit for diversion or impose conditions upon permit holders without a hearing for a period of thirty days. If the DEP determines that it is necessary to extend a temporary suspension or the conditions imposed upon a permit holder, it holds a hearing on its determination within ten (10) days of the DEP extension order upon written request from the permit holder. The DEP may also, with the approval of the Governor, authorize a person to divert certain quantities of water as the DEP deems necessary and proper to ease emergency conditions for a period of thirty (30) days without holding a hearing, and the thirty (30) day period may be extended twice except that the DEP must not authorize a diversion if such diversion would adversely impact an area where a public drinking water supply emergency has been declared. In taking this action, the DEP must consult with the DPH, other state agencies, and municipal officials as the DEP deems necessary and advisable.³⁰⁷

i. Emergency Violations

Any person that commits a violation during the course of a declared water supply emergency or who impedes, interferes with, or obstructs any lawful water supply emergency activities is subject to fines up to one thousand dollars (\$1,000.00) for each offense, imprisoned up to one (1) year, or both.³⁰⁸

III. AIR

A. Air Quality

1. Connecticut Air Quality Laws

The term "air pollution" means the presence in the outdoor atmosphere of one or more air pollutants of such quantities and characteristics and duration as to be, or likely be, injurious to public welfare, health of human health, plant or animal life, or property or unreasonably interfering with the enjoyment of life and property.³⁰⁹

In Connecticut, the DEP is responsible for air quality. The DEP initiates and supervises programs that determine the causes, effects, and hazards of air pollution and programs for air pollution control education.³¹⁰

³⁰⁷ The thirty (30) day period may be extended once; *see* CONN. GEN. STAT. ANN. § 22a-378(a) (1995).

³⁰⁸ CONN. GEN. STAT. ANN. § 22a-378(b) (1995).

³⁰⁹ CONN. GEN. STAT. ANN. § 22a-170 (1995).

³¹⁰ CONN. GEN. STAT. ANN. § 22a-171 (1995).

2. *Connecticut Air Regulations*

Although, the DEP consults with other departments or agencies of the state and exchanges information, the DEP has the power to formulate, adopt, amend, and repeal regulations to control and prohibit air pollution throughout the state as long as the regulations are consistent with the federal CAA.³¹¹ The DEP must consult with the Department of Economic and Community Development (ECD) regarding the location of highways and with the Department of Industrial Development (DID) with respect to the incidence and effect of air pollution. The DEP may employ technical consultants for special studies, advice, and assistance.³¹²

The DEP must in making regulations and issuing orders and in enforcing air pollution control provisions take into consideration all of the facts and circumstances bearing on the reasonableness of the activity involved and the regulations proposed to control it including:

- The character and degree of injury or interference to safety, health, or reasonable use of property;
- The social and economic value of the activity involved;
- The suitability or unsuitability of such activity to the area in which it is located; and
- The practicability, both scientific and economic, of reducing or eliminating the discharge resulting from such activity.³¹³

In all cases, the DEP must exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the area involved and to any lawful business, occupation, or activity involved. The regulations must also take into consideration the health risks of dioxins and furans developed by the DPH.³¹⁴

a. Air General Permits

The DEP requires a permit for any source regulated under the federal CAA.³¹⁵ Regarding any new air contaminant source, the DEP may require submittal of plans, specifications, and other information relating to its establishment, construction, installation, or enlargement for

³¹¹ 42 U.S.C. § 7401 et seq. (2000).

³¹² CONN. GEN. STAT. ANN. § 22a-172, 174 (1995 & Supp. 2002).

³¹³ CONN. GEN. STAT. ANN. § 22a-176 (1995).

³¹⁴ CONN. GEN. STAT. ANN. § 22a-176 (1995).

³¹⁵ 42 U.S.C. § 7661 et seq. (1994).

approval in order to obtain an air permit for the new air contaminant source. Modification may first be necessary to obtain approval and a permit. A permit with special conditions may be issued with DEP approval. The DEP may also require periodic inspection and maintenance of sources of air pollution as well as required records relating to air pollution.

The DEP may issue a general or an individual air permit. The general permit is issued for similar types of operations or substances, the same types of pollution control equipment or other operating conditions, standards, or limitations and require the same or similar monitoring. Even upon possessing a general permit, it may still be further required that a person proposing to conduct any activity under the general permit register the activity and obtain approval from the DEP before the general permit actually becomes effective to cover the activity. The general permit may also include other conditions the DEP deems appropriate including certain management practices and reporting requirements. All required reports are made available to the public. The DEP prepares an annual list of general permit holders that is available to the public.

In granting general air permits, the DEP publishes notice of its intent to issue a general permit in a newspaper having a substantial circulation in the affected area or areas, the public's right to inspect the proposed general permit, the public's opportunity to submit written comments, and the right to a public hearing if the DEP receives a petition signed by at least twenty-five (25) persons within the thirty (30) day comment period.³¹⁶ States that would be affected by the general permit and the U.S. EPA are also given notice as required by the federal CAA.³¹⁷ General air permits have fixed terms and may not be valid for a term greater than five (5) years. Any person who submitted timely comments may appeal the issuance of a general permit. Any person may request that the DEP issue, modify, revoke, or suspend a general permit. Grounds for modification, revocation, or suspension include:

- Violation of any air pollution control provision, regulation, permit, or order issued;
- Any unauthorized alteration to the source of air pollution after the issuance of a permit;
- A determination that the source endangers public health, safety, or welfare or the environment; and
- Misrepresentation of facts by the holder of the permit at any time.³¹⁸

³¹⁶ When the permit would regulate an activity which is subject to the federal CAA.

³¹⁷ CONN. GEN. STAT. ANN. § 22a-174(l)(1 - 2) (1995 & Supp. 2002).

³¹⁸ CONN. GEN. STAT. ANN. § 22a-174c (1995).

b. Individual Air Permits

The DEP may require a person whose activity is covered by a general permit to apply for and obtain an individual permit if the DEP determines that an individual permit would better protect the land, air, and waters of the state from pollution, e.g., when:

- The permittee is not in compliance with the conditions of the general permit;
- A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollution applicable to the permitted activity;
- Circumstances have changed since the time the general permit was issued so that the permitted activity is no longer appropriately controlled under the general permit or a temporary or permanent reduction or elimination of the permitted activity is necessary; or
- A relevant change has occurred in the applicability of the federal CAA.³¹⁹

In making the determination to require an individual permit, the commissioner may consider the location, character, and size of the source and other relevant factors. The DEP may require an individual permit only if the person whose activity is covered by the general permit has been notified in writing that an individual permit is required. The notice must include a brief statement of the reasons for requiring an individual permit, an application form, a statement setting a time for the person to file the application, and a statement that the general permit automatically terminates on the effective date of the individual permit. Aggrieved applicants may appeal the DEP's final action on a permit application may appeal.³²⁰

c. Operator Permits

The DEP may also require that operators of an air contaminant source obtain a permit to operate when the source is subject to DEP regulations, emits high risk hazardous air pollutants, burns waste oil, exceeds emission limits for sulfur compounds, is under a DEP order for a violation, or violates any air pollution control provision, regulations, permit, or permit conditions. The DEP may require that a person in control of an air contaminant source register with DEP and provide information even if the person is not required to obtain a permit so that the DEP may maintain his inventory of air pollution sources. Registration renewal intervals are determined by the DEP. The DEP may refuse to issue a permit if the U.S. EPA objects to the permit issuance in a timely manner.³²¹

³¹⁹ CONN. GEN. STAT. ANN. § 22a-174(l)(5) (1995 & Supp. 2002).

³²⁰ CONN. GEN. STAT. ANN. § 22a-174(m) (1995 & Supp. 2002).

³²¹ CONN. GEN. STAT. ANN. § 22a-174(c) (1995 & Supp. 2002).

d. Indirect Sources

The DEP does not require "indirect sources" to submit plans and specifications for approval. The term "indirect source" means any building, structure, facility, or installation that has or leads to an associated activity where an air pollutant is or may be emitted.³²²

e. Payment Insurance

Any new machinery, equipment, or buildings that are for the primary purpose of reducing, controlling, or eliminating air pollution, that are certified as approved for that purpose by the DEP, and that are purchased with a loan may apply to the Connecticut Development Authority for mortgage payment insurance if the payment insurance is required by a first mortgage.³²³

f. Brush Burning

The DEP allows residents of a municipality to burn brush on their property provided the resident possesses a permit unless;

- National or state ambient air quality standards would be exceeded;
- Where a hazardous health condition might be created;
- When the forest fire danger in the area is identified by the DEP as extreme and woodland or grass land is within one hundred feet of the proposed burn;
- Where there is an advisory from the commissioner of any air pollution episode; and
- Where burning is prohibited by municipal ordinance.³²⁴

g. Air Emission and Registration Fees

The DEP charges an air permit application fee and to cover the cost of review and monitoring plus a fee for visual testing of air pollution control device to detect leaks in such devices.³²⁵ Registration of air pollution sources is biennial, and a registration fee is charged.

³²² CONN. GEN. STAT. ANN. § 22a-174(e) (1995 & Supp. 2002).

³²³ CONN. GEN. STAT. ANN. § 22a-173 (1995).

³²⁴ CONN. GEN. STAT. ANN. § 22a-174(f) (1995 & Supp. 2002).

³²⁵ CONN. GEN. STAT. ANN. § 22a-174(g - h) (1995 & Supp. 2002).

The owners or operators of air pollution sources must pay an annual fee of five hundred dollars (\$500.00) to the DEP based on actual emissions or potential emissions of one hundred (100) tons per year or more of any criteria pollutant or A1 sources. An additional two hundred fifty dollar (\$250.00) fee is charged to these sources for each day after the day the DEP requires an inspection to be performed.

The owners or operators of air pollution sources which have a calculated rate of emissions before the application of control equipment of one hundred (100) tons per year or more of any criteria pollutant but actual emissions of less than one hundred (100) tons per year (called A2 sources) must pay a two hundred fifty dollar (\$250.00) fee to the DEP. Other fees may be charged by the DEP by regulation and sources other than A1 and A2 sources may be charged a fee for a permit to operate as long as the corresponding regulations are consistent with the federal CAA.³²⁶

The DEP may require the planting of trees or turf grass to offset carbon dioxide emitted into the atmosphere from the air contaminant source as a condition of obtaining an air permit.³²⁷

h. Criminal Air Penalties

Any person who knowingly or with criminal negligence violates any air pollution control provision, regulation, order, or permit is subject to fines up to twenty-five thousand dollars (\$25,000.00) per day for each day of violation, imprisonment up to one (1) year, or both. A subsequent conviction carries a fine up to fifty thousand dollars (\$50,000.00) per day for each day of violation, imprisonment up to two (2) years, or both.³²⁸

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other required document or who falsifies, tampers with, or knowingly renders any monitoring device or required method inaccurate is subject to fines up to ten thousand dollars (\$10,000.00) for each violation, imprisonment up to six (6) months for each violation, or both.³²⁹

i. Air Inspections and Investigations

The DEP has authority upon a written complaint or upon its own initiative to enter and inspect any building or place, except a private residence, for the purpose of investigating sources of air pollution and ascertaining compliance with any air pollution regulation. Furthermore, the

³²⁶ CONN. GEN. STAT. ANN. § 22a-174a (1995).

³²⁷ CONN. GEN. STAT. ANN. § 22a-174d (1995).

³²⁸ CONN. GEN. STAT. ANN. § 22a-175(a) (1995 & Supp. 2002).

³²⁹ CONN. GEN. STAT. ANN. § 22a-175(b) (1995 & Supp. 2002).

DEP may apply to any court having criminal jurisdiction over a building or place for a warrant to inspect the premises to determine compliance of sources of air pollution with such regulations. All information gained by inspection is kept confidential except as it relates directly to air pollution. If samples are taken for analysis, a duplicate of the analytical report is promptly furnished to the person suspected of causing air pollution.³³⁰ Any confidential information made available to DEP as to secret processes or methods is kept confidential.³³¹

j. Air Orders

When the DEP finds that a person has violated an air pollution control provision, regulation, order, or permit, a written order is issued against that person and a true copy of the order is served upon the person either by certified mail, with return receipt requested, a state marshal, or an indifferent person. The return service with the person's endorsement is filed with the DEP. The DEP order must specify the nature of the violation and a reasonable period of time for the person to take measures to correct or remedy the violation.³³²

If the DEP finds that a violation exists and the person has received written notification of two violations in the preceding one (1) year period, the DEP mandates an emission test of the air contaminant source at the expense of the source. If the results of the test indicate noncompliance, the DEP issues an order requiring pollution abatement.³³³

Unless such person files a written answer within thirty (30) days after the date of notice service and requests a hearing before the DEP, the DEP's order is final and not subject to appeal. However, after receiving a request for a hearing, the DEP must grant a hearing as soon as practicable. The testimony at the hearing is under oath and recorded stenographically or by a sound-recording device although the strict rules of evidence in courts of law are not applied. True copies of the transcript and of any other record made at the hearing is furnished to the alleged violator upon request but at the alleged violator's expense.³³⁴ After the hearing, the DEP considers all the evidence and must affirm, modify, or revoke the order. By agreement of the DEP and the person subject to the order, the DEP may modify the order or extend the time for compliance set forth in the order. No appeal may be taken from a modification or extension by agreement.³³⁵

³³⁰ CONN. GEN. STAT. ANN. § 22a-177 (1995).

³³¹ CONN. GEN. STAT. ANN. § 22a-179 (1995).

³³² CONN. GEN. STAT. ANN. § 22a-178(a) (1995 & Supp. 2002).

³³³ CONN. GEN. STAT. ANN. § 22a-178(b) (1995 & Supp. 2002).

³³⁴ CONN. GEN. STAT. ANN. § 22a-178(c) (1995 & Supp. 2002).

³³⁵ CONN. GEN. STAT. ANN. § 22a-178(d) (1995 & Supp. 2002).

Whenever the DEP issues an order to a person to correct a violation and that person is not the owner of the land where violation occurred, the DEP may issue an order to the landowner to correct the violation. This order must be sent by certified mail, return receipt requested, to the owner at his last known post office address, with a notice that the order will be filed upon the land records.³³⁶ A certified copy of the order or notice of the order constitutes notice to the landowner's heirs, successors, and assigns. When the landowner fully complies with the order or the order is revoked, the DEP issues a certificate showing the compliance or revocation which the DEP records on the land records where the order was previously recorded.³³⁷ Orders issued to two or more persons involving the same violation, cause each person to be jointly and severally liable.³³⁸

If the DEP has reasonable cause to believe, based on department investigation, test data, or other credible information that any person has violated or is about to violate any air pollution control provision, regulation, order, or permit, the DEP may issue an order to the person to cooperate in its investigation by monitoring the source, producing records from the source, or any other means involving the source of air pollution. The order may also require that the respondent correct the violation.³³⁹

k. Air Enforcement and Civil Penalties

In addition to criminal penalties for knowing and wilful violations, any person who violates any air pollution control provision, regulation, order, or permit may be assessed a civil penalty by the court up to twenty-five thousand dollars (\$25,000.00) for each offense and each day of violation. The DEP may request the attorney general to bring a civil action in the superior court for the judicial district of Hartford to have a penalty assessment imposed by the court. In addition, the DEP may request the attorney general to institute a civil action in the superior court for the judicial district of Hartford for injunctive relief to restrain any further violation. The superior court grants relief following notice and hearing to the violator.³⁴⁰

When noncompliance is not due to factors beyond the control of the person under a DEP order and the person has not requested a hearing on the order or filed an appeal during the time for making the request or filing an appeal, the failure to comply with the corrective provision of the order within six months of the date prescribed for correction, causes the DEP to request the attorney general to bring an action in the superior court for the judicial district of Hartford for injunctive relief to restrain any further violation of the order and to secure compliance. During

³³⁶ CONN. GEN. STAT. ANN. § 22a-178(e) (1995 & Supp. 2002).

³³⁷ CONN. GEN. STAT. ANN. § 22a-178(g) (1995 & Supp. 2002).

³³⁸ CONN. GEN. STAT. ANN. § 22a-178(f) (1995 & Supp. 2002).

³³⁹ CONN. GEN. STAT. ANN. § 22a-178(h) (1995 & Supp. 2002).

³⁴⁰ CONN. GEN. STAT. ANN. § 22a-180(a) (1995).

the pendency of any action, the DEP pursues any administrative measure available to obtain compliance.³⁴¹

l. Air Emergencies

If the DEP finds that an air pollution emergency exists caused by adverse weather conditions which requires immediate action to protect the public health or safety, the DEP may order any person causing air pollution to reduce or discontinue air pollution immediately. Even if no adverse weather condition exists, if the DEP finds any person who is causing air pollution to an extent as to require immediate action to protect the public health or safety, the DEP may order reduction or discontinuance of the air pollution immediately. Upon the issuance of any emergency order, the DEP must establish a place and time for a hearing within forty-eight (48) hours after the issuance of the order. Not more than twenty-four (24) hours after the conclusion of such hearing, the DEP must affirm, modify, or set aside the order.³⁴²

All appeals brought by any persons aggrieved by a final decision of the DEP must be brought in the superior court for the judicial district of Hartford-New Britain at Hartford.³⁴³

m. Air Pollution Exemptions

Any person who owns or is in control of any plant, building, structure, process, or equipment may apply to the DEP for a permit granting an exemption or partial exemption from air pollution control regulations governing the quality, nature, duration, or extent of discharges of air pollutants. The DEP may grant the exemption permit if the emissions do not constitute a danger to public health or safety, and compliance would produce substantial practical difficulty or hardship without equal or greater benefits to the public.³⁴⁴ Additionally, in granting exemption permits, the DEP must hold a public hearing and consider, in addition to the other required considerations, the relative interests of the permit applicant, owners of other property likely to be affected by the discharges, and the general public unless the DEP determines whether the source, either alone or in combination with another source, would endanger public health, safety, or welfare or the environment if the permit were granted. An exemption or partial exemption permit may not exceed five (5) years duration although the period may be renewed by application.

³⁴¹ CONN. GEN. STAT. ANN. § 22a-180(b) (1995).

³⁴² CONN. GEN. STAT. ANN. § 22a-181 (1995).

³⁴³ CONN. GEN. STAT. ANN. § 22a-182a (1995 & Supp. 2002).

³⁴⁴ CONN. GEN. STAT. ANN. § 22a-183(a) (1995 & Supp. 2002).

n. Air Construction and Operating Permits

A person may not use a construction permit as an operating permit for an air contaminant source except as authorized by the DEP. Any unauthorized use of an air emission source is cause for the DEP to deny the issuance of an operating permit. The DEP may require an emission test of the source before issuing an operating permit. The results of emission tests are sent to the legislative body of the municipality where the source is located upon request by the legislative body. A fee may be charged to the operating permit applicant for the reasonable cost of DEP conducting or monitoring an emission test. A violation of air pollution control regulations provides grounds for revoking an operating permit.³⁴⁵

6. Connecticut Air Pollution Prohibitions

In Connecticut, it is unlawful to:

- Cause air pollution in violation of air pollution control provisions or regulations; or
- Construct, install, enlarge, or establish a new air contaminant source without a DEP permit or in violation of a DEP order.

The DEP is authorized to request the attorney general to institute an action in the superior court for the judicial district of Hartford for injunctive relief to restrain any air pollution control violation.³⁴⁶ Municipalities in Connecticut may adopt air pollution control ordinances if the ordinances are consistent with air pollution control provisions and DEP regulations and the DEP does not disapprove the ordinances.³⁴⁷

7. Connecticut Small Business Stationary Air Source Assistance Program

The DEP implements a small business stationary source technical and environmental compliance program to assist small business stationary sources in complying with the federal CAA. A small business air pollution compliance advisory panel advises the DEP with regard to the effectiveness of the small business stationary source technical and environmental compliance program. The panel consists of ten members representing the public, owners of small business stationary sources, and the DEP. The panel has one member designated by the DEP as a small business ombudsman.³⁴⁸ The panel reports to the U.S. EPA on the program's compliance with

³⁴⁵ CONN. GEN. STAT. ANN. § 22a-186 (1995).

³⁴⁶ CONN. GEN. STAT. ANN. § 22a-184 (1995).

³⁴⁷ CONN. GEN. STAT. ANN. § 22a-184, 185 (1995).

³⁴⁸ CONN. GEN. STAT. ANN. § 22a-188a (1995).

the federal Paperwork Reduction Act, the federal Regulatory Flexibility Act, and the federal Equal Access to Justice Act.

The term "small business stationary source" means a stationary source of air pollution that:

- Is owned or operated by a person who employs one hundred (100) or fewer individuals;
- Is a small business concern as defined in the federal Small Business Act;³⁴⁹
- Is not a major stationary source as defined in the federal CAA;
- Emits less than fifty (50) tons per year of any regulated pollutant;
- Emits less than seventy-five (75) tons per year of all such pollutants.³⁵⁰

Upon petition by a person who owns or operates a stationary source of air pollution, the DEP may, after notice and opportunity for public comment, include any stationary source as a small business stationary source even though the source does not meet the criteria of a small business stationary source but the source emits less than one hundred (100) tons per year of pollutants regulated pursuant to the federal CAA.³⁵¹

IV. SOLID WASTE AND HAZARDOUS WASTE

Producer Note: There are several laws which control the use, disposal, and cleanup of solid and hazardous wastes. Agricultural producers who use hazardous chemicals, petroleum, or other products stored in storage tanks should be aware of requirements governing their actions.

A. Solid Waste Laws

1. *Connecticut Solid Waste Policy*

It is Connecticut's solid waste policy that in order to create and maintain a healthful, clean, and beautiful environment:

³⁴⁹ 15. U.S. C. § 631 *et seq.*

³⁵⁰ CONN. GEN. STAT. ANN. § 22a-188(a) (1995).

³⁵¹ CONN. GEN. STAT. ANN. § 22a-188(b) (1995).

- It is necessary to establish a program to reduce litter³⁵² and littering and to recover and recycle³⁵³ waste materials that conserve resources which, in turn, promotes and maintains environmental quality, the economic productivity of the state, and the public's health and welfare; and
- The comprehensive litter control program should not only serve to collect and remove litter, but supplement recycling programs designed to process discarded packaging materials as well as other energy rich components of solid waste.³⁵⁴

Connecticut assigns the administration and implementation of the solid waste policy to the DEP. The term "solid waste" means unwanted or discarded solid, liquid, semisolid, or contained gaseous material, including demolition debris material burned or otherwise processed at a resources recovery facility or incinerator, material processed at a recycling facility, and sludges or other residue from a water pollution abatement facility, water supply treatment plant, or air pollution control facility.³⁵⁵

The DEP administers and enforces the planning and implementation requirements of solid waste provisions. The DEP examines all existing or proposed solid waste facilities and provides for the proper planning, design, construction, operation, monitoring, closure, and post closure maintenance to ensure against pollution of the waters of the state, the harboring of vectors, incidents of fire and explosion, the emission of objectionable odors, dirt, or other air pollutants so that the health, safety, and welfare of the people of the state is safeguarded and enhanced and the natural resources and environment of the state may be conserved, improved, and protected. The DEP has a duty to require a plan for the design, construction, operation, monitoring, closure, and postclosure maintenance of the facility and authority to order the alteration, extension, limitation, closure, or replacement of these facilities whenever necessary to meet these DEP responsibilities. Before ordering closure, the DEP must determine that reasonable alternative facilities exist.³⁵⁶

³⁵² The term "litter" means any discarded, used, or unconsumed substance or waste material which has not been deposited in a litter receptacle; *see* CONN. GEN. STAT. ANN. § 22a-248 (1995).

³⁵³ The term "recycling" means the process of sorting, cleansing, treating, and reconstituting waste or other discarded material for the purpose of using the altered form; *see* CONN. GEN. STAT. ANN. § 22a-248(10) (1995).

³⁵⁴ CONN. GEN. STAT. ANN. § 22a-247 (1995).

³⁵⁵ CONN. GEN. STAT. ANN. § 22a-270(2) (1995). The term "resources recovery facility" means a facility utilizing processes to claim energy from municipal solid waste; *see* CONN. GEN. STAT. ANN. § 22a-207(9) (1995).

³⁵⁶ CONN. GEN. STAT. ANN. § 22a-208 (1995).

a. *Solid Waste Prohibitions*

In Connecticut, it is unlawful to throw, scatter, spill, place, or cause to be blown, scattered, spilled, thrown, or placed, or otherwise dispose any litter upon any public or private property unless it is designated and licensed by the state as a disposal location or it is a litter receptacle.³⁵⁷ Dumping with the permission of a landowner is no defense to a violation, and the DEP may investigate any reported or suspected violation. Dumping includes the discard of automobiles and parts, large appliances, tires, bulky waste, and hazardous waste. The DEP has authority to order the removal of dumped objects to an approved solid waste facility.

b. *Solid Waste Violations*

Upon the determination that a violation has occurred, the DEP sends notice to the landowner where the violation occurred by certified mail, return receipt, stating the law, the charge, the demand to remove the dumped material to the proper location, the right to a hearing to contest the DEP finding, and a date, time, and place set aside to hold such hearing. The hearing must be held within ten (10) days of the notice mailing, and the DEP must render a decision within ten (10) days of the completion of the hearing.³⁵⁸ If a landowner fails to remove the dumped material within thirty (30) days of an order to do so and does not appeal the order, the municipality may enter the property and remove the material.³⁵⁹

The DEP is authorized to offer a reward for information that leads to the imposition of a civil penalty or conviction for illegal dumping. The reward ranges up to one thousand dollars (\$1,000.00).³⁶⁰

c. *Solid Waste Construction and Operation Permits*

In making a decision to grant or deny a permit to construct a solid waste land disposal facility, the DEP must consider the character of the neighborhood in which the facility is located. The DEP may impose requirements for hours and routes of traffic, security, fencing, and dust, odor, rodent, and insect prevention. The DEP has authority to issue, deny, modify, renew, suspend, revoke, or transfer a permit for the construction, alteration, and operation of solid waste facilities. Application fees vary according to the type solid waste facility.

³⁵⁷ Violators are subject to fines up to one hundred ninety-nine dollars (\$199) for each violation; *see* CONN. GEN. STAT. ANN. § 22a-250(a) (1995 & Supp. 2002).

³⁵⁸ CONN. GEN. STAT. ANN. § 22a-250 (1995 & Supp. 2002).

³⁵⁹ Dumping violations subject the violator to fines up to ten thousand dollars (\$10,000.00) for each violation and each day of continuing violation; willful violations may bring additional civil penalties plus a penalty up to three times remediation costs and restitution to a landowner for suffered damages from the violation; a vehicle used in a solid waste or hazardous waste violation is subject to forfeiture; *see* CONN. GEN. STAT. ANN. § 22a-250, 250a (1995 & Supp. 2002).

³⁶⁰ CONN. GEN. STAT. ANN. § 22a-250b (1995).

A plan design and method of operation plus a permit to construct is required for a new or proposed solid waste facility. A permit to operate is required for solid waste facility operations.³⁶¹ The DEP is authorized to issue a permit to construct a facility for land disposal of solid waste provided the applicant also submits a valid certificate of zoning approval, special permit, special exception, variance, or other documentation proving municipal approval where the facility is proposed to be located.³⁶² The DEP files a certified copy of any issued permit to construct a solid waste facility upon the land records where such records are kept for the land where the facility is to be located.³⁶³

The DEP holds a public hearing prior to approving or denying an application if public interest is best served or if a petition is received that requests a hearing signed by at least twenty-five (25) persons. The DEP may amend a permit to construct or permit to operate without a hearing for minor changes in design, practices, or equipment provided the amendment does not significantly change the nature of the facility or its impact on the environment.³⁶⁴

d. Solid Waste Operators

The DEP establishes requirements for operators of solid waste facilities and may develop, offer, or sponsor training programs and require participation by operator applicants.³⁶⁵

e. Solid Waste General Permits

General solid waste permits are issued for a category of activities that involve the same types of operations, involve the transfer, storage, processing, or disposal of the same types of substances, require the same operating conditions or standards, and require similar monitoring. The DEP may require a person to obtain a general permit and to register the proposed activity with the DEP before the activity is covered by the general permit. The general permit clearly defines the activity and may contain terms, limitations, and conditions. Registration is prescribed by the DEP.³⁶⁶

The DEP publishes notice of its intent to issue a general permit in a newspaper having substantial circulation in the affected area. A thirty (30) day comment period follows in which

³⁶¹ CONN. GEN. STAT. ANN. § 22a-208a(a - d) (1995 & Supp. 2002).

³⁶² CONN. GEN. STAT. ANN. § 22a-208b (1995).

³⁶³ CONN. GEN. STAT. ANN. § 22a-208(g) (1995).

³⁶⁴ If a hearing was held on the construction of the solid waste facility on or after July 1, 1993, no hearing is required for an application for a permit to operate; *see* CONN. GEN. STAT. ANN. § 22a-208a(e) (1995 & Supp. 2002).

³⁶⁵ CONN. GEN. STAT. ANN. § 22a-208(f) (1995).

³⁶⁶ CONN. GEN. STAT. ANN. § 22a-208(q)(1) (1995).

interested persons may submit written comment to the DEP. The DEP also publishes notice of the subsequent issuance or decision not to issue a general permit. Any person may request that the DEP issue, modify, suspend, or revoke a general permit.³⁶⁷

f. Solid Waste Individual Permits

The DEP may require a general permit holder to obtain an individual permit if the individual permit would better protect the land, air, and waters of the state from pollution. Individual permits may be required:

- When the owner or operator is not in compliance with the conditions of the general permit;
- When a change has occurred in the availability of demonstrated technology or practices for the control of pollution applicable to the activity;
- When circumstances have changed since the time of the issuance of the general permit so that the activity is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized activity is necessary; or
- When a relevant change has occurred in the applicability of the federal RCRA.³⁶⁸

In making a determination to require an individual solid waste permit, the DEP may consider the location, character, size of the activity, and any other relevant factor. A general permit holder must be notified in writing when the DEP determines that an individual permit is required. The notice must include a statement of the reasons for the individual permit requirement and a date that the general permit automatically terminates. The DEP may grant an extension to obtain the individual permit, but the person must use best efforts to obtain the required permit. Any interested person may petition the DEP to take action under the solid waste management provisions.³⁶⁹

g. Solid Waste Facilities

In Connecticut it is unlawful to receive, dispose, process, or transport solid waste without a solid waste permit. However, the DEP must determine there is a need in the state to construct or expand a resources recovery facility, composting facility, or ash residue disposal area in order that the state will not have substantial excess capacity. The DEP publishes notice of its

³⁶⁷ CONN. GEN. STAT. ANN. § 22a-208(q)(2) (1995).

³⁶⁸ CONN. GEN. STAT. ANN. § 22a-208(q)(3) (1995).

³⁶⁹ CONN. GEN. STAT. ANN. § 22a-208(q)(4) (1995).

preliminary determination of need within sixty (60) days of its decision regarding any applications. The DEP considers any comments received on the application as well as the design capacity, the planned operating rate and throughput, estimated amount of solid waste receivable over the life of the facility, a contingency plan for ten percent (10%) higher or lower solid waste estimates, seasonal reserve capacity, the capability of the applicant to complete the project, the technical feasibility of the proposed facility, the demonstration that the facility would not exceed the state's need for solid waste capacity, and the proposed location, service area, and transportation system.³⁷⁰ Quarterly reports regarding the amount of solid waste received are required by the DEP, and some items require individual accounting such as cardboard, glass food containers, leaves, metal food containers, newspapers, storage batteries, waste oil and plastic food containers.³⁷¹ Grass clippings are not accepted at disposal facilities other than a municipal or commercial composting facility. The state encourages recycling on the property where the grass clippings are generated.³⁷² The DEP has authority to develop, encourage, and operate demonstration resource recovery systems or improved solid waste facilities.³⁷³

In Connecticut, all retail establishments which offer plastic bags to customers for purchased goods must also offer paper bags and inform customers of the choice.³⁷⁴

h. Solid Waste Orders

The DEP may issue, modify, or revoke orders to correct or abate solid waste violations. The orders may be issued to the alleged violator or to the landowner where the violation occurs regardless of whether the landowner participated in the alleged violation or not. If two or more persons participated in the same violation, they are jointly and severally liable. Notice of the order is by certified mail, return receipt requested, or by actual process service. The order states the basis for its issuance and specifies the reasonable time allowed for compliance. A certified copy of the order is also filed upon the land where land records are kept for that area. Upon compliance or revocation of the order, the DEP causes a release certificate to be recorded upon the land records.

³⁷⁰ CONN. GEN. STAT. ANN. § 22a-208(c - d) (1995).

³⁷¹ CONN. GEN. STAT. ANN. § 22a-208e (1995 & Supp. 2002).

³⁷² CONN. GEN. STAT. ANN. § 22a-208v (1995).

³⁷³ CONN. GEN. STAT. ANN. § 22a-210 (1995).

³⁷⁴ CONN. GEN. STAT. ANN. § 22a-255e (1995).

i. Solid Waste Appeals

Any person aggrieved by the order may request a hearing before the DEP provided the request is made in writing and submitted within thirty (30) days of the date of the issuance of the order.³⁷⁵ The hearing is necessary to further appeal the order. Before or after the hearing, the DEP may modify by agreement or extend an existing order. No hearing or appeal is allowed from any modification or extension of the order. After a hearing, the DEP must affirm, modify, or revoke the order and notify the recipient of the order by certified mail, return receipt requested. A final DEP order is appealable in the superior court for the judicial district of New Britain.³⁷⁶

j. Solid Waste Penalties

Violators of solid waste provisions, regulations, permits, or orders are subject to civil penalties up to twenty-five thousand dollars (\$25,000.00) for each violation and each day of violation. Upon request by the DEP, the attorney general institutes a civil action in the superior court for the judicial district of Hartford to assist in recovery of the penalty. The DEP may also request the attorney general to bring an action to enjoin the violation and order remedial measures to prevent, control, or abate pollution. Actions brought by the attorney general have precedence in the order of trial.³⁷⁷

Knowing violations carry penalties up to twenty-five thousand dollars (\$25,000.00) for each violation and each day of violation, imprisonment up to two years, or both. Subsequent violations of any solid waste violation carry increased penalties up to fifty thousand dollars (\$50,000.00), imprisonment up to five (5) years, or both.³⁷⁸ Violations that involve imminent danger of death or bodily injury are more severe and result in fines up to two hundred fifty thousand dollars (\$250,000.00), imprisonment up to five (5) years, or both.³⁷⁹

k. Solid Waste Public Education

The DEP in consultation with the DPH coordinate a public education program on risk assessment and risk management of solid waste disposal practices to help prevent pollution.³⁸⁰

³⁷⁵ CONN. GEN. STAT. ANN. § 22a-225 (1995).

³⁷⁶ CONN. GEN. STAT. ANN. § 22a-225 (1995).

³⁷⁷ CONN. GEN. STAT. ANN. § 22a-226 (1995).

³⁷⁸ CONN. GEN. STAT. ANN. § 22a-226a (1995 & Supp. 2002).

³⁷⁹ CONN. GEN. STAT. ANN. § 22a-226b (1995).

³⁸⁰ CONN. GEN. STAT. ANN. § 22a-240 (1995).

2. *Connecticut Solid Waste Management Plan*

The DEP is responsible for preparing the state's solid waste management plan and updating the plan biennially.³⁸¹ To reduce pollution and hazards to public health and safety and the environment, Connecticut has also mandated that heavy metals be eliminated from packaging because heavy metals survive incineration and are still present in the residue ash and may be present in the emissions. Heavy metal such as lead, mercury, cadmium, and hexavalent chromium are of particular concern.³⁸² Penalties for the packaging violations subject the violator to fines up to ten thousand dollars (\$10,000.00) for each violation and each day of continuing violation.³⁸³

a. Used Batteries and Tires

Used lead acid batteries or motor vehicle batteries must be separately from other solid waste and disposed at designated collection sites, recycling centers, or U.S. EPA permitted smelters.³⁸⁴ New battery purchases require the exchange of a used battery or a five dollar (\$5.00) deposit. Required signage at the retailer must inform customers that exchanges of up to three (3) used batteries must be accepted by the retailer up to thirty (30) days from the date of the purchase receipt.³⁸⁵ Nickel-cadmium and mercuric oxide batteries must be separated from other solid waste and disposed properly by solid waste processing centers and recycling centers.³⁸⁶

b. Newsprint

In Connecticut, the newsprint used by newspapers must contain fifty per cent (50%) or more of recycled fiber unless the specification cannot be met according to the Northeast

³⁸¹ CONN. GEN. STAT. ANN. § 22a-211 (1995).

³⁸² CONN. GEN. STAT. ANN. § 22a-255g (1995). Some exemptions exist; *see* CONN. GEN. STAT. ANN. § 22a-255j (1995).

³⁸³ Knowing violations increase the penalty to fifty thousand dollars (\$50,000.00), imprisonment up to one (1) year, or both.; *see* CONN. GEN. STAT. ANN. § 22a-255l (1995).

³⁸⁴ CONN. GEN. STAT. ANN. § 22a-256g (1995).

³⁸⁵ Violators are fined up to one hundred dollars (\$100.00) for each violation day; *see* CONN. GEN. STAT. ANN. § 22a-256h (1995). Wholesalers must accept and remove used batteries from retailers in exchange for new batteries purchased within ninety (90) days; the DEP has authority to inspect retail premises and issue warnings and citations; *see* CONN. GEN. STAT. ANN. § 22a-256i (1995).

³⁸⁶ CONN. GEN. STAT. ANN. § 22a-256b, 256c (1995).

Recycling Council or sufficient amounts are unavailable at a comparable price to virgin newsprint or are unavailable within a reasonable time.³⁸⁷

3. *Connecticut Solid Waste Recycling*

In Connecticut, the DEP has authority to designate certain items that must be recycled and separated from other solid waste materials for disposal. The requirement applies to residential properties as well as other generating sources.³⁸⁸ The DEP coordinates and develops programs relating to litter control, recycling, and waste reduction.³⁸⁹

Beverage containers³⁹⁰ in Connecticut must have a refund value not less than five (5) cents per container. Metal beverage containers must not have detachable devices that open the container unless the detachable material decomposes within a reasonable time when exposed to the atmospheric elements.³⁹¹

4. *Connecticut Solid Waste Management Services Act*

In order to provide a clean and wholesome environment, the Connecticut General Assembly enacted the Solid Waste Management Services Act (SWMSA)³⁹² to address solid waste disposal practices because local governments find it difficult to provide adequate disposal services at reasonable costs without causing damage or hazards to the environment and loss of useful resources. State legislators realize that recycling programs are successful and show that recoverable resources exist within solid wastes. Legislators also recognize that technology and methods are available to recover resources at a level commensurate with environmental benefits, but large scale processing of solid wastes may be necessary in order to achieve maximum environmental and economic benefits for the people of the state. Thus, the state has undertaken the development of systems and facilities utilizing technology to implement large-scale processing of solid wastes so that it may provide solid waste services to local governments at reasonable costs. The SWMSA sets out the necessary state and local structure and powers for providing statewide solid waste disposal services including the operations, supervision, and monitoring.³⁹³

³⁸⁷ Directory stock for publishing directories must contain forty per cent (40%) or more; *see* CONN. GEN. STAT. ANN. § 22a-256n, 256p, 256v, 256z (1995 & Supp. 2002).

³⁸⁸ CONN. GEN. STAT. ANN. § 22a-241b (1995).

³⁸⁹ CONN. GEN. STAT. ANN. § 22a-249, 255f (1995).

³⁹⁰ Except those sold by an interstate passenger carrier; *see* CONN. GEN. STAT. ANN. § 22a-244 (1995 & Supp. 2002).

³⁹¹ CONN. GEN. STAT. ANN. § 22a-244 (1995 & Supp. 2002).

³⁹² CONN. GEN. STAT. ANN. § 22a-260 to 285 (1995).

³⁹³ CONN. GEN. STAT. ANN. § 22a-258 (1995).

B. Hazardous Waste

1. Connecticut Hazardous Waste Laws

a. Hazardous Waste Policy

The general assembly of Connecticut discloses its findings regarding hazardous waste³⁹⁴ as follows:

- Improper management of hazardous wastes has contaminated the water, soil, and air of the state which threatens the health and safety of the state's citizens;
- Economic benefits from industry are jeopardized if hazardous waste disposal facilities are not available in Connecticut;
- Safe management of hazardous wastes, including state involvement, is mandated by the federal RCRA and related regulations;
- Siting of hazardous waste disposal facilities is in the best interest of the state's citizens; and
- The public should participate in siting decisions.

The hazardous waste policy sets forth a goal to initiate final remedial action by the year 2000 at each hazardous waste disposal site listed on the DEP's July 3, 1989 inventory and to assure the siting of hazardous waste disposal facilities so that the health and safety of the state's citizens and the environmental and economic interests of the state are protected. The state has established a legal process for the siting of hazardous waste facilities that will:

- Protect the health and safety of Connecticut citizens;
- Assure responsible economic development; and
- Have a siting process at least as strict as that required by federal law.³⁹⁵

³⁹⁴ The term "hazardous waste" used here means any waste material, except by-product material, source, material, or special nuclear material which may pose a present or potential hazard to human health or the environment when improperly disposed, treated, stored, transported, or otherwise managed; *see* CONN. GEN. STAT. ANN. § 22a-115(1) (1995 & Supp. 2002).

³⁹⁵ CONN. GEN. STAT. ANN. § 22a-114 (1995).

V. PESTICIDES AND CHEMIGATION

Producer Note: Use of pesticides and other farm chemicals is regulated by federal and state statutes, and most states have some form of pesticide licensing or certification requirements controlling those who use pesticides. In addition, most states including Connecticut have laws that address safety concerns about pesticide use by agricultural employees or around agricultural employees.

A. Connecticut Pesticide Laws

1. *Connecticut Pesticide Control Act*

In Connecticut, it is unlawful to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, receive, deliver, offer to deliver any pesticide which is not registered with the DEP.³⁹⁶

a. *Pesticide Registration*

Applications for pesticide registration must be filed with the DEP, and each application must provide the following information:

- Name and address of the applicant and of any other person whose name will appear on the label;
- Name of the pesticide;
- Copy of the labeling;
- Statement of all claims;
- Directions for use;
- Full description of the results of tests made involving the claims made;³⁹⁷
- Complete formula; and

³⁹⁶ It is not unlawful to transfer a pesticide if the pesticide transfer is in accordance with an experimental permit or if the pesticide transfer is from one plant to another plant within the state operated by the same producer for packaging or for use as a constituent part of another pesticide produced at the second plant; *see* CONN. GEN. STAT. ANN. § 22a-48 (1995 & Supp. 2002).

³⁹⁷ Renewals are required only to provide information that is different from the last registration; *see* CONN. GEN. STAT. ANN. § 22a-49 (1995).

- Whether the pesticide is for general-use or restricted-use or both; and
- Results of effectiveness tests against the pest to be controlled, the hazards involved in the use of the product, acute and chronic toxicity, and persistence in the environment, or impact on nontarget organisms, but only if requested by the DEP.³⁹⁸

The DEP reviews the registration application and within thirty (30) days determines whether the pesticide requirements are fulfilled so that the pesticide may be registered.³⁹⁹ The pesticide composition must support and warrant its claims, the pesticide must be properly labeled, and the pesticide must perform its intended function without unreasonable adverse effects on the environment and will not cause unreasonable adverse effects on the environment when used in accordance with widespread and commonly recognized practices.⁴⁰⁰

If a pesticide does not meet registration requirements, the DEP must notify the applicant and provide the reasons the registration is lacking. The applicant must correct any deficiencies in the registration within thirty (30) days, or the DEP may lawfully refuse to register the pesticide.⁴⁰¹

The DEP may determine that a pesticide should be reclassified from general-use to restricted-use, from restricted-use to permit use, or from general-use to permit use when it is necessary to prevent unreasonable adverse effects on the environment. However, the DEP must notify the registrant at least thirty (30) days before making the change. The registrant or any interested person may seek relief from the DEP determination by requesting a hearing within thirty (30) days of receipt of notice or publication of notice. Subsequent appeal is accomplished by seeking judicial review.⁴⁰²

Registration and renewal of a pesticide must be accompanied by a fee of three hundred dollars (\$300.00). Registrations may be valid for any number of years up to five (5) years before expiration. Fees are adjusted accordingly. Although a registered pesticide is prima facie evidence that the pesticide, its labeling, and packaging comply with registration provisions, registrations may not be used by the registrant as a defense to any alleged violation or offense.⁴⁰³

³⁹⁸ CONN. GEN. STAT. ANN. § 22a-49(a) (1995).

³⁹⁹ CONN. GEN. STAT. ANN. § 22a-49(b) (1995).

⁴⁰⁰ CONN. GEN. STAT. ANN. § 22a-49(d) (1995).

⁴⁰¹ CONN. GEN. STAT. ANN. § 22a-49(e) (1995).

⁴⁰² CONN. GEN. STAT. ANN. § 22a-50(e) (1995 & Supp. 2002).

⁴⁰³ CONN. GEN. STAT. ANN. § 22a-50(j) (1995 & Supp. 2002).

A pesticide registration is canceled at the end of a five (5) year period unless the registrant, or other interested person with concurrence of the registrant, requests before the expiration that the registration be continued. The DEP may allow existing stocks of a pesticide to be sold after the expiration date if the pesticide use is not inconsistent with its purpose and labeling. The DEP, however, notifies the registrant at least thirty (30) days prior to the expiration of the pending cancellation date.⁴⁰⁴ If at any time after registration, the registrant becomes aware of any additional factual information regarding unreasonable adverse effects on the environment caused by or due to the pesticide, the registrant must submit the information to the DEP.⁴⁰⁵

Any time after a pesticide is registered, if the DEP determines that the pesticide or its labeling or other required material does not comply with Connecticut's pesticide provisions or the pesticide when used according to its labeling directions utilizing widespread or commonly recognized practices usually causes unreasonable adverse effects on the environment, the DEP may issue a notice of intent⁴⁰⁶ either:

- To cancel its registration or change its classification but must provide the factual basis and its reasons for making the determination or
- To hold a hearing in order to determine whether or not the pesticide registration should be cancelled or its classification changed; if a hearing is held, the registrant receives notification by the DEP, and the notice is made public.⁴⁰⁷

A DEP decision issued after a hearing is considered a final decision and is subject to subsequent appeal by seeking judicial review.

b. General-Use and Restricted-use Pesticides

Pesticides are classified as either general-use or restricted-use. Restricted-use pesticides are more strictly regulated. General-use pesticides do not cause unreasonable adverse effects on the environment when used in accordance with directions for use, for the purposes

⁴⁰⁴ CONN. GEN. STAT. ANN. § 22a-52(a) (1995).

⁴⁰⁵ CONN. GEN. STAT. ANN. § 22a-52(b) (1995).

⁴⁰⁶ Whatever action was proposed to the registrant, it becomes final and effective at the end of the thirty (30) days from the date the DEP notice was received by the registrant or from the date of publication, whichever is later, unless the registrant or any person adversely affected by the notice as long as the registrant concurs; *see* CONN. GEN. STAT. ANN. § 22a-52(c)(2) (1995); within the thirty (30) day period makes the necessary corrections or requests a hearing; *see* CONN. GEN. STAT. ANN. § 22a-52(c - d) (1995).

⁴⁰⁷ CONN. GEN. STAT. ANN. § 22a-52(c - d) (1995). The pesticide chlordane is prohibited from use after July 1, 1981 except for the treatment of nursery stock or subsoil treatment or pretreatment of soil during construction against termites; *see* CONN. GEN. STAT. ANN. § 22a-52(e) (1995).

recommended, and utilizing recommended methods or in accordance with widespread and commonly recognized practices. Restricted-use pesticides generally cause unreasonable adverse effects on the environment⁴⁰⁸ when used in accordance with directions for use, for the purposes recommended, and utilizing recommended methods or in accordance with widespread and commonly recognized practices.⁴⁰⁹

Pesticides must be applied by a certified applicator or under the direct supervision of a certified applicator:

- If pesticide acute dermal contact or inhalation toxicity presents a hazard to the applicator or to other persons; or
- If the pesticide may cause unreasonable adverse effects on the environment.⁴¹⁰

If the pesticide usually causes unreasonable adverse effects on the environment including injury to the applicator, the DEP must allow the use of the pesticide by permit only.⁴¹¹

c. Experimental-Use Pesticides

The DEP may issue an experimental-use permit for a pesticide when it is determined that the applicant needs a permit in order to accumulate information necessary to register a pesticide. The period of time for an experimental-use permit may vary as the DEP may determine is necessary. An experimental-use permit may be revoked at any time if any terms or conditions of the permit are being violated or if the terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.⁴¹²

d. Imminent Hazard

The DEP has authority to determine that action is necessary to prevent an imminent hazard before the time for routine registration cancellation passes. The DEP may, by order, suspend the registration or change the classification for some or all of the pesticide uses, but notice of the DEP intention must be issued describing the DEP finding and information must be provided to the registrant that an expedited hearing may be requested on the question of whether or not an imminent hazard exists provided the request is made within five (5) days of DEP's

⁴⁰⁸ Including injury to the applicator; *see* CONN. GEN. STAT. ANN. § 22a-50(c) (1995 & Supp. 2002).

⁴⁰⁹ CONN. GEN. STAT. ANN. § 22a-50(b - c) (1995 & Supp. 2002).

⁴¹⁰ CONN. GEN. STAT. ANN. § 22a-50(c)(1) (1995 & Supp. 2002).

⁴¹¹ For the uses to which the unreasonable adverse effects determination applies; *see* CONN. GEN. STAT. ANN. § 22a-50(d) (1995 & Supp. 2002).

⁴¹² CONN. GEN. STAT. ANN. § 22a-51 (1995).

notification of its intentions otherwise the DEP suspension order takes effect.⁴¹³ Upon the registrant's written request for a hearing, a hearing must take place within five (5) days of the request unless the registrant and the DEP agree that it will be held at a later time. Within fifteen (15) days after evidence is presented at the hearing, the DEP must render its final order regarding the suspension.⁴¹⁴

Alternatively, the DEP may issue a suspension order in advance of notification to the registrant if the emergency does not allow DEP to hold a hearing before the suspension. In that situation, the DEP suspension is in effect pending the expeditious completion of the remedies and the issuance of a final order on suspension.⁴¹⁵

e. Certified Applicators

The application of restricted-use pesticides may only be conducted by a certified applicator, i.e., an individual holding a private or commercial certificate or permit, or by an individual under the direct supervision of a certified applicator. The DEP has exclusive authority to regulate pesticide spraying, pesticide practices, and pesticide procedures.⁴¹⁶

The DEP must review an applicator's certification if:

- The applicator is convicted of a criminal violation of FIFRA;
- A final order is issued by the U.S. EPA that assesses a civil penalty against the applicator under FIFRA; or
- The applicator's certification has been revoked in another state.⁴¹⁷

f. Operational or Supervisory Commercial Applicators

Commercial applicators are classified as either operational or supervisory. Operational

⁴¹³ Except when the DEP determines that an emergency exists and the emergency situation does not permit a hearing before suspending the pesticide in order to prevent an imminent hazard; *see* CONN. GEN. STAT. ANN. § 22a-53(a - b) (1995).

⁴¹⁴ CONN. GEN. STAT. ANN. § 22a-53(c) (1995).

⁴¹⁵ In this situation, no party other than the registrant and the DEP are allowed to participate although a person adversely affected may file briefs within the time allowed by DEP regulations; *see* CONN. GEN. STAT. ANN. § 22a-53(d) (1995).

⁴¹⁶ CONN. GEN. STAT. ANN. § 22a-54(a) (1995 & Supp. 2002).

⁴¹⁷ CONN. GEN. STAT. ANN. § 22a-61(f)(2) (1995).

certification is required for commercial applicators who actively use pesticides. Supervisory certification is required for commercial applicators who are responsible for deciding:

- Whether or not pesticides are to be employed;
- How they are to be mixed;
- Where they are to be employed;
- What pesticides are to be used;
- What concentrations and timing are involved;
- Which methods of application are to be used; and
- What precautions must be taken when using the pesticides.⁴¹⁸

The DEP establishes separate standards for the supervisory and operational certificates of commercial applicators.⁴¹⁹

The DEP establishes separate standards for commercial applicators and for private applicators.⁴²⁰ It is unlawful to engage in commercial application of pesticides without a certificate, and it is unlawful to engage in private application of restricted-use pesticides without a certificate.

Application for pesticide certification is made to the DEP. The applicant must provide information regarding the applicant's qualifications, proposed operations, knowledge concerning:

- Proper use and application of pesticides, danger involved, and precautions that must be taken; plus
- Knowledge of integrated pest management including the role of honey bees in agriculture, in particular, pesticides that are especially toxic to honey bees, and methods of application which minimize damage to honey bees.⁴²¹

⁴¹⁸ CONN. GEN. STAT. ANN. § 22a-54(b) (1995 & Supp. 2002).

⁴¹⁹ CONN. GEN. STAT. ANN. § 22a-54(d) (1995 & Supp. 2002).

⁴²⁰ CONN. GEN. STAT. ANN. § 22a-54(d) (1995 & Supp. 2002).

⁴²¹ CONN. GEN. STAT. ANN. § 22a-54(c) (1995 & Supp. 2002).

The DEP certifies an applicant when it finds by examination that the applicant possesses knowledge of pesticides concerning the proper use and application of pesticides and the dangers involved and precautions to be taken. Generally, certification is valid for five (5) years and may be renewed with or without further examination. The certificate may restrict the applicant's utilization of pesticides to certain types of equipment or materials if the applicant is not fully qualified to use all types of equipment or materials.

The DEP provides written notice and its reasons for certification denials. Aggrieved persons may request a hearing before the DEP provided the request is made within thirty (30) days. The DEP recognizes a certified nonresident without examination provided the certification was attained under substantially similar qualifications for certification and the nonresident's home state grants similar privileges of pesticide certification without examination to residents of Connecticut.⁴²²

The DEP may prescribe fees for pesticide permit and certification applicants to defray the cost of administering examinations and assisting in carrying out pesticide provisions and related regulations.⁴²³

g. Applications by Air

Pesticide⁴²⁴ applications by airplanes must be authorized by obtaining a certificate or a permit. It is unlawful to apply or cause to be applied any pesticide or fertilizer by aircraft without a certificate or permit. The DEP designates the kind and amount of pesticides for use by aircraft. The DEP may also issue permits for crop owners or landowners⁴²⁵ for application of pesticides or fertilizers by a certified aircraft applicator. Although, generally fees are charged to pesticide applicants, the DEP may waive the fee where application of broad spectrum chemical pesticides from the air is necessary to control specific vectors of human disease which pose an imminent threat to public health. For broad spectrum control, the DEP may require inspection of the crop or area and its immediate environs by state officials. The DEP with the advice of the DOT is authorized to adopt pesticide regulations as it deems necessary for the protection of public health, aquatic and animal life, and public and private property governing:

- The type of aircraft to be used;
- The hours during which aircraft may be used;

⁴²² CONN. GEN. STAT. ANN. § 22a-54(c) (1995 & Supp. 2002).

⁴²³ CONN. GEN. STAT. ANN. § 22a-54(f) (1995 & Supp. 2002).

⁴²⁴ Pesticides or fertilizers; *see* CONN. GEN. STAT. ANN. § 22a-54(e) (1995 & Supp. 2002).

⁴²⁵ Or a designated representative by the owner.

- The weather conditions under which aircraft spraying or dusting may be performed;
- The minimum area on which aircraft spraying or dusting may be done; and
- The amount of public liability and property damage insurance to be carried by the aircraft applicator.⁴²⁶

The DEP may require any person engaged in the commercial or aircraft application of pesticides to furnish proof of financial responsibility to satisfy claims for physical injuries to persons or damage to property that might result from an act or omission on the part of the applicator or applicator's the agents or employees.⁴²⁷

h. Pesticide Sellers and Dealers

The DEP has authority to establish standards for the registration of sellers and distributors of restricted and permit use pesticides. The standards must provide that the registration of sellers and distributors must be competent with respect to the handling of pesticides and demonstrate knowledge concerning the proper application of pesticides, pesticide hazards, and pesticide impact on the environment. Registration must be performed annually, and it requires the registrant's name, address, and a small fee.⁴²⁸

The DEP may refuse to grant distributor registration or renewal and may revoke or suspend registration after holding a hearing where the proposed distributor may present evidence. Any violation of pesticide provisions or related regulations is considered grounds for revocation, grounds for refusal to renew, or grounds for suspension of registration including:

- Falsification of required records;
- Refusal to keep and maintain required records;
- Neglecting or refusing to comply with pesticide provisions, related pesticide regulations, or DEP orders;

⁴²⁶ No person may apply pesticides or fungicides by aircraft or by misting-type devices to shade tobacco crops within three hundred (300) feet of an inhabited residential building for which a certificate of occupancy was issued prior to January 1, 1997 without the written permission of the owner of such building, except spray applications may be administered within the confines of the netting. This subdivision does not apply to an application of pesticides or fungicides to land which was poled for the cultivation of shade tobacco between January 1, 1994 and January 1, 1997; *see* CONN. GEN. STAT. ANN. § 22a-54(e) (1995 & Supp. 2002).

⁴²⁷ CONN. GEN. STAT. ANN. § 22a-54(g) (1995 & Supp. 2002).

⁴²⁸ CONN. GEN. STAT. ANN. § 22a-56 (1995).

- Distribution, sale, or offering for sale of any restricted-use pesticide to any person unless that person is a commercial supervisor or a private certified applicator; or
- Distribution, sale, or offering for sale any permit use pesticide to any person unless that person has a permit or is a registered seller.⁴²⁹

A registered distributor of restricted pesticides whose registration is suspended or revoked may apply for a new registration only when the time established in the DEP order suspending or revoking the registration has elapsed.⁴³⁰

i. Pesticide Records

The DEP is authorized to require distributors, carriers, dealers, and others who distribute, sell, or offer for sale, deliver, or offer for delivery any restricted or permit use pesticide or device to maintain records regarding pesticide activity, pesticide use, and pesticide equipment. Required records⁴³¹ for distributors, carriers, and dealers include:

- Records showing the delivery, movement, or holding of pesticides and pesticide equipment including the quantity, shipment date, and receipt date plus the name of the consignor and consignee.

The DEP is authorized to require private applicators to maintain records of restricted-use pesticides. Required records include:

- Applicator name;
- Pesticide used and its amount;
- Date and place of application; and
- Crop or site treated and the amount of acreage treated.⁴³²

The DEP is authorized to require commercial applicators to maintain records of pesticide use and supervision of the use of pesticides. Commercial applicator records must be maintained at least five (5) years after the date of application. The required records must include:

⁴²⁹ CONN. GEN. STAT. ANN. § 22a-56a, 57 (1995).

⁴³⁰ CONN. GEN. STAT. ANN. § 22a-56b (1995).

⁴³¹ Financial data, sales data, pricing data, personnel data, and research data are not included in records that must be provided for DEP inspection; *see* CONN. GEN. STAT. ANN. § 22a-58(b)(2) (1995).

⁴³² Records for the preceding calendar year in which pesticide application was made must be submitted to the DEP on or before January 31 of each year; *see* CONN. GEN. STAT. ANN. § 22a-58(c) (1995).

- Name and certification number of any commercial supervisor and the commercial operator's name;
- Pesticide used and the amount;
- Date and place of application;
- Pest controlled or treated against; and
- Crop or land site treated.⁴³³

CEP required pesticide records must be furnished or allowed access to the records and to copy records at all reasonable times upon request of any DEP representative.

j. Pesticide Enforcement

CEP representatives are authorized to enter any place at reasonable times where pesticides or equipment are used or held in order to:

- Observe the application of pesticides;
- Determine if the applicator is or should be certified;
- Determine if the applicator has obtained a proper permit to apply restricted-use pesticides;
- Inspect pesticide ;
- Inspect or investigate the validity of damage claims; and
- Inspect or obtain samples.⁴³⁴

When there is reason to believe that a violation has occurred, the DEP is authorized to obtain and execute warrants allowing:

⁴³³ Records for the preceding calendar year in which pesticide application was made must be submitted to the DEP on or before January 31 of each year; *see* CONN. GEN. STAT. ANN. § 22a-58(d) (1995).

⁴³⁴ Appropriate DEP credentials must be presented along with a written statement of the reasons for the inspection including whether a violation is suspected; a receipt describing the samples obtained and a copy of the results of any analysis is provided; a portion of each sample taken is provided, if requested; *see* CONN. GEN. STAT. ANN. § 22a-59(a) (1995).

- Entry;
- Inspection and reproduction of pesticide records; and
- Seizure of any pesticide or pesticide equipment which violates pesticide provisions.⁴³⁵

k. Pesticide Trade Secrets

If a pesticide applicant clearly marks information or documents submitted to DEP as trade secrets or confidential commercial or financial information and submits it separately from other material required, the DEP prevents public disclosure of it and protects it from disclosure unless:

- It is necessary to carry out pesticide provisions regarding the formula of any product;
- It is necessary to reveal to a federal or state agency consulted; or
- It is necessary to reveal at a public hearing or in findings of fact issued by the DEP.⁴³⁶

Before releasing the information, however, the DEP must notify the applicant or registrant in writing of its intentions to release the information, and the DEP must not make the information available for thirty (30) days after notification. During this thirty (30) day period, the applicant or registrant may institute an action in the superior court for the judicial district of Hartford and request a declaratory judgment as to whether or not the marked information is subject to further DEP protection.⁴³⁷

l. Pesticide Prohibitions

Any pesticide which is adulterated or misbranded or any device which is misbranded is unlawful. It is also unlawful to:

⁴³⁵ CONN. GEN. STAT. ANN. § 22a-59(b) (1995).

⁴³⁶ CONN. GEN. STAT. ANN. § 22a-60 (1995).

⁴³⁷ CONN. GEN. STAT. ANN. § 22a-60 (1995).

- Detach, alter, deface, or destroy any pesticide labeling required under FIFRA;⁴³⁸
- Give a guaranty which is false;
- Use trade secret or confidential information for one's advantage or to reveal the information to any person except DEP or other federal or state agencies, courts, physicians and pharmacists needing such information for the performance of their duties;
- Advertise a product registered for restricted-use without giving the classification of the product assigned to it;
- Use or make available for use restricted-use or permit-use pesticides for purposes other than those approved for its classification and registration;
- Use any registered pesticide in a manner inconsistent with pesticide provisions or its labeling;
- Use any pesticide which is under an experimental-use permit contrary to the provisions of the permit;
- Violate any DEP order;
- Knowingly falsify any application for registration, application for experimental-use permit, any records required, any report filed, or any information marked as confidential and submitted to the DEP;
- Fail to file a required report; or
- Use any pesticide in tests on human beings unless they are fully informed of the nature, purpose, and any physical and mental health consequences of the test and freely volunteer to participate.⁴³⁹

It is unlawful for any person not certified as a commercial applicator to advertise or to solicit to perform commercial application of pesticides. It is also unlawful for any person possessing an operational certificate for commercial application to perform or to advertise or solicit to perform any activity requiring a supervisory certificate for commercial application.⁴⁴⁰

⁴³⁸ 7 U.S.C. § 136 *et seq.* (2000).

⁴³⁹ Some exceptions apply, e.g. for experimental-use pesticides, common carriers, public officials, others relying in good faith on another's guaranty; *see* CONN. GEN. STAT. ANN. § 22a-61 (1995).

⁴⁴⁰ CONN. GEN. STAT. ANN. § 22a-61(d - e) (1995).

The following acts are grounds for denial, revocation, or suspension of pesticide certification:

- Use of a pesticide in a manner inconsistent with the registered labeling or with state or federal restrictions on the use of such pesticide;
- Falsification of records required to be maintained; refusal to keep and maintain such records;
- Applying pesticides generally known in the trade to be ineffective or improper for the intended use;
- Operating faulty or unsafe equipment; applying a pesticide in a faulty, careless, or negligent manner;
- Neglecting or refusing to comply with pesticide provisions, rules, regulations, or any lawful DEP order;
- Using fraud or misrepresentation in making an application or renewal of a permit or certification;
- Refusing or neglecting to comply with any limitations or restriction in permit or certification;
- Aiding or abetting or conspiring to evade pesticide provisions with another person;
- Allowing one's permit or certification to be used by another person;
- Making a false or misleading statement during an inspection or investigation concerning an infestation of pests, accident in applying a pesticide, misuse of a pesticide, or violation of a statute or regulation; performing work for which the applicator does not possess certification; or
- Failure to submit records required to be maintained.⁴⁴¹

m. Stop Sale, Seizure, and Condemnation

The DEP has authority to issue a stop sale, use, or removal order if:

- There is reason to believe that any pesticide or equipment is in violation or has been or is intended to be distributed or sold in violation of pesticide provisions; or
- If the registration of the pesticide is suspended or has been cancelled by a final DEP order.

⁴⁴¹ CONN. GEN. STAT. ANN. § 22a-61(f)(1) and 66e (1995).

Furthermore, any pesticide distributed, sold, offered for sale or delivered for transportation or transported into or within the state for the purpose of sale is subject to seizure and condemnation upon application of the DEP to the superior court for the judicial district of Hartford if:

- The pesticide is adulterated or misbranded;
- The pesticide is not registered;
- Its labeling fails to bear the information required by FIFRA;
- The pesticide does not bear the proper color; and
- Any pesticide claims or any of the directions for its use differ in substance from the representations made in connection with its registration.⁴⁴²

If a pesticide is condemned, it is disposed by destruction or sale as the court may direct. The court may also direct that the article be delivered to the owner for relabeling or reprocessing. Court costs, legal fees, storage, and other proper expenses must be awarded against the person, who intervenes as claimant or who is responsible for the condition which leads to its condemnation.⁴⁴³

The DEP has authority to request the attorney general to make application to the appropriate court for an order enjoining such acts or practices or for an order directing compliance with such statutes, regulations, or orders.⁴⁴⁴

n. Pesticide Penalties

The DEP has authority to establish appropriate penalties for the violation of pesticide regulations including certification suspension and revocation.⁴⁴⁵

Any registrant, commercial applicator, uncertified person who performs or advertises or solicits to perform commercial application, wholesaler, dealer, retailer or other distributor who knowingly violates a pesticide provision is subject to fines up to five thousand dollars (\$5,000.00), imprisoned up to one (1) year, or both.⁴⁴⁶

⁴⁴² CONN. GEN. STAT. ANN. § 22a-63 (1995 & Supp. 2002).

⁴⁴³ CONN. GEN. STAT. ANN. § 22a-62(c) (1995).

⁴⁴⁴ CONN. GEN. STAT. ANN. § 22a-62(d) (1995).

⁴⁴⁵ CONN. GEN. STAT. ANN. § 22a-55 (1995).

⁴⁴⁶ CONN. GEN. STAT. ANN. § 22a-63(a) (1995 & Supp. 2002).

Any private applicator or other person, who knowingly violates any pesticide provision may be fined up to one thousand dollars (\$1,000.00), imprisoned up to thirty (30) days, or both. Any person who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of pesticide statutes, is subject to fines up to ten thousand dollars (\$10,000.00), imprisoned up to one (1) year, or both.⁴⁴⁷

Any person who violates a pesticide provision may be assessed a civil penalty up to two thousand five hundred dollars (\$2,500.00) for each violation and each day of violation. Failure to obtain proper certification subjects the violator to a civil penalty up to two thousand dollars (\$2,000.00). Subsequent violations cause increased fines that range up to five thousand dollars (\$5,000.00). Upon complaint by the DEP, the attorney general may institute a civil action to recover civil penalties in the superior court for the judicial district of Hartford.⁴⁴⁸

o. Pesticide Disposal

The DEP may establish regulations governing the disposal of any pesticide or pesticide containers to prevent the pollution of waterways and to protect plant and animal life provided they are in accordance with FIFRA and are established after a public hearing on the matter has been held.⁴⁴⁹

p. Pesticide Precautions

The DEP in conjunction with The University of Connecticut, the Connecticut Agricultural Experiment Station, and other public agencies, publishes information regarding proper application or handling of pesticides and methods and precautions designed to prevent damage and injury.⁴⁵⁰

q. Pesticide Monitoring

The DEP may, in cooperation with federal, state and local agencies, undertake monitoring activities in air, soil, water, man, plants, and animals as necessary for the implementation of pesticide provisions.⁴⁵¹

⁴⁴⁷ CONN. GEN. STAT. ANN. § 22a-63(b - c) (1995 & Supp. 2002). The act, omission, or failure to act of any person acting for or employed by another is considered the act, omission, or failure to act of the person as well as that of the person employed; *see* CONN. GEN. STAT. ANN. § 22a-63(d) (1995 & Supp. 2002).

⁴⁴⁸ CONN. GEN. STAT. ANN. § 22a-63(e - f) (1995 & Supp. 2002).

⁴⁴⁹ CONN. GEN. STAT. ANN. § 22a-65(a) (1995 & Supp. 2002).

⁴⁵⁰ CONN. GEN. STAT. ANN. § 22a-65(b) (1995 & Supp. 2002).

⁴⁵¹ CONN. GEN. STAT. ANN. § 22a-65(c) (1995 & Supp. 2002).

r. Notification After Pesticide Applications

A pesticide application must provide written notification to the person requesting the application and the resident or manager of the property to be treated that includes the pesticide product name and registration number, the manufacturer, the active ingredients, the signal word, an emergency phone number, if listed, and any precautionary statements including statements on environmental hazards, human and animal hazards, emergency treatment, and reentry.⁴⁵²

If requested by adjacent landowners or tenants, a pesticide application business must provide prior notice of the time and date of a proposed pesticide application to any owner or tenant who occupies land that abuts the treatment area within one hundred (100) yards of any property line. A request for advance notification must be submitted on a form prescribed by the DEP and provided to the pesticide application business or the DEP. The DEP maintains a registry of persons requesting advance notification.

A pesticide application business shall make not less than two attempts to notify any owner or tenant who requests notification. Such attempts must be made as early as practicable but not less than twenty-four (24) hours before the application. Notice may be by any method, including telephone, mail, or personal notification. If attempts at notification by the applicator fail, and an emergency application is necessary or best management practices of integrated pest management recommend an immediate pesticide application to reduce the amount of pesticides that would otherwise be necessary, the pesticide application business must attempt to notify the owner or tenant in person immediately prior to the application. Advance notice of the application and the attempts made for advance notification must be placed on the door of the person requesting notification if all notification attempts fail.⁴⁵³

s. Pesticide Posted Signage

Persons making an outdoor application of a pesticide within one hundred (100) yards of any property line must at the time of application post a sign notifying the public of the application at any conspicuous point of entry. A commercial pesticide applicator making an application shall post a sign every one hundred fifty (150) feet of road frontage.⁴⁵⁴ Land which produces agricultural commodities must be posted with a sign notifying the public of pesticide applications

⁴⁵² This does not apply to any outdoor application of a pesticide by a pesticide application business to maintain rights-of-way, facilities, or equipment for an electric public service company provided the application is consistent with an approved pesticide management plan; *see* CONN. GEN. STAT. ANN. § 22a-66a(a) (1995).

⁴⁵³ An exception exists for notification for an aircraft application of a pesticide; *see* CONN. GEN. STAT. ANN. § 22a-66a(b) (1995).

⁴⁵⁴ Noncommercial applications to an area less than one hundred (100) square feet or to a fenced area are exempted from the signage requirement as is land that produces agricultural commodities from which gross sales in excess of one thousand dollars (\$1,000.00) were realized or can reasonably be expected to be realized during any calendar year; *see* CONN. GEN. STAT. ANN. § 22a-66a(c) (1995).

at each conspicuous point of entry and at every one hundred fifty (150) feet of road frontage of treated property if the application is within one hundred (100) yards of any public road. If the application is more than twenty-five feet (25) from a public road an exemption exists for up to five hundred (500) square feet of an application. These signs may be posted on a seasonal basis from the date of first application until the reentry period established under FIFRA has lapsed for the last pesticide used. Any signs used must be maintained by the person making application in a readable manner and not less than eight and one-half (8 ½) inches by eleven (11) inches in size substantially stating that attention is required, that restricted-use pesticides are in use, and that the area should be avoided.⁴⁵⁵

Wholesalers or distributors selling pesticides to retail establishments must make signs for notification of a pesticide application available to the owners of retail establishments. Owners of retail establishments must provide a sign to any purchaser of a pesticide requiring the area be posted.⁴⁵⁶

Prior to spraying a seasonal larvicide for mosquito control, the DPH publishes notice in a newspaper of general circulation in the area regarding the spraying. Prior to adulticide spraying for mosquito control, the DPH or local health department must post a sign in the proposed spray area notifying the public of the planned spraying.⁴⁵⁷ A violation of pesticide notification provisions subjects the violator to a fine up to ninety dollars (\$90.00).⁴⁵⁸

2. Connecticut Pesticide Advisory Council

The Pesticide Advisory Council consists of the director of the Agricultural Experiment Station, the Commissioner of Agriculture, the Commissioner of Public Health, and the dean of the College of Agriculture of The University of Connecticut or their respective designees. The council meets at least annually and the commissioner of the DEP may consult with the Pesticide Advisory Council on technical matters involving the application and use of pesticides, the determination of imminent hazards, and the unreasonable adverse effects on the environment before promulgating regulations or issuing orders in carrying out pesticide provisions.⁴⁵⁹

⁴⁵⁵ The word "attention" must be in letters at least one and one-half inches high, the words "restricted-use pesticides are in use, please avoid this area" must be in letters at least three-fourths of an inch high, and any other wording on the sign must be one-quarter of an inch or smaller; *see* CONN. GEN. STAT. ANN. § 22a-66a(d) (1995).

⁴⁵⁶ CONN. GEN. STAT. ANN. § 22a-66a(f) (1995).

⁴⁵⁷ CONN. GEN. STAT. ANN. § 22a-66a(j) (1995).

⁴⁵⁸ CONN. GEN. STAT. ANN. § 22a-66a(k) (1995).

⁴⁵⁹ CONN. GEN. STAT. ANN. § 22a-65(d) (1995 & Supp. 2002).

3. *Connecticut Pesticide Regulations*

The DEP is authorized to prescribe regulations to carry out the pesticide provisions and to exercise all incidental powers to comply with FIFRA.⁴⁶⁰ After notice and opportunity for hearing, the DEP is authorized to:

- Declare as a pest any form of plant or animal life, other than man and other bacteria, virus, and other microorganisms on or living in man or other animals, which is injurious to health or the environment;
- Determine whether any pesticide contains any substance or substances in quantities highly toxic to man; and
- Prescribe regulations requiring any pesticide to be colored or discolored for the protection of health and the environment as long as the regulations are consistent with FIFRA;
- Prohibit the use of any pesticides by officials of towns, cities or boroughs or their agents when the pesticides would result in unreasonable adverse effects on the environment;
- Prescribe regulations concerning the time, place, manner, methods, materials, amounts, and concentrations for pesticides in designated areas during specified periods of time and encompass all reasonable factors necessary to prevent damage or injury by drift or misapplication to:
 - Plants;
 - Adjacent or nearby lands;
 - Wildlife;
 - Fish and other aquatic life in waters in reasonable proximity; and
 - Beneficial insects, animals, or man.⁴⁶¹

4. *Connecticut Pesticides in State Waters*

The DEP may issue permits for the introduction of chemicals into the waters of the state for the control of aquatic vegetation, fish populations, or other aquatic organisms. Application for these permits must be submitted on DEP forms accompanied by a fee. If the proposed application of chemicals involves areas tributary to reservoirs, lakes, ponds, or streams used for public water

⁴⁶⁰ CONN. GEN. STAT. ANN. § 22a-66(d) (1995).

⁴⁶¹ CONN. GEN. STAT. ANN. § 22a-66(c) (1995).

supply, prior approval of the permit must be obtained from the DPH. Permittees are responsible for any and all resulting damages.

These provisions do not apply to normal, emergency, or experimental operations of the DEP, DPH, or public water supply utilities although chemicals may not be applied to waters used for water supply without prior approval of the DPH.⁴⁶²

VI. PROTECTION OF WILDLIFE

Producer Note: Agricultural producers have responsibilities concerning wildlife and migratory birds which may have habitat on the producer's property. Federal and state laws contain measures designed to protect or enhance wildlife and wildlife habitat.

Producer Note: Many states have laws and regulations that either enhance the protections under federal laws or address issues peculiar to wildlife found within the state. States also may address frequent problems caused by wildlife. Connecticut has laws and regulations protecting wildlife.

A. Connecticut Wildlife Laws

1. *Connecticut Endangered Species Policy*

It is the policy of the state to conserve,⁴⁶³ protect, restore, and enhance any endangered or threatened species⁴⁶⁴ and their essential habitat. Certain species of wildlife and plants⁴⁶⁵ have been rendered extinct as a consequence of man's activities, and other species of wildlife, and

⁴⁶² CONN. GEN. STAT. ANN. § 26-66z (1995).

⁴⁶³ The term "conservation" means to use all methods and procedures necessary to maintain or increase the populations of any endangered or threatened species to the point where legislative protection is no longer necessary. Conservation includes all activities associated with resources management such as research, census, monitoring, regulation, law enforcement, habitat acquisition, restoration, maintenance, propagation, live trapping, transplantation, and regulated taking; *see* CONN. GEN. STAT. ANN. § 26-304(2) (1995).

⁴⁶⁴ The term "endangered species" means any native species in danger of extirpation throughout all or a significant portion of its range within the state that has no more than five (5) occurrences in the state plus any species determined to be an "endangered species" according to the federal ESA; the term "threatened species" means any native species to be likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range within the state that has no more than nine (9) occurrences in the state, and any species determined to be a "threatened species" according to the federal ESA unless the species is determined to be endangered by the DEP; *see* CONN. GEN. STAT. ANN. § 26-304(7 - 8) (1995).

⁴⁶⁵ The term "wildlife" means all species of invertebrates, fish, amphibians, reptiles, birds, and mammals which are wild by nature; the term "plants" means any member of the plant kingdom; *see* CONN. GEN. STAT. ANN. § 26-304(3 - 4) (1995).

plants are in danger or are threatened with extinction or have been otherwise reduced or may become extinct or reduced because of destruction, modification, or severe curtailment of their habitats; exploitation for commercial, scientific, educational, or private use; or because of disease, predation, or other factors. These species are of ecological, scientific, educational, historical, economic, recreational, and aesthetic value to the people of the state, and the conservation, protection, and enhancement of such species and their habitats are of state-wide concern.

The DEP has the responsibility to develop regulations and establish procedures for determining whether any native species is endangered, threatened, or of special concern.⁴⁶⁶ The DEP is responsible for adopting regulations that establish the criteria and for listing native wildlife and native plants that it determines to be endangered or threatened species or species of special concern and for identifying⁴⁶⁷ the essential habitats for endangered and threatened species.⁴⁶⁸ The DEP must review the listings at least every five years and determine whether it should:

- Add or remove any species from the list of endangered or threatened species or species of special concern;
- Change the designation from one category to another; or
- Add or remove any area from the list of essential habitats for endangered or threatened species.⁴⁶⁹

Connecticut is one of the few states that also has laws protecting species “similar” to endangered or threatened species. The DEP is authorized to adopt regulations to treat a species not listed as endangered or threatened as an endangered or threatened species if it finds that:

- Such species so closely resembles a species listed as endangered or threatened that enforcement personnel would have substantial difficulty in attempting to differentiate between it and the listed species;
- The effect of substantial identification difficulty is an additional threat to the endangered or threatened species; or

⁴⁶⁶ The term "species of special concern" means any native plant species or any native nonharvested wildlife species that has been extirpated from the state or has a naturally restricted range or habitat in the state with a low population level and is in such high demand by man that its unregulated taking would be detrimental to the conservation of its populations; *see* CONN. GEN. STAT. ANN. § 26-304(9).

⁴⁶⁷ Where biologically feasible.

⁴⁶⁸ CONN. GEN. STAT. ANN. § 26-306(b - c) (1995).

⁴⁶⁹ The review of species that are listed as endangered by the United State Department of Interior must be conducted annually pursuant to the federal ESA; *see* 16 U.S.C. 1531 et seq. (2000) and CONN. GEN. STAT. ANN. § 26-307 (1995).

- Treatment of the unlisted species as an endangered or threatened species would substantially facilitate enforcement and further the wildlife policy state.⁴⁷⁰

The DEP is authorized to conduct investigations of wildlife and plants in order to develop information relating to population, distribution, habitat needs, limiting factors, essential habitats, and other biological and ecological data to determine conservation and management measures necessary for the continued ability of wildlife and plants to sustain themselves successfully.⁴⁷¹ The DEP must consider:

- Destruction or threatened destruction, modification, or curtailment of the habitat of the species;
- Overutilization of the species for commercial, recreational, scientific, educational, or private purposes;
- Disease, predation, or competition affecting the species;
- Inadequacy of existing regulatory mechanisms to affect the continued existence of the species within the state; or
- Other natural or man-made factors affecting the continued existence of the species within the state.⁴⁷²

a. Essential Habitat

State agencies must not destroy or adversely modify designated essential habitat which would reduce the viability of the habitat to support endangered or threatened species or kill, injure, or appreciably reduce the likelihood of survival of the species.⁴⁷³

b. Enforcement

In Connecticut, it is unlawful to:

- Wilfully take any endangered or threatened species on or from public property, waters of the state, or property of another without the written permission of the owner on whose property the species occurs; or

⁴⁷⁰ The regulations may allow a person to conduct an activity which affects a species that resembles an endangered or threatened species if the person can demonstrate to the DEP that the activity does not affect the endangered or threatened species; *see* CONN. GEN. STAT. ANN. § 26-308 (1995).

⁴⁷¹ CONN. GEN. STAT. ANN. § 26-305 (1995).

⁴⁷² CONN. GEN. STAT. ANN. § 26-306(a) (1995).

⁴⁷³ CONN. GEN. STAT. ANN. § 26-311(a)(3) (1995).

- Wilfully take an endangered or threatened species for the purpose of selling, offering for sale, and transporting for commercial gain or export.⁴⁷⁴

c. Exemptions

State agencies that are responsible for the primary recommendation or initiation of actions on land or in aquatic habitats which may significantly affect the environment must ensure that their actions are consistent with the state's endangered species provisions and take all reasonable measures to mitigate any adverse impacts of their actions on endangered or threatened species or essential habitat. In Connecticut, OPM determines whether or not state proposed actions and the environmental impact evaluation satisfies the state's established environmental policy. If the OPM in conjunction with the DEP determines that a proposed action violates the endangered species policy or the environmental policy and there are no feasible and prudent alternatives, the state agency may apply to the DEP for an exemption. The DEP may grant an exemption after considering the following factors:

- The agency did not make an irreversible or irretrievable commitment of resources after initiation of consultation with the department that forecloses the opportunity for formulating and implementing feasible and prudent alternatives;
- The action is consistent with conserving the species or its essential habitat and the benefits of the action clearly outweigh the benefits of alternative courses of action;
- The action is in the public interest;
- The action is of regional or state-wide significance; and
- The agency plans to take reasonable mitigation and enhancement measures necessary and appropriate to minimize the adverse impacts of the action upon the species or essential habitat including live propagation, transplantation, habitat acquisition, and improvement.⁴⁷⁵

⁴⁷⁴ CONN. GEN. STAT. ANN. § 26-311(a)(1 - 2) (1995). However, a person is not prevented from performing any legal activities on his own land that may result in the incidental taking of endangered or threatened animal and plant species or species of special concern; actions authorized pursuant to an exemption or permit provided for by the federal ESA or in any related regulation are not prohibited and any action prohibited by the ESA or by any related regulation are not allowed; transportation of any endangered or threatened species is allowed through the state provided the transportation is in accordance with the terms of any permit issued under the laws of another state and the person in possession of an endangered or threatened species can prove legal possession of the species; and the DEP in an emergency may prohibit the otherwise lawful taking of any state species of special concern threatened with undue depletion from overutilization of the species for commercial, recreational, scientific, educational, or private purposes; *see* CONN. GEN. STAT. ANN. § 26-311(b - e) (1995).

⁴⁷⁵ CONN. GEN. STAT. ANN. § 26-310(a - c) (1995).

If the OPM in consultation with the DEP determines that a proposed action would not appreciably reduce the likelihood of the survival or recovery of an endangered or threatened species, but would result in the incidental taking⁴⁷⁶ of endangered or threatened species, the DEP must provide the state agency with a written statement that:

- Specifies the impact of such incidental taking on the species;
- Specifies feasible and prudent measures and alternatives that shall be implemented as part of the proposed project in order to ensure that the action does not appreciably reduce the likelihood of the recovery of the species; and
- Sets forth terms and conditions including reporting requirements to ensure compliance.⁴⁷⁷

d. Orders

If the DEP or a duly authorized agent finds that any person is conducting any activity or maintaining a facility or condition which is in violation of endangered and threatened species provisions, the DEP issues a written order to the person by certified mail to immediately cease the activity or to correct the unlawful condition. Within ten (10) days of the issuance of such order the DEP holds a hearing to provide the person an opportunity to be heard and show cause why the order should not remain in effect. Within ten (10) days of the completion of the hearing, the DEP notifies the person by certified mail that the original order remains in effect, that a revised order is in effect, or that the order has been withdrawn. The original order is effective upon issuance and remains in effect until the DEP revises or withdraws the order.⁴⁷⁸

e. Maps and Records

The DEP may in its discretion not disclose maps and records that show the location of any essential habitat or any threatened species, endangered species, or species of special concern if the DEP determines that disclosure of the information to requesting person would create an unacceptable risk of destruction or harm to the habitat or species.⁴⁷⁹ Additionally, the DEP may impose reasonable conditions before disclosing the location information including a security amount sufficient to guarantee that the person does not destroy or harm the habitat or species.

⁴⁷⁶ The term "taking" means to capture, collect, destroy, harm, hunt, kill, pursue, shoot, trap, snare, net, possess, transport, remove, sell, offer for sale, export, import, or attempt to engage in any such conduct or any act of assistance to any other person in taking or attempting to take native wildlife and native plants whether or not the act results in capture or collection; *see* CONN. GEN. STAT. ANN. § 26-304(11) (1995).

⁴⁷⁷ CONN. GEN. STAT. ANN. § 26-310(d) (1995).

⁴⁷⁸ CONN. GEN. STAT. ANN. § 26-312 (1995).

⁴⁷⁹ Notwithstanding the provisions of the Freedom of Information Act, as defined in section 1-200.

Any person whose request for location disclosure has been denied must be afforded the opportunity for a hearing to establish that:

- The requested information should be disclosed because disclosure would not create an unacceptable risk of destruction or harm to the habitat or species and
- The unreasonableness of the condition imposed.⁴⁸⁰

2. *Connecticut Acquisition of Protective Areas*

On behalf of the state, the DEP is authorized to acquire areas of essential habitat for the conservation of endangered, threatened, or species of special concern by gift, devise, purchase, exchange, condemnation, or any other method of acquiring real property or an interest in real property. The DEP may also enter into agreements with federal or state agencies or political subdivisions, individuals, or organizations for conservation management programs.⁴⁸¹

3. *Connecticut Natural Area Preserves Advisory Committee*

A Natural Area Preserves Advisory Committee consists of seven members⁴⁸² and represents the state's interest in the preservation of land in its natural condition for scientific and educational purposes. Members are persons with experience or professional training in ecological, biological, or natural sciences or environmental education or persons representing institutions having experience in natural area research, education, or preservation. The committee advises the DEP and cooperates in:

- Establishing standards for the acquisition, designation, maintenance, and operation of natural area preserves within the system;
- Making periodic state-wide surveys to determine the availability of that land which should be designated as a natural area preserve;
- Recommending the acquisition of specific lands or interests in lands which are suitable for natural area preserves;
- Preparing and disseminating literature and other materials to inform the public with respect to the natural area preserve program;

⁴⁸⁰ CONN. GEN. STAT. ANN. § 26-313 (1995).

⁴⁸¹ CONN. GEN. STAT. ANN. § 26-309. (1995)

⁴⁸² Three members are DEP employees and four members are appointed by the governor; *see* CONN. GEN. STAT. ANN. § 26-314 (1995).

- Consulting and cooperating with conservation and naturalist groups and organizations in the acquisition and maintenance of natural area preserves;
- Recommending the acquisition of specific lands or interests in lands which are suitable for natural area preserves with funds available under the recreation and natural heritage trust program or other programs under which funds are available to the DEP;
- Preparing management plans for specific natural area preserves; and
- Recommending the alienation or revocation of a natural area preserve for just cause.⁴⁸³

4. *Connecticut Elephant Ivory Products*

The DEP has authorization by the Connecticut General Assembly to adopt regulations to regulate the trade of elephant ivory products if it determines that the trade of raw elephant ivory or products manufactured or derived from elephant ivory contributes to the extinction or endangerment of elephants.⁴⁸⁴

VII. OTHER CONNECTICUT STATUTES AFFECTING AGRICULTURE

Producer Note: Many other state statutes have the potential of impacting agricultural operations and their relationship to the environment. The following is a brief discussion of some of these state laws in Connecticut.

A. **Connecticut Right to Farm Law**

Due to urban growth and development, agricultural activities are increasingly becoming the source of nuisance complaints. In Connecticut, state law provides agricultural producers some defense against these nuisance claims. When an agricultural place, establishment, or facility has been operating for one year or more and has not substantially changed and the operation follows generally accepted agricultural practices, the agricultural or farming operation including any of its appurtenances is deemed not to constitute a private nuisance or a public nuisance when the nuisance claim is based upon any of the following alleged objectionable activities:

⁴⁸³ CONN. GEN. STAT. ANN. § 26-314 (1995).

⁴⁸⁴ CONN. GEN. STAT. ANN. § 26-315 (1995).

- Odor from livestock, manure, fertilizer, or feed;
- Noise from livestock or farm equipment used in normal, generally acceptable farming procedures;
- Dust created during plowing or cultivation operations;
- Use of chemicals provided such chemicals and the method of their application conform to practices approved by the DEP,⁴⁸⁵ or
- Water pollution from livestock or crop production activities as long as public or private drinking water supplies are not polluted and the activities conform to acceptable management practices for pollution control approved by the DEP.⁴⁸⁶

This law does not apply nor provide a defense whenever nuisance results from negligence or wilful or reckless misconduct in the operation of any agricultural or farming operation, place, establishment, facility, or appurtenances.⁴⁸⁷

Furthermore, no operation to collect spring water or well water may be deemed to constitute a private nuisance or a public nuisance based on alleged objectionable noise from equipment used in the operation provided the operation conforms to generally accepted practices for the collection of spring water or well water, has obtained all approvals or permits required by law, and complies with the local zoning laws that may impose time, place, and manner restrictions on operations to collect the spring water or well water.⁴⁸⁸

⁴⁸⁵ Or approved by the DPH where applicable.

⁴⁸⁶ Unless there is a municipal ordinance or regulation otherwise pertaining to nuisances; inspection and approval of the agricultural or farming operation, place, establishment or facility by the DOA is prima facie evidence that the operation follows generally accepted agricultural practices. *see* CONN. GEN. STAT. ANN. § 19a-341(a) (1995).

⁴⁸⁷ CONN. GEN. STAT. ANN. § 19a-341(c) (1995).

⁴⁸⁸ CONN. GEN. STAT. ANN. § 19a-341(b) (1995).

B. Connecticut Conservation Easement

Connecticut allows conservation and preservation restrictions⁴⁸⁹ to be acquired by governmental bodies and charitable organizations or trusts as interests in land in the same manner as other interests in land. These restrictions:

- Help to maintain open spaces and prevent the development of land beyond its agricultural status;
- Provide the landowner with monies from the sale of the land restriction interests while otherwise maintaining access and control of the land; and
- Often keep property taxes assessed at an agricultural value instead of a higher land use valuation.⁴⁹⁰

Conservation easements and preservation restrictions may be enforced by injunction or proceedings in equity.

⁴⁸⁹ The term "conservation restriction" means a limitation described in any deed, will, or other legal instrument executed by or on behalf of the landowner whether or not the limitation is stated in the form of a restriction, easement, covenant, or condition or limitation described in any state order for the taking of land for the purpose of retaining land or water areas predominantly in their natural, scenic, or open condition or in agricultural, farming, forestry, or open space use; the term "preservation restriction" means a limitation described in any deed, will, or other instrument executed by or on behalf of the landowner whether or not the limitation is stated in the form of a restriction, easement, covenant, or condition or limitation described in any state order for the taking of land for the purpose of preserving historically significant structures or sites; *see* CONN. GEN. STAT. ANN. § 47-42a (1995).

⁴⁹⁰ CONN. GEN. STAT. ANN. § 47-42c (1995).

Appendix A - Agencies

Producer Note: State and federal agencies are available to answer questions regarding environmental matters and a producer's compliance with environmental laws and regulations. The following is a list of agencies which should be able to answer questions or provide materials for a producer.

State Agencies:

State of Connecticut
Department of Agriculture
765 Asylum Avenue
Hartford, CT 06105
(860) 713-2500
(860) 713-2514 fax
<http://www.state.ct.us/doag/>

Agricultural Experiment Station (AES)
123 Huntington Street or P.O. Box 1106
New Haven, CT 06504-1106
(877) 855-2237 toll free
(203) 974-8456 fax
<http://www.caes.state.ct.us/>

Areas within AES:
Analytical Chemistry
(203) 974-8602
Biochemistry and Genetics
(203) 974-8603
Administration/Business Services
(203) 974-8500
Entomology
(203) 974-8604
Forestry and Horticulture
(203) 974-8605
Plant Pathology and Ecology
(203) 974-8606
Soil and Water
(203) 974-8607

Attorney General
55 Elm Street
Hartford, CT 06106
(860) 808-5318
(860) 808-5387 fax
<http://www.cslib.org/attygenl/>

Department of Economic & Community
Development
505 Hudson Street
Hartford, Connecticut 06106-7107
(860) 270-8000
(860) 270-8055 fax
<http://www.state.ct.us/ecd/>

The Department of Environmental Protection (DEP)
79 Elm Street, Hartford, CT 06106-5127.
(860) 424-3000
(860) 424-4153 fax
<http://www.dep.state.ct.us/>

4 Bureaus within DEP:

1. Bureau of Air Management
(860) 424-3026
(860) 424-4063 fax
2. Bureau of Natural Resources (BNR)
(860) 424-3010
(860) 424-4078 fax

3 Divisions within BNR:

1. Fisheries
(860) 424-3474
(860) 424-4070 fax
 2. Forestry
(860) 424-3630
(860) 424-4070 fax
 3. Wildlife
(860) 424-3011
(860) 424-4078 fax
3. Bureau of Waste Management
(860) 424-3021
(860) 424-4060 fax
 4. Bureau of Water Management
(860) 424-3704
(860) 424-4067 fax

Council on Environmental Quality
79 Elm Street
Hartford, CT 06106
(860) 424-4000
(860) 424-4070 fax
<http://www.ceq.state.ct.us/>

Department of Public Health (DPH)
410 Capitol Avenue or
P.O. Box 340308
Hartford, Connecticut 06134-0308
(860) 509-8000
(860) 509-7359 fax
<http://www.dph.state.ct.us/>