

EXHIBIT E

HEARING REPORT

**Prepared Pursuant to Section 4-168(d)
of the Connecticut General Statutes and
Section 22a-3a-3(d)(5) of the Department of Environmental Protection Rules of Practice**

**Regarding the Amendment of Section 22a-174-43 of the
Regulations of Connecticut State Agencies**

Hearing Officer: Allison Ferraro

Date of Hearing: June 27, 2006

On May 9, 2006, the Commissioner of the Department of Environmental Protection ("Commissioner" and "Department," respectively) signed a notice of intent to amend section 22a-174-43 of the Regulations of Connecticut State Agencies ("R.C.S.A."). Pursuant to such notice, a public hearing was held on June 27, 2006, with the public comment period for the proposed amendment closing on June 30, 2006.

I. Hearing Report Content

As required by section 4-168(d) of the Connecticut General Statutes ("C.G.S."), this report describes the amendment as proposed for hearing; the principal reasons in support of the proposed amendment; the principal considerations presented in oral and written comments in opposition to the proposed amendment; all comments made and responses thereto regarding the proposed amendment; and the final wording of the proposed amendment. Commenters are identified in Attachment 1.

This report also includes in Section II a statement in accordance with C.G.S. section 22a-6(h).

II. Federal Standards Analysis in Compliance with Section 22a-6(h) of the General Statutes

Pursuant to the provisions of C.G.S. section 22a-6(h), the Commissioner is authorized to adopt regulations pertaining to activities for which the federal government has adopted standards or procedures. At the time of public notice, the Commissioner must distinguish clearly all provisions of a proposed regulation or amendment that differ from *applicable* federal standards or procedures (*i.e.*, federal standards and procedures that apply to *the same persons* under the proposed state regulation or amendment). The Commissioner must distinguish any such provisions either on the face of such proposed regulation or amendment or through supplemental documentation accompanying the proposed regulation or amendment. In addition, the

Commissioner must provide an explanation for all such provisions in the regulation-making record required under Title 4, Chapter 54 of the C.G.S. and make such explanation publicly available at the time of the notice of public hearing required under C.G.S. section 4-168.

In accordance with the requirements of C.G.S. section 22a-6(h), the following statement was available at the time of the notice of the public hearing and was entered into the administrative record in the matter of the proposed amendment of R.C.S.A. section 22a-174-43 ("Section 43"):

With respect to section 43, there are no applicable federal standards placed on portable fuel containers.

There is a **proposed** federal regulation (71 FR 15803, March 29, 2006) that, if enacted, will not take effect until 2009 (approximately a year and a half after Connecticut's proposed regulation will take effect).

III. Summary and Text of the Amendment as Proposed

Section 43 requires portable fuel containers ("PFCs") to meet stringent design requirements to control emissions from evaporation, spillage and permeation, and provides volatile organic compound ("VOC") emission reductions necessary for Connecticut's 8-hour ozone national ambient air quality standard ("NAAQS") attainment demonstration. The proposed changes will increase the effectiveness of the existing rule by clarifying definitions, simplifying design requirements and minimizing the potential for misuse of the product. The proposed changes will amend the existing requirements for flow-rate and spout design to address spillage concerns. The proposed changes also incorporate the California Air Resources Board's ("CARB's") anticipated certification program for PFCs, due to begin July 1, 2007.

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

IV. Principal Reasons in Support of the Proposed Amendment

The amendment is proposed primarily to improve rule effectiveness in reducing VOC emissions in support of attainment planning for the 8-hour ozone NAAQS.

V. Principal Considerations in Opposition to the Proposed Amendment

No comments opposed the adoption of the proposed amendment. One manufacturer suggested minor revisions related to retail concerns.

VI. Summary of Comments

All comments submitted are summarized below with the Department's responses. Commenters are identified by abbreviation in this section and are identified fully in Attachment 1 to this report. When changes to the proposed text are indicated in response to comment, new text is in bold font and deleted text is in strikethrough font.

1. Comment: EPA comments regarding recently proposed federal standards that would limit hydrocarbon emissions that evaporate from or permeate through PFCs (71 FR 15803, March 29,

2006). EPA's proposal starts with containers manufactured in 2009 and would limit evaporation and permeation emissions from these containers to 0.3 grams of hydrocarbons per gallon per day. Connecticut's existing and proposed revised gas can rule limits the permeation emissions from PFCs to less than or equal to 0.4 grams of hydrocarbons per gallon per day. If, as proposed, the final EPA standard for permeation emissions from PFCs is more stringent than Connecticut's standard, the federal standard will supersede the state standard as of 2009. (EPA)

Response: Connecticut's proposed changes to the regulation will allow the sale of PFCs meeting the permeation rate of less than or equal to 0.4 grams of hydrocarbons per gallon per day, only if they were manufactured on or before December 31, 2008. On or after January 1, 2009 the amended section 43 will include (by reference to CARB's Certification Program) a permeation rate of 0.3 grams of hydrocarbons per gallon per day, the same as the proposed federal standard. Therefore, the Department should not revise section 43 in response to this comment.

More specifically, for any PFC manufactured on or after July 1, 2007, Connecticut's regulation would require that any PFC provided for sale in Connecticut be certified for use and sale by the manufacturer through CARB and covered by an Executive Order issued by CARB. In order to receive such certification and Executive Order, a PFC manufacturer will need to certify their PFC in accordance with Certification Procedure 501 "CP 501".

CP 501 requires that:

- a) PFCs manufactured on or after July 1, 2007 must emit no more than 0.4 grams per gallon per-day as determined by Air Resources Board Test Procedure TP-502, Test Procedures for Determining Diurnal Emissions from Portable Fuel Containers July 26, 2006...
- b) PFCs manufactured on or after January 1, 2009 must emit no more than 0.3 grams per gallon per-day as determined by Air Resources Board Test Procedure TP-502, Test Procedures for Determining Diurnal Emissions from Portable Fuel Containers July 26, 2006...

Therefore, for containers manufactured after January 1, 2009, CP 501 references the same permeation rate as that which will be required by the federal rule as of January 1, 2009.

2. Comment: Blitz USA, Inc. expressed concern as to how the amendment would address the kerosene cans already on retailer's shelves when the regulation is established. Will the retailers be allowed to sell these cans until they are gone?

Response: The Hearing Officer recommends revising the proposed amendment by adding language to allow for PFCs labeled or designated solely for use with kerosene and manufactured prior to the effective date of the regulation to be sold until January 1, 2008. This would allow for a reasonable sell-through period for cans already on the shelves, but is not so long as to compromise the emissions reductions benefits that would be received through can turnover. A new subdivision should be added to subsection (f), as follows:

(7) Notwithstanding the provisions of subsections (d)(1) and (d)(3) of this section, a portable fuel container manufactured prior to the effective date of this section may be sold or

offered for sale until January 1, 2008 if it is labeled or designated for use solely with kerosene and if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container.

3. Comment: Blitz also asked: when would the new regulation go into law?

Response:

The newly amended regulation will become effective on the date it is filed with the Connecticut Secretary of the State.

4. Comment: Blitz stated that subsections (d)(2)(D) and (d)(4)(C) address flow rate requirements for the cans until June 30, 2007. California eliminated these requirements when they added kerosene to their regulations. Blitz suggests that the amended Connecticut regulation do the same so as to have a common can for all regulated states. The proposed new national EPA standard will also not have these requirements.

Response: Connecticut's proposed amendment is consistent with the CARB regulation and the proposed EPA standard on this matter. The brackets around subsection (d)(2)(D) and (d)(4)(C) indicate that Connecticut is deleting the flow rate requirement. No change is recommended in response to this comment.

VII. Additional Comment by the Hearing Officer

On October 11, 2006, CARB's regulation that provides the basis for the certification program referenced at subsection (f)(2)(C) went into effect. Therefore, the appropriate dates were added as follows (underlined portions):

- (A) For portable fuel containers manufactured on or before June 30, 2007, "Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000, as amended July 26, 2006; and
- (C) For portable fuel containers manufactured on or after July 1, 2007, "CP-501, Certification Procedure for Portable Fuel Containers and Spill-Proof Spouts", adopted by CARB on July 26, 2006, or alternative methodology approved in writing by CARB.

Other changes recommended by Hearing Officer:

1. Correct the spelling of "alcohol" that appears in the definition of fuel, found in subsection (a)(8).

2. Change the definition of kerosene found in subsection (a)(9) to make it consistent with the definition used by CARB in Title 13, Section 2467 and 2467.1 of California Code of Regulations ~ Part 1.

VIII. Final Text of Proposed Amendment

The final text of Section 22a-174-43 inclusive of the change recommended in this report, is located at Attachment 3 to this report.

IX. Conclusion

Based upon the comments submitted by interested parties and addressed in this Hearing Report, I recommend the final amendment, as contained in Attachment 3 to this report, be submitted by the Commissioner for approval by the Attorney General and the Legislative Regulations Review Committee. Based upon the same considerations, I also recommend that upon promulgation this amendment be submitted to EPA as a revision to the State Implementation Plan.


Allison Ferraro
Hearing Officer

10/19/00
Date

Attachment 1
List of Commenters

1. Anne Arnold, Manager
Air Quality Planning Unit
United States Environmental Protection Agency (“EPA”)
Region 1
1 Congress Street, Suite 1100
Boston, MA 02114-2023

2. Chuck Craig
Blitz USA, Inc. (“Blitz”)
404 26th Ave.,
N.W. Miami, OK 74354

Attachment 2

Text of the Proposed Amendment to R.C.S.A. Section 22a-174-43

Section 22a-174-43 Portable Fuel Container Spillage Control.

(a) Definitions. For the purposes of this section:

(1) "Automatic closure" means a device or mechanism that causes a spill-proof system or spout to close, seal and remain completely closed when not dispensing fuel.

(2) "Automatically close" means closure occurs through the activation of a device or mechanism that causes a spill-proof system or spout to close, seal, and remain completely closed when not dispensing fuel.

[(1)] (3) "CARB" means the California Air Resources Board.

[(2)] (4) "CCR" means the California Code of Regulations.

(5) "Closed-system portable fuel container" means a portable fuel container that forms a complete loop between the engine and the fuel container so that any excess fuel or vapors are returned to the portable fuel container.

[(3)] (6) "Consumer" means any person who purchases or otherwise acquires a new portable fuel container or spout or both portable fuel container and spout for personal, family, household or institutional use. A person who acquires a portable fuel

container or spout or both a portable fuel container and spout for resale is not a "consumer" for that product.

[(4)] (7) "Distributor" means any person to whom a portable fuel container or spout or both portable fuel container and spout is sold or supplied for the purpose of resale or distribution in commerce. This term does not include manufacturers, retailers and consumers.

[(5)] (8) "Fuel" means a volatile liquid mixture containing hydrocarbons or a blend of a volatile liquid mixture with one or more oxygen containing ashless organic compounds, such as alcohols or ethers, which is suitable for use in spark-ignition internal combustion engines or compression-ignition internal combustion engines.

[(6)] (9) "Kerosene" means any light petroleum distillate fuel that is used in space heating, cook stoves, and water heaters, or is suitable for use as a light source when burned in wick-fed lamps.

[6] (10) "Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages or re-labels a portable fuel container or spout or both portable fuel container and spout.

[7](11) "NYCRR" means the Official Compilation of Codes, Rules and Regulations of the State of New York.

[8](12) "NYSDEC" means the New York State Department of Environmental Conservation.

[9](13) "Nominal capacity" means the volume indicated by the manufacturer that represents the maximum recommended filling level.

[10](14) "Outboard engine" means the spark-ignition marine engine mounted on a marine watercraft and used to propel such watercraft.

[11](15) "Permeation" means the process by which individual fuel molecules may penetrate the walls and components of a portable fuel container.

[12](16) "Portable fuel container" means any container or vessel with a nominal capacity of ten gallons or less intended

for reuse that is designed, [or] used, sold, or offered for sale [primarily] for receiving, transporting, storing and dispensing fuel or kerosene. Portable fuel containers do not include containers or vessels permanently embossed or permanently labeled, as defined in 49 CFR Section 172.407, with language indicating said containers or vessels are solely intended for use with non-fuel or non-kerosene products.

[13] (17) "Retailer" means any person who owns, leases, operates, controls or supervises a retail outlet.

[14] (18) "Retail outlet" means any establishment at which any portable fuel container or spout or both portable fuel container and spout is sold, supplied or offered for sale.

[15] (19) "Spill-proof spout" means any spout that complies with the performance standards set forth in subsection (d) of this section.

[16] (20) "Spill-proof system" means any configuration of portable fuel container and firmly attached spout that complies with the performance standards set forth in subsection (d) of this section.

[17](21) "Spout" means any device that can be firmly attached to a portable fuel container for dispensing the contents of a portable fuel container, not including a device that can be used to lengthen the spout to accommodate necessary applications.

[18] (22) "Target fuel tank" means any receptacle that receives fuel from a portable fuel container.

(b) Applicability.

Except as provided in subsection (c) of this section, this section applies to any person who sells, supplies, offers for sale or manufactures for sale in the State of Connecticut a portable fuel container or spout or both portable fuel container and spout for use in the State of Connecticut.

(c) Exemptions.

(1) This section shall not apply to any portable fuel container or spout or both portable fuel container and spout manufactured

in the State of Connecticut for shipment, sale and use outside of the State of Connecticut.

(2) This section shall not apply to a manufacturer or distributor who sells, supplies or offers for sale in the State of Connecticut a portable fuel container or spout or both portable fuel container and spout that does not comply with the performance standards set forth in subsection (d) of this section, provided that such manufacturer makes and keeps records demonstrating:

- (A) The portable fuel container or spout or both portable fuel container and spout is intended for shipment and use outside of the State of Connecticut; and
- (B) The manufacturer or distributor has taken reasonable and prudent precautions to assure that the portable fuel container or spout or both portable fuel container and spout is not distributed to or within the State of Connecticut.

(3) This section shall not apply to any safety can subject to and in compliance with the provisions of 29 CFR 1926, Subpart F.

(4) This section shall not apply to any portable fuel container with a nominal capacity of less than or equal to one (1) quart.

(5) This section shall not apply to any rapid refueling device with a nominal capacity of greater than or equal to four gallons, provided that such device:

- (A) Is designed for use in an off-highway motorized vehicle competition;
- (B) Creates a leak-proof seal against the target fuel tank; or
- (C) Operates in conjunction with a receiver permanently installed on the target tank.

(6) This section shall not apply to marine portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and an outboard engine for the purpose of operating such engine.

(7) This section shall not apply to "closed-system" portable fuel containers that are used exclusively for fueling remote control model airplanes.

[7](8) This section shall not apply to any manufacturer for any product for which the NYSDEC issued a variance pursuant to 6 NYCRR 239-7 for the period of time such variance is in effect, provided that the manufacturer submits all information and data required by 6 NYCRR 239-7 to the commissioner within thirty days of variance approval. If NYSDEC issues a variance pursuant to 6 NYCRR 239-7 more than thirty days before the effective date of this section, the manufacturer shall submit the information and data required by 6 NYCRR 237-7 to the commissioner within thirty days of the effective date of this section, provided the underlying variance is still in effect and necessary to maintain this exemption in the State of Connecticut.

[8](9) This section shall not apply to any product for which the manufacturer is granted:

- (A) An exemption by CARB pursuant to the Innovative Products provisions of 13 CCR 2467.4 for the period of time the CARB Innovative Products exemption remains in effect; or
- (B) An exemption by the NYSDEC pursuant to the Innovative Products provisions of 6 NYCRR 239-5 for the period of time the NYSDEC Innovative Products exemption remains in effect.

[9](10) Any manufacturer who claims an exemption pursuant to subdivision [8](9) of this subsection shall submit to the commissioner, upon request therefore, a copy of the applicable CARB or NYSDEC exemption decision.

(d) Performance Standards.

(1) Except as provided in subsection (c) of this section, no person shall sell, supply, offer for sale or manufacture for sale in the State of Connecticut on or after May 1, 2004 and ending June 30, 2007, any portable fuel container or any portable fuel container and spout that, at the time of sale or manufacture, does not comply with the performance standards specified in subdivision (2) of this subsection.

(2) Each portable fuel container and each portable fuel container and spout shall:

(A) Have an automatic shut-off that stops fuel flow before the target tank overflows;

(B) Automatically close and seal when removed from the target fuel tank and remain completely closed when not dispensing fuel;

(C) Have only one opening for both filling and pouring;

[(D) Provide a fuel flow rate and fill level equal to or greater than:

(i) One-half (0.5) gallon per minute for portable fuel containers with a nominal capacity:

(aa) less than or equal to one and one-half (1.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening, or

(bb) greater than one and one-half (1.5) gallons, but less than or equal to two and one-half (2.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "LOW FLOW RATE" in type of thirty-four (34) point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any,

(ii) One (1) gallon per minute for portable fuel containers with a nominal capacity greater than one and one-half (1.5) gallons, but less than or equal to two and one-half (2.5) gallons, and fills to a level less than or equal to one and one-quarter (1.25) inches below the top of the target fuel tank opening, or

(iii) Two (2) gallons per minute for portable fuel containers with a nominal capacity greater than two and one-half (2.5) gallons;]

[(E)] (D) Have a permeation rate of less than or equal to four-tenths (0.4) grams per gallon per day; and

[(F)] (E) Be warranted by the manufacturer for a period of not less than one year against all defects in material and workmanship.

(3) Except as provided in subsection (c) of this section, no person shall sell, supply, offer for sale or manufacture for sale in the State of Connecticut on or after May 1, 2004 and ending June 30, 2007, any spout that, at the time of sale or manufacture, does not comply with the performance standards specified in subdivision (4) of this subsection.

(4) Each spill-proof spout shall:

(A) Have an automatic shut-off that stops fuel flow before the target tank overflows;

(B) Automatically close and seal when removed from the target fuel tank and remain completely closed when not dispensing fuel; and

[(C)] Provide a fuel flow rate and fill level equal to or greater than:

(i) One-half (0.5) gallon per minute for portable fuel containers with a nominal capacity:

(aa) less than or equal to one and one-half (1.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening, or

(bb) greater than one and one-half (1.5) gallons, but less than two and one-half (2.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "LOW FLOW RATE" in bold type of thirty-four (34) point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto,

(ii) One (1) gallon per minute for portable fuel containers with a nominal capacity greater than one and one-half (1.5) gallons, but less than two and one-half (2.5) gallons, filling to a level less than or equal to one and one-quarter (1.25) inches below the top of the target fuel tank opening, or

(iii) Two (2) gallons per minute for portable fuel containers with a nominal capacity greater than two and one-half (2.5) gallons; and]

[(D)] (C) Be warranted by the manufacturer for a period of not less than one year against all defects in material and workmanship.

(5) On or after July 1, 2007, except as provided in subsection (c) of this section, no person shall sell, supply, offer for sale or manufacture for sale in the State of Connecticut, a portable fuel container or spout or both portable fuel container and spout that, at the time of sale or manufacture, is not certified for use and sale by the manufacturer through the California Air Resources Board and covered by an Executive Order issued by CARB pursuant to 13 CCR Chapter 9, Article 6, Section 2467.2(d).

(e) [Labelling] Labeling Requirements.

(1) Each manufacturer of a portable fuel container or portable fuel container and spout subject to this section shall clearly display on each spill-proof system:

(A) The phrase "Spill-Proof System;"

(B) A date of manufacture or a representative date; and

(C) A representative code identifying the portable fuel container or portable fuel container and spout as subject to this section and in compliance with subsection (d) of this section.

(2) Each manufacturer of a spout subject to this section shall clearly display on the accompanying package, or for a spill-proof spout sold without packaging, on either the spill-proof spout or a label affixed thereto:

- (A) The phrase "Spill-Proof Spout;"
- (B) A date of manufacture or a representative date; and
- (C) A representative code identifying the spout as subject to this section and in compliance with subsection (d) of this section.

(3) Each manufacturer of a portable fuel container or portable fuel container and spout subject to and complying with subsection (d)(5) of this section shall clearly display on each spill-proof system:

- (A) The phrase "Spill-Proof System;"
- (B) A date of manufacture or a representative date; and
- (C) A representative code identifying the Executive Order Number issued by CARB for the portable fuel container and spout.

[3] (4) Each manufacturer subject to this section shall file an explanation of both the date code and representative date code with the commissioner no later than three months after the effective date of this section or within ninety (90) days of production or any change in coding.

[(4) Each manufacturer subject to this section shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.]

(5) Each manufacturer subject to subdivision (2) of this subsection shall clearly display, on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout, or a label fixed thereto, the make, model number and size of each portable fuel container the spout is designed to accommodate, provided the identified combinations of container and spout shall comply with all applicable provisions of this section.

(6) No manufacturer shall display or affix the phrase "Spill-Proof System" or "Spill-Proof Spout" to a portable fuel container or a portable fuel container and spout unless such container and spout comply with all applicable provisions of

subsection (d) of this section.

(7) If, due to its design or other features, a portable fuel container or a portable fuel container and spout cannot be used to refuel one or more on-road motor vehicles, the manufacturer shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in thirty-four (34) point type or greater on:

- (A) An affixed label and the accompanying package, if any, for any portable fuel container or portable fuel container and spout sold together as a spill-proof system; and
- (B) Either the spill-proof spout or a label affixed thereto, and the accompanying package, if any, for any spill-proof spout.

(f) Compliance Test Procedures.

(1) Each manufacturer of a portable fuel container or spout or both a portable fuel container and spout [must] shall perform the compliance tests specified in subdivisions (2) and (3) of this subsection prior to allowing the product to be offered for sale in the State of Connecticut or at any other time directed to do so by the commissioner.

(2) To determine compliance with the standards set forth in subsection (d) of this section, each manufacturer shall use the following test procedures:

- (A) For portable fuel containers manufactured on or before June 30, 2007, "Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000; and
- (B) For portable fuel containers manufactured on or before June 30, 2007, "Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000.; and]
- [(C) "Test Method 512, Determination Of Fuel Flow Rate For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000.]

(C) For portable fuel containers manufactured on or after July 1, 2007, "CP-501, Certification Procedure for Portable Fuel Containers and Spill-Proof Spouts", adopted (INSERT EFFECTIVE DATE OF CA REGULATION), or alternative methodology approved in writing by CARB.

(3) To determine compliance with the permeation standard set forth in subsection (d)(2)(D) of this section, each manufacturer shall use the test procedures set forth in subdivision (2) of this subsection and "Test Method 513, Determination Of Permeation Rate For Spill-Proof Systems," adopted by CARB on July 6, 2000.

(4) Each manufacturer must make and keep records of the compliance tests specified in subdivisions (2) and (3) of this subsection for as long as the product is available for sale in the State of Connecticut and make any test results available to the commissioner within thirty (30) days after receiving a request by the commissioner for such records.

(5) Compliance with the performance standards set forth in subsection (d) of this section does not exempt any manufacturer of a spill-proof system or spill-proof spout from the duty to comply with all other applicable federal and state requirements.

(6) Notwithstanding the provisions of subsections (d)(1) and (d)(3) of this section, a portable fuel container or spout or both a portable fuel container and spout manufactured before May 1, 2004, may be sold, supplied or offered for sale until May 1, 2005 if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

Statement of Purpose: To update requirements applicable to portable fuel containers to make the rule more effective by simplifying design requirements, minimizing the potential for misuse of the product, and incorporating the California Air Resources Board PFC certification program.

Attachment 3

Final Text of the Amendment to R.C.S.A. Section 22a-174-2a(a)

Section 22a-174-43 Portable Fuel Container Spillage Control.

(a) Definitions. For the purposes of this section:

(1) "Automatic closure" means a device or mechanism that causes a spill-proof system or spout to close, seal and remain completely closed when not dispensing fuel.

(2) "Automatically close" means closure occurs through the activation of a device or mechanism that causes a spill-proof system or spout to close, seal, and remain completely closed when not dispensing fuel.

[(1)] (3) "CARB" means the California Air Resources Board.

[(2)] (4) "CCR" means the California Code of Regulations.

(5) "Closed-system portable fuel container" means a portable fuel container that forms a complete loop between the engine and the fuel container so that any excess fuel or vapors are returned to the portable fuel container.

[(3)] (6) "Consumer" means any person who purchases or otherwise acquires a new portable fuel container or spout or both portable fuel container and spout for personal, family, household or institutional use. A person who acquires a portable fuel

container or spout or both a portable fuel container and spout for resale is not a "consumer" for that product.

[(4)] (7) "Distributor" means any person to whom a portable fuel container or spout or both portable fuel container and spout is sold or supplied for the purpose of resale or distribution in commerce. This term does not include manufacturers, retailers and consumers.

[(5)] (8) "Fuel" means a volatile liquid mixture containing hydrocarbons or a blend of a volatile liquid mixture with one or more oxygen containing ashless organic compounds, such as [alchols] alcohols or ethers, which is suitable for use in spark-ignition internal combustion engines or compression-ignition internal combustion engines.

[(6)] (9) "Kerosene" means "kerosene" as defined in California Code of Regulations, Title 13, Section 2467 and 2467.1.

[6] (10) "Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages or re-labels a portable fuel container or spout or both portable fuel container and spout.

[7] (11) "NYCRR" means the Official Compilation of Codes, Rules and Regulations of the State of New York.

[8] (12) "NYSDEC" means the New York State Department of Environmental Conservation.

[9] (13) "Nominal capacity" means the volume indicated by the manufacturer that represents the maximum recommended filling level.

[10] (14) "Outboard engine" means the spark-ignition marine engine mounted on a marine watercraft and used to propel such watercraft.

[11] (15) "Permeation" means the process by which individual fuel molecules may penetrate the walls and components of a portable fuel container.

[12] (16) "Portable fuel container" means any container or vessel with a nominal capacity of ten gallons or less intended for reuse that is designed, [or] used, sold, or offered for sale [primarily] for receiving, transporting, storing and dispensing fuel or kerosene. Portable fuel containers do not include containers or vessels permanently embossed or permanently labeled, as defined in 49 CFR Section 172.407, with language indicating said containers or vessels are solely intended for use with non-fuel or non-kerosene products.

[13] (17) "Retailer" means any person who owns, leases, operates, controls or supervises a retail outlet.

[14] (18) "Retail outlet" means any establishment at which any portable fuel container or spout or both portable fuel container and spout is sold, supplied or offered for sale.

[15] (19) "Spill-proof spout" means any spout that complies with the performance standards set forth in subsection (d) of this section.

[16] (20) "Spill-proof system" means any configuration of portable fuel container and firmly attached spout that complies with the performance standards set forth in subsection (d) of this section.

[17] (21) "Spout" means any device that can be firmly attached to a portable fuel container for dispensing the contents of a portable fuel container, not including a device that can be used to lengthen the spout to accommodate necessary applications.

[18] (22) "Target fuel tank" means any receptacle that receives fuel from a portable fuel container.

(b) Applicability.

Except as provided in subsection (c) of this section, this section applies to any person who sells, supplies, offers for sale or manufactures for sale in the State of Connecticut a portable fuel container or spout or both portable fuel container and spout for use in the State of Connecticut.

(c) Exemptions.

(1) This section shall not apply to any portable fuel container or spout or both portable fuel container and spout manufactured in the State of Connecticut for shipment, sale and use outside of the State of Connecticut.

(2) This section shall not apply to a manufacturer or distributor who sells, supplies or offers for sale in the State of Connecticut a portable fuel container or spout or both portable fuel container and spout that does not comply with the performance standards set forth in subsection (d) of this section, provided that such manufacturer makes and keeps records demonstrating:

- (A) The portable fuel container or spout or both portable fuel container and spout is intended for shipment and use outside of the State of Connecticut; and

(B) The manufacturer or distributor has taken reasonable and prudent precautions to assure that the portable fuel container or spout or both portable fuel container and spout is not distributed to or within the State of Connecticut.

(3) This section shall not apply to any safety can subject to and in compliance with the provisions of 29 CFR 1926, Subpart F.

(4) This section shall not apply to any portable fuel container with a nominal capacity of less than or equal to one (1) quart.

(5) This section shall not apply to any rapid refueling device with a nominal capacity of greater than or equal to four gallons, provided that such device:

(A) Is designed for use in an off-highway motorized vehicle competition;

(B) Creates a leak-proof seal against the target fuel tank; or

(C) Operates in conjunction with a receiver permanently installed on the target tank.

(6) This section shall not apply to marine portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and an outboard engine for the purpose of operating such engine.

(7) This section shall not apply to "closed-system" portable fuel containers that are used exclusively for fueling remote control model airplanes.

[7](8) This section shall not apply to any manufacturer for any product for which the NYSDEC issued a variance pursuant to 6 NYCRR 239-7 for the period of time such variance is in effect, provided that the manufacturer submits all information and data required by 6 NYCRR 239-7 to the commissioner within thirty days of variance approval. If NYSDEC issues a variance pursuant to 6 NYCRR 239-7 more than thirty days before the effective date of this section, the manufacturer shall submit the information and data required by 6 NYCRR 237-7 to the commissioner within thirty days of the effective date of this section, provided the underlying variance is still in effect and necessary to maintain this exemption in the State of Connecticut.

[8](9) This section shall not apply to any product for which the manufacturer is granted:

- (A) An exemption by CARB pursuant to the Innovative Products provisions of 13 CCR 2467.4 for the period of time the CARB Innovative Products exemption remains in effect; or
- (B) An exemption by the NYSDEC pursuant to the Innovative Products provisions of 6 NYCRR 239-5 for the period of time the NYSDEC Innovative Products exemption remains in effect.

[9] (10) Any manufacturer who claims an exemption pursuant to subdivision [8] (9) of this subsection shall submit to the commissioner, upon request therefore, a copy of the applicable CARB or NYSDEC exemption decision.

(d) Performance Standards.

(1) Except as provided in subsection (c) of this section, no person shall sell, supply, offer for sale or manufacture for sale in the State of Connecticut on or after May 1, 2004 and ending June 30, 2007, any portable fuel container or any portable fuel container and spout that, at the time of sale or manufacture, does not comply with the performance standards specified in subdivision (2) of this subsection.

(2) Each portable fuel container and each portable fuel container and spout shall:

- (A) Have an automatic shut-off that stops fuel flow before the target tank overflows;
- (B) Automatically close and seal when removed from the target fuel tank and remain completely closed when not dispensing fuel;
- (C) Have only one opening for both filling and pouring;
- [(D) Provide a fuel flow rate and fill level equal to or greater than:

- (iv) One-half (0.5) gallon per minute for portable fuel containers with a nominal capacity:

- (aa) less than or equal to one and one-half (1.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening, or

- (cc) greater than one and one-half (1.5) gallons, but less than or equal to two and

one-half (2.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "LOW FLOW RATE" in type of thirty-four (34) point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any,

(v) One (1) gallon per minute for portable fuel containers with a nominal capacity greater than one and one-half (1.5) gallons, but less than or equal to two and one-half (2.5) gallons, and fills to a level less than or equal to one and one-quarter (1.25) inches below the top of the target fuel tank opening, or

(vi) Two (2) gallons per minute for portable fuel containers with a nominal capacity greater than two and one-half (2.5) gallons;]

[(E)] (D) Have a permeation rate of less than or equal to four-tenths (0.4) grams per gallon per day; and

[(F)] (E) Be warranted by the manufacturer for a period of not less than one year against all defects in material and workmanship.

(3) Except as provided in subsection (c) of this section, no person shall sell, supply, offer for sale or manufacture for sale in the State of Connecticut on or after May 1, 2004 and ending June 30, 2007, any spout that, at the time of sale or manufacture, does not comply with the performance standards specified in subdivision (4) of this subsection.

(4) Each spill-proof spout shall:

(A) Have an automatic shut-off that stops fuel flow before the target tank overflows;

(B) Automatically close and seal when removed from the target fuel tank and remain completely closed when not dispensing fuel; and

[(C)] Provide a fuel flow rate and fill level equal to or greater than:

(i) One-half (0.5) gallon per minute for portable fuel containers with a nominal capacity:

(aa) less than or equal to one and one-half (1.5) gallons, filling to a level less than or

equal to one (1) inch below the top of the target fuel tank opening, or

(bb) greater than one and one-half (1.5) gallons, but less than two and one-half (2.5) gallons, filling to a level less than or equal to one (1) inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "LOW FLOW RATE" in bold type of thirty-four (34) point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto,

(ii) One (1) gallon per minute for portable fuel containers with a nominal capacity greater than one and one-half (1.5) gallons, but less than two and one-half (2.5) gallons, filling to a level less than or equal to one and one-quarter (1.25) inches below the top of the target fuel tank opening, or

(iii) Two (2) gallons per minute for portable fuel containers with a nominal capacity greater than two and one-half (2.5) gallons; and]

[(D)] (C) Be warranted by the manufacturer for a period of not less than one year against all defects in material and workmanship.

(5) On or after July 1, 2007, except as provided in subsection (c) of this section, no person shall sell, supply, offer for sale or manufacture for sale in the State of Connecticut, a portable fuel container or spout or both portable fuel container and spout that, at the time of sale or manufacture, is not certified for use and sale by the manufacturer through the California Air Resources Board and covered by an Executive Order issued by CARB pursuant to 13 CCR Chapter 9, Article 6, Section 2467.2(d).

(e) [Labelling] Labeling Requirements.

(1) Each manufacturer of a portable fuel container or portable fuel container and spout subject to this section shall clearly display on each spill-proof system:

(A) The phrase "Spill-Proof System;"

(B) A date of manufacture or a representative date; and

(C) A representative code identifying the portable fuel

container or portable fuel container and spout as subject to this section and in compliance with subsection (d) of this section.

(2) Each manufacturer of a spout subject to this section shall clearly display on the accompanying package, or for a spill-proof spout sold without packaging, on either the spill-proof spout or a label affixed thereto:

- (A) The phrase "Spill-Proof Spout;"
- (B) A date of manufacture or a representative date; and
- (C) A representative code identifying the spout as subject to this section and in compliance with subsection (d) of this section.

(3) Each manufacturer of a portable fuel container or portable fuel container and spout subject to and complying with subsection (d)(5) of this section shall clearly display on each spill-proof system:

- (A) The phrase "Spill-Proof System;"
- (B) A date of manufacture or a representative date; and
- (D) A representative code identifying the Executive Order Number issued by CARB for the portable fuel container and spout.

[3] (4) Each manufacturer subject to this section shall file an explanation of both the date code and representative date code with the commissioner no later than three months after the effective date of this section or within ninety (90) days of production or any change in coding.

[(4) Each manufacturer subject to this section shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.]

(5) Each manufacturer subject to subdivision (2) of this subsection shall clearly display, on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout, or a label fixed thereto, the make, model number and size of each portable fuel container the spout is designed to accommodate, provided the identified combinations of container and spout shall comply with all applicable provisions of this section.

(6) No manufacturer shall display or affix the phrase "Spill-Proof System" or "Spill-Proof Spout" to a portable fuel container

or a portable fuel container and spout unless such container and spout comply with all applicable provisions of subsection (d) of this section.

(7) If, due to its design or other features, a portable fuel container or a portable fuel container and spout cannot be used to refuel one or more on-road motor vehicles, the manufacturer shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in thirty-four (34) point type or greater on:

- (A) An affixed label and the accompanying package, if any, for any portable fuel container or portable fuel container and spout sold together as a spill-proof system; and
- (B) Either the spill-proof spout or a label affixed thereto, and the accompanying package, if any, for any spill-proof spout.

(f) Compliance Test Procedures.

(1) Each manufacturer of a portable fuel container or spout or both a portable fuel container and spout [must] shall perform the compliance tests specified in subdivisions (2) and (3) of this subsection prior to allowing the product to be offered for sale in the State of Connecticut or at any other time directed to do so by the commissioner.

(2) To determine compliance with the standards set forth in subsection (d) of this section, each manufacturer shall use the following test procedures:

- (A) For portable fuel containers manufactured on or before June 30, 2007, "Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000, as amended July 26, 2006; and
- (B) For portable fuel containers manufactured on or before June 30, 2007, "Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000. [; and]
- [(C) "Test Method 512, Determination Of Fuel Flow Rate For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000.]
- (C) For portable fuel containers manufactured on or after July 1, 2007, "CP-501, Certification Procedure for Portable Fuel Containers and Spill-Proof Spouts",

adopted July 26, 2006, or alternative methodology approved in writing by CARB.

(3) To determine compliance with the permeation standard set forth in subsection (d)(2)(D) of this section, each manufacturer shall use the test procedures set forth in subdivision (2) of this subsection and "Test Method 513, Determination Of Permeation Rate For Spill-Proof Systems," adopted by CARB on July 6, 2000.

(4) Each manufacturer must make and keep records of the compliance tests specified in subdivisions (2) and (3) of this subsection for as long as the product is available for sale in the State of Connecticut and make any test results available to the commissioner within thirty (30) days after receiving a request by the commissioner for such records.

(5) Compliance with the performance standards set forth in subsection (d) of this section does not exempt any manufacturer of a spill-proof system or spill-proof spout from the duty to comply with all other applicable federal and state requirements.

(6) Notwithstanding the provisions of subsections (d)(1) and (d)(3) of this section, a portable fuel container or spout or both a portable fuel container and spout manufactured before May 1, 2004, may be sold, supplied or offered for sale until May 1, 2005 if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

(7) Notwithstanding the provisions of subsections (d)(1) and (d)(3) of this section, a portable fuel container manufactured prior to the effective date of this section may be sold or offered for sale until January 1, 2008 if it is labeled or designated for use solely with kerosene and if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container.

Statement of Purpose: To update requirements applicable to portable fuel containers to make the rule more effective by simplifying design requirements, minimizing the potential for misuse of the product, and incorporating the California Air Resources Board PFC certification program.