



**STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION
OFFICE OF ADJUDICATIONS**

IN THE MATTER OF : **APPLICATION NO.**
202207376

**CENTRAL CONNECTICUT
RESOURCE RECOVERY,
SOUTHINGTON** : **AUGUST 9, 2024**

PROPOSED FINAL DECISION

1. INTRODUCTION

The Central Connecticut Resource Recovery – Southington (the "Applicant" or "CCRR") has filed an application with the Department of Energy and Environmental Protection ("DEEP" or "Department") seeking to modify its currently permitted solid waste and recycling facility. This application was reviewed under the governing statutes and regulations. *See* Connecticut General Statutes (CGS) §§ 22a-208 and 22a-208a and Regs., Conn. State Agencies §§ 22a-209-4, 22a-209-9, and 22a-209-10. The Department determined that the application was complete and, following its sufficiency and technical review, that the proposed permit complied with the relevant statutes and regulations.

Following the evidentiary hearing, the Applicant and DEEP staff ("the parties") filed the attached Agreed Draft Decision ("ADD," Attachment I). I have reviewed the entire administrative record in this proceeding, including the documents and testimony in the record as evidence. The ADD was evaluated in light of the relevant statutes and regulations. To make a determination, the evidence in the record is compared to relevant statutory and regulatory criteria. That question, and the evaluation of the relevant evidence and statutory and regulatory criteria it requires, is the only question before me in this matter. I have considered public comments made throughout this hearing process and the responses of the Applicant and DEEP staff to the public input. The purpose of public comment is to guide the hearing officer's inquiry into a matter, but it is not evidence in the record and not a basis for a decision.

The Applicant met its burden to demonstrate the legal issues of this matter, which are as follows:

1. Whether the proposed Modified Permit to Construct and Operate a solid waste facility consisting of a volume reduction plant and transfer station complies with the relevant statutory





and regulatory standards, namely CGS §§ 22a-208 and 208a and Regs., Conn. State Agencies §§ 22a-209-4, 22a-209-9, and 22a-209-10.

2. Whether the proposed facility, if constructed and operated in accordance with the Draft Permit, will comply with the relevant statutory and regulatory standards, namely CGS §§ 22a-208 and 208a and Regs. Conn. State Agencies §§ 22a-209-4, 22a-209-9, and 22a-209-10.

The ADD comprehensively demonstrates that the issuance of this Draft Permit is supported by substantial evidence in the record. It demonstrates that the proposed activity, as set forth in the application and condition by the Draft Permit, complies with the relevant statutes and regulations. Therefore, I adopt the ADD, with supplemental conclusions of law, as my proposed final decision and recommend that the Commissioner finalize and issue the Draft Permit.

II. CONCLUSIONS OF LAW

This matter concerns the Department's issuance of a permit to conduct a regulated activity. It was convened and conducted as a contested case pursuant to the parameters of the Connecticut Uniform Administrative Procedure Act, CGS §§ 4-166(8); 4-177, et seq., and with the Department's Rules of Practice, *see* Regs., Conn. State Agencies §§ 22a-3a-2—22a-3a-6. As this proceeding concerns an application, the burden of proof rests with the Applicant. Regs., Conn. State Agencies § 22a-3a-6(f).

The parties offered the testimony of five expert witnesses. As a general matter, the finder of fact "is not required to believe unrebutted expert testimony, but may believe all, part or none of such unrebutted expert evidence." *Bancroft v. Commissioner of Motor Vehicles*, 48 Conn. App. 391, 405, 710 A.2d 807 (1998). The expert testimonies were each credible, convincing, and uncontradicted in the evidentiary record. Accordingly, I have relied upon the testimony of these expert witnesses in arriving at my decision in this matter. *See id.*; *Bain v. Inland Wetlands Commission*, 78 Conn. App. 808, 817, 829 A.2d 18 (2003); *see also Tanner v. Conservation Commission*, 15 Conn. App. 336, 340-41, 544 A.2d 258 (1988).

As fully addressed through the ADD, the Draft Permit complies with the relevant statutory standards and implementing regulations relating to the subject application. The evidence, including documents and testimony, supports approving the application and issuing the proposed Draft Permit. The ADD further demonstrates that any potential environmental impacts from the proposed project have been sufficiently minimized, such that the project is consistent with applicable policies governing the Draft Permit and the Applicant has satisfied its burden in this matter.

III. PUBLIC COMMENTS

Throughout the hearing process, public comments were received regarding this matter, and the participation and concerns of the members of the public were thoughtfully considered. Public comments on a pending draft permit are important for the hearing process. While issues raised by the public are thoroughly addressed in the ADD, they are further evaluated below. This administrative body's

jurisdiction is restricted to the statutes and regulations pertinent to a pending application. All public comments are considered in conjunction with these statutes and regulations. Public comments cannot be a basis for a decision but were considered as part of this process. Where relevant, the parties provided evidence in response to public comments to further demonstrate that the draft permit is in compliance with the relevant statutes and regulations.

Public concerns were raised regarding the local planning and zoning authority, the local inland wetland and watercourse commission, traffic, pest control, dust, odor, water discharge, noise, and human health. After considering the public comments, the parties addressed these concerns through the evidentiary hearing.

First, several individuals raised concerns regarding the local planning and zoning and wetland commissions, as well as the process the local authorities provided in making their decisions. The Draft Permit does not relieve the Applicant of other obligations under applicable federal, state, and local laws. (Ex. DEEP-23). Local Planning and Zoning approval is not required in this matter before DEEP approves the permit. (Ex. APP-17, Test. Brucato, June 17, 2024, 1:20). Additionally, the local inland wetlands and watercourse commission regulates the wetlands on site, and, pursuant to the relevant statutes and regulations in this case, wetlands are not addressed in this Draft Permit. (Test. Brucato, June 17, 2024, 1:24).¹ The record demonstrates that no activities will occur in wetland areas. (Ex. APP-15). While important, questions for local commissions regarding local processes and decision-making are outside the statutory jurisdiction of this administrative process.

Next, public comments were submitted regarding traffic due to the proximity of residential neighborhoods. While residential neighborhoods are in the vicinity of this site, the property is locally zoned in an industrial site area. (Ex. APP-15). In this case, the impact on off-site traffic from the Applicant's facility is regulated by local planning and zoning authorities and is not a consideration for DEEP's permitting process. (Ex. DEEP-32). Pursuant to the relevant statutes and regulations, only on-site queuing is within the purview of DEEP's jurisdiction in this matter. The Draft Permit has a condition to address this. (Ex. DEEP-23). As required by the Draft Permit, this condition will be reviewed during the site's compliance audits. In addition to this permit requirement, the Applicant testified to several operational practices in place to address traffic concerns, which include the requirement for tractor-trailers to use the eastern route for travel in the opposite direction of the residential neighborhoods and that vehicles under the Applicant's control will be instructed to use the eastern route when appropriate. (Exs. APP-15, 17).

¹ All citations to testimony provided at the evidentiary hearing in this matter refer to the Zoom recording of the hearing, a copy of which remains on file with the Office of Adjudications.



Several members of the public raised concerns regarding pests, dust, noise, odor, and human health. The Draft Permit includes a condition to "operate the Facility in a safe manner so as to control fire, odor, noise, spills, vectors, litter and dust emission levels in continuous compliance with all applicable requirements, including OSHA." (Ex. DEEP-23). The Applicant testified that it has protocols to address the public's concerns, including removing waste from the tipping floor each evening, a contract with a pest control facility, and a protocol to use machines that may cause more noise than daily operations outside. (Test. Hoyt, June 17, 2024, 1:01-1:05). Furthermore, specific machines, such as a rock crusher, will be used in a limited capacity based on the needs of the operations. Under the Draft Permit, the facility will be enclosed, which may further address public concerns. (Test. D. Brown, June 17, 2024, 00:48). It is understood that members of the public are actively engaged with the community in this area, and the Draft Permit requires signage on site to inform community members on how to communicate with the Applicant. (Ex. DEEP-23). It further requires the Applicant to maintain a log of all calls received and how such calls were addressed or resolved. (Id.).

Lastly, questions were raised regarding water discharge and protocols in place to address this. The Applicant is required to comply with the requirements of DEEP's General Permit for Discharge of Stormwater Associated with Industrial Activity. (Ex. APP-16). That permit requires the development of a site-specific Stormwater Pollution Prevention Plan. (Id.) The requirements for that permit are separate from the subject permit of this hearing. (Test. Brucato, June 17, 2024, 1:25).

Based on the extensive record and evidence provided by the parties, the Draft Permit meets the statutory and regulatory requirements.

IV. CONCLUSION AND RECOMMENDATION

If conducted as proposed and in accordance with the terms and conditions of the Draft Permit, this proposed project will be consistent with the relevant statutes and regulations raised in this proceeding. I recommend that the Commissioner finalize and issue the requested permit.

Kathleen W. Reiser, Esq.
Hearing Officer

Dated: August 9, 2024

cc: Service List

**STATE OF CONNECTICUT
DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION
OFFICE OF ADJUDICATIONS**

IN THE MATTER OF : **APPLICATION NO. 202207376**

**CENTRAL CONNECTICUT
RESOURCE RECOVERY –
SOUTHINGTON** : **JULY 16, 2024**

AGREED DRAFT DECISION

Together with Central Connecticut Resource Recovery (the “Applicant” or “CCRR”), the staff of the Department of Energy and Environmental Protection Bureau of Materials Management and Compliance Assurance (the “Department” or “DEEP”)(collectively, the “Parties”) respectfully request that the Hearing Officer issue this Agreed Draft Decision as the Proposed Final Decision in the above captioned matter:

I. BACKGROUND

On June 29, 2022, CCRR submitted Application No. 202207376 pursuant to Connecticut General Statutes §22a-208a seeking to modify its currently permitted solid waste and recycling facility located at 65 Triano Drive, Southington, Connecticut (the “Application”). The Application was submitted to modify the authorizations previously granted by the Department under Permit to Construct and Operate No. 13101334-PCO for a volume reduction facility, which permit was issued on October 30, 2020 (the “Original Permit”).

The Department conducted a review for both the sufficiency and the technical merits of the Application in accordance with all applicable standard procedures. As a part of the Department’s review, the Parties engaged in an iterative discussion to clarify the information submitted as part of that Application, as well as for the Applicant to provide additional information which was requested by the Department as part of those reviews. Subsequent to the submission and evaluation of information provided by the Applicant, the Department drafted a permit (“draft permit”) based on the Application, as amended by the Applicant’s subsequent submissions. The Draft Permit authorizes the activities sought by the Applicant in regard to the wastes and materials itemized in the Application, tempered by those limitations and restrictions

the Department deems necessary to protect human health and the environment and in accordance with all applicable law.

On February 3, 2024, the Department, in accordance with C.G.S. §22a-6h, issued a Notice of Tentative Determination to approve the Application and issue a permit for the activities sought, which triggered the thirty (30) day public comment period. On February 22, 2024, a petition for hearing was filed which initiated the hearing process.

The parties to this matter are CCRR and staff of the Department's Bureau of Materials Management and Compliance Assurance; there are no intervening parties. On June 5, 2024, a public hearing was held, which was conducted by the Department's Office of Adjudications and present at the public hearing were staff of the Department's Bureau of Materials Management and Compliance Assurance, the Applicant, and various members of the public. On June 17, 2024, an evidentiary hearing was held (the "Evidentiary Hearing"). The Evidentiary Hearing was conducted by the Department's Office of Adjudications and present were staff of the Department's Bureau of Materials Management and Compliance Assurance, the Applicant, the representative for the Petitioners, and several interested members of the public. The Applicant provided written testimony in advance and supplemented the record at the Evidentiary Hearing. In addition, the Department staff provided written testimony in advance and supplemented the record at the Evidentiary Hearing. The formal record was closed on June 17, 2024, and no additional formal comments were received beyond those which already had been submitted both orally on June 5, 2024 and in writing before the public comment deadline of June 12, 2024.

II. FINDINGS OF FACT

The evidentiary record in this proceeding is extensive, with scores of exhibits. As a result, more than one source may support a finding of fact. Citations to the record in this Agreed Draft Decision may cite only some of the documents or pages of testimony that support a finding. The Hearing Officer has broad discretion to give weight to the evidence found to be most complete, credible, and relevant. *See, e.g., Windels v. Environmental Protection Commission*, 284 Conn. 286, 291 (2007) (reasoning that the trier of facts is "privileged to adopt whatever testimony he [or she] reasonably believes to be credible."). The reliance on, and reference to, certain sources does not imply that the other sources in the record do not also support that finding, but rather that the sources cited are sufficient.

1. The Applicant is a Connecticut limited liability company that consists of three members. (Ex. APP-1). At the time of the filing of the Application, the Applicant was operating a volume reduction facility on property leased from the owner of the property, Triano Drive 65 LLC, a Connecticut limited liability company, which includes Ralph Holyst as a member. (Ex. APP-6).
2. Prior to this proceeding, DEEP had issued other regulatory approvals necessary for the Applicant to construct and operate a volume reduction facility on the site. The Applicant submitted the Application in order to modify a previously issued Individual Permit to Construct and Operate a Dolid Waste Volume Reduction Plant (Permit No. 13101334-PCO) issued by DEEP on October 30, 2020. (Ex. DEEP-1). Prior to the issuance of this underlying permit, the facility originally was authorized to operate under a DEEP General Permit (Ex. APP-1). In addition, the Applicant also operates the facility pursuant to an Individual Industrial Stormwater Permit (Permit No. CSI002810). (Ex. APP-6).
3. In addition to the permits issued by DEEP, the Applicant also has received prior approvals from the Town of Southington local regulatory bodies to operate the facility. Specifically, the Town of Southington Conservation Commission Inland Wetland and Watercourses Agency and the Planning and Zoning Commission issued approvals in 2014 and 2015. (Ex. APP-5).
4. On June 29, 2022, the Applicant submitted Application No. 202207376, a C.G.S. §22a-208a application to modify its currently permitted solid waste and recycling facility located at 65 Triano Drive, Southington, Connecticut.
5. Application No. 202207376 (Ex. APP-6) was submitted to the Department to modify Permit to Construct and Operate No. 13101334-PCO (Ex. DEEP-1) issued on October 30, 2020 and authorizing the construction and operation of a volume reduction facility and other solid waste activities at 65 Triano Drive, Southington, Connecticut.
6. The Application seeks modifications in the Original Permit as follows: a) increase the authorized amount of putrescible municipal solid waste (“MSW”) that can be accepted from 125 tons/day to 600/tons/day; b) modify the existing volume reduction plant (“VRP”) building to install equipment to manage wastes and maximize recovery of materials for recycling and beneficial use by: i) allowing the installation of a baler for preparing MSW for efficient long-distance disposal; ii) expanding the building to the

- north to accommodate a sorting line to process Construction and Demolition (“C&D”) waste and non-putrescible MSW; iii) expanding the building to the west to provide additional space to accommodate a new baler with wrapping and/or bagging ability to manage MSW; iv) expanding the building to the south to accommodate an electrical/mechanical area, offices and commensurate adjustments to a loading dock area; and v) certain changes to the storage volumes authorized by the permit as associated with the above changes in the tons per day of MSW and increased sorting and recovery activities in certain material streams authorized for acceptance. (Ex. DEEP– 2E).
7. On July 1, 2022, the Applicant published notice of the Application in the Hartford Courant providing notice of the filing of its permit application. (Ex. APP-8). The Applicant also provided written notice, in compliance with Conn. Gen. Stat. §22a-6g, of the permit application to Victoria Triano, the Chairperson of the Southington Connecticut Town Council on July 1, 2022. (Ex. APP-6).
 8. On July 27, 2022, the Department issued a Notice of Sufficiency with respect to the Application (Exs. APP-7; DEEP-3A) as supported by the Department’s Application Sufficiency Review Checklist dated July 26, 2022. (Ex. DEEP-3B).
 9. The location at which the activities proposed under the Application are to occur is located in an area considered to be within an Environmental Justice Block Group. (Exs. DEEP-4E and DEEP-32 (Brucato testimony at p. 4)).
 10. In accordance with Conn. Gen. Stat. §22a-20a *et seq.*, the Applicant prepared an Environmental Justice Participation Plan erroneously dated January 11, 2021 (the “EJ Plan”). (Ex. APP-1) which was submitted to the Department for its review and approval on January 11, 2022. The Plan was tentatively approved by the Department on January 20, 2022 and a date of February 28, 2022 at 5:30 p.m. was established for the Public Informational Meeting in order to describe to those in attendance the modifications proposed in the Application via ZOOM. (Ex. DEEP-2I).
 11. The Applicant published notice of the date and time of the Public Informational meeting in the Hartford Courant on January 31, 2022. (Ex. APP-3). In addition to that published notice, the Applicant mailed, via USPS, first class, postage prepaid, written notice of the Public Information meeting to owners of real property which abut the location of the

- facility as well as to Town officials in accordance with the statutory notice requirements in place in 2022. (Ex. APP-17 at p.6; Holyst Testimony at 00:57:57 through 00:59:35).
12. The Public Informational meeting occurred on February 28, 2022 and the required meeting report and summary of discussions with Town officials was filed electronically with the Department on March 1, 2022. (Ex, APP-4).
 13. In the course of discussions with Town officials in December 2021, specifically the Town Manager, the Assistant Town Planner, and the Corporation Counsel, the Applicant was informed by these local officials that, based upon the proposed modifications, a community environmental benefit agreement was not necessary. (Ex. APP-1; Holyst Testimony at 00:59:55 through 01:00:59).
 14. On January 20, 2024, the Department approved the Applicant's Environmental Justice Public Participation Plan Final Report. (Ex. DEEP-6).
 15. In the course of its technical review of the Application, on several occasions, the Department requested that the Applicant provide additional information and clarification on a number of topics and the Applicant responded to those requests. (Exs. DEEP-7 through 10; DEEP-32 (Brucato testimony at p.7)).
 16. In addition, on January 23, 2023, the Department sent the Applicant an initial Request for Additional Information ("RFAI") seeking further clarification and information with respect to the Application. (Exs. DEEP-11; DEEP-32 (Brucato testimony at pp. 7 – 9)).
 17. In the period between this initial RFAI and early February 2023, the Department and the Applicant engaged in an exchange of information and requests for clarification and additional information in response to the Department's initial RFAI and in response to further questions and requests for information from the Department. (Exs. DEEP-12 through 18; DEEP-32 (Brucato testimony at pp. 9 – 12)).
 18. As part of its technical review of the Application, the Department determined that the Applicant did not have a history of noncompliance with environmental statutes or regulations. (Ex. DEEP-3C).
 19. Upon completion of its review of the Applicant's Application and supplemental information, the Department issued a Permit Review Summary Sheet, summarizing the proposed activity and concluding that the Department had no environmentally related concerns. (Ex. DEEP-20).

20. The Notice of Tentative Determination, along with associated cover letters to the Applicant and to the Town of Southington, was issued on February 3, 2024. (Exs. DEEP-21; DEEP-22; DEEP-32 (Brucato testimony at p.13)).
21. Public notice of the Department's Notice of Tentative Determination was published on February 3, 2024 in the Hartford Courant. (Ex. DEEP-32 (Brucato testimony at p. 13)).
22. Pursuant to the draft permit, the Applicant would be authorized to receive for processing at the modified facility the following types of solid waste: i) 600 tons/day of putrescible MSW; ii) 260 tons/day of C&D waste and/or non-putrescible MSW including oversized MSW; iii) 100 tons/day of recyclable items, scrap metal including appliances with CFC liquid, propane tanks with valves, universal waste and used electronics, textiles, scrap tires, regulated wood fuel, clean wood, yard trimmings; and iv) 60 tons/day of land clearing debris. (Ex. DEEP-23, Condition No. C.4).
23. The Department's Office of Adjudications received a petition for hearing on February 22, 2024. (Exs. DEEP-26 and DEEP-27).
24. On May 14, 2024, the Applicant held a site visit. It was attended by the Hearing Officer, representatives of the Applicant, Department staff, the petitioners' representative, and interested members of the public.
25. A public hearing was held, via Zoom, on June 5, 2024. Public comments were received at the public hearing and written comments were accepted until June 12, 2024. (Ex. DEEP-30).
26. An evidentiary hearing opened on June 17, 2024. Both Parties offered testimony and other evidence regarding the proposed modifications and the permit application process.. The evidentiary hearing closed on June 17, 2024. Notice of the site visit, the public hearing, the opportunity to submit public comment and the evidentiary hearing was published in the Hartford Courant on May 4, 2024. (Ex. DEEP-33).

III. CONCLUSIONS OF LAW

Pursuant to Regulations of Connecticut State Agencies ("RCSA") § 22a-3a-6(f), "in a proceeding on an application, the applicant and other proponents of the application shall have [t]he burden of persuasion with respect to each issue which the commissioner is required by law to consider... Each factual issue in controversy shall be determined upon a preponderance of the evidence." The Applicant has satisfied its burden. Indeed, as more fully explained below, the

evidence in the record, including the uncontradicted testimony of experts retained by the Applicant and members of the Department staff, demonstrates that all statutory and regulatory criteria by which the Application must be evaluated have been satisfied.

A. Expert Testimony

When considering technically complex issues, administrative agencies typically rely on experts. *See, e.g. River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission*, 269 Conn. 57, 78 (2004) (determination of impacts to an inland wetland is a technically complex matter for which inland wetland commissions typically rely on evidence provided by experts). “When the application of agency regulations requires a technical, case-by-case review, that is precisely the type of situation that calls for agency expertise.” *MacDermid v. Dep’t of Environmental Protection*, 257 Conn. 128, 139 (2001). The issues raised in this proceeding are also the type of issues on which DEEP may rely on its own expertise. *See Conn. Building and Wrecking Co. v. Carothers*, 218 Conn. 580, 593 (1991) (“An agency comprised of [experts] is entitled ... to rely on its own expertise within the area of its professional competence,”).

In this proceeding, DEEP offered testimony from two witnesses, Olympia Brucato and Frank Gagliardo. (Exs. DEEP-31 and DEEP-32). Likewise, three experts testified on behalf of the Applicant: David Brown, P.E., Ralph Holyst, and Matthew Brown, P.E. (Exs. APP-15, APP-16 and APP-17). Each testified that, in their expert opinion, the Applicant’s proposed activities in connection with the Applicant’s proposed expansion, as set forth in the Application, complied with relevant statutory and regulatory criteria. (*See* Exs. DEEP-31 and DEEP-32; APP-15, APP-16 and APP-17). Their testimony was credible, and no expert evidence was offered to refute or otherwise contradict their opinions. This un-contradicted expert testimony constitutes substantial evidence upon which the Hearing Officer can base her conclusions. “An administrative agency is not required to believe any of the witnesses, including expert witnesses... but it must not disregard the only expert evidence available on the issue...” *Bain v. Inland Wetlands Commission*, 78 Conn. App. 808, 817 (2003); *see also Felinson v. Conservation Comm’n.*, 180 Conn. 421, 429 (1980) (lay commission must accept expert testimony).

The uncontradicted expert testimony offered in this proceeding is credible and provides a substantial basis upon which the Hearing Officer may determine that the Applicant has satisfied the relevant statutory and regulatory criteria and recommend the draft permit be issued in final form. The analysis that follows is intended to amplify the conclusions reached by the experts

and provide context for the recommendation that the proposed draft permit be issued as final permits.

B. The Application and the Proposed Modified Permit to Construct and Operate Are Consistent With and Satisfy All Applicable Provisions of Conn. Gen. Stat. §§22a-208 and 22a-208a and RCSA §§ 22a-209-4, 22a-209-9 and 22a-209-10.

a. Statutory Criteria

Conn. Gen. Stat. §§22a-208 and 22a-208a apply to the Application. The two statutes include explicit criteria that must be considered. Also, both statutes are sufficiently broad to allow the Commissioner to evaluate the suitability of the immediate area near the proposed facility and the impacts of the increased traffic and potential odor, noise, and emissions resulting from the operation of the proposed facility on the area in the immediate vicinity of the proposed facility. This analysis, however, is tempered because the Commissioner's authority is limited to overseeing the design, planning, construction, operation, and closure and post-closure maintenance of a solid waste facility.

Conn. Gen. Stat. §22a-208 provides that the Commissioner shall provide for the proper planning, design, construction, operation, monitoring, closure, and post-closure maintenance of a solid waste facility: 1) to ensure against pollution of the waters of the state; 2) to prevent the harboring of vectors; 3) to prevent fires and explosions; and 4) to minimize the emissions of objectionable odors, dust 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 are conserved, improved and protected.

i. Monitoring and Measuring Procedures

The draft permit requires that the Applicant maintain daily records in a manner acceptable to the Commissioner. These daily records must be maintained for the life of the permit, and monthly summaries of the daily records must be prepared and submitted quarterly to the Department. The records must identify the types and quantities of wastes received, origin of waste loads, waste hauler name, and destinations to which such wastes were delivered. (Ex. DEEP-23, Condition No. C.11). In addition, the draft permit also obligates the Applicant to take reasonable measures to ensure that all Clean Wood received at the facility is not the subject of infestation. If such infestation is detected, the Applicant must take measures to contain the material that may be the subject of the insect infestation, (Ex. DEEP-23, Condition No. C.12).

The draft permit requires quarterly compliance audits by an engineer licensed to practice in Connecticut or a consultant. The Department must approve the engineer or consultant. (Ex. DEEP-23, Condition No. C.16). The record demonstrates that the Applicant will comply with all statutory and regulatory monitoring requirements.

ii. Prevents Pollution to the Waters of the State

The facility that is proposed to be modified pursuant to the terms of the draft permit is not located within the coastal boundary. (Ex. DEEP-4A). The site where the facility is located, and the area is served by public water infrastructure. The area is classified “GA” which means that the groundwater is impaired. (Ex. DEEP-4G). Groundwater will not be further impaired by the operations proposed in the draft permit. The nearby waterbody, the Quinnipiac River, has a classification of “B.” (Ex. DEEP-4H). The property is located within a wetlands area. (Ex. DEEP-4F); however, no activities will occur in a wetlands area. (Ex. APP-15 at A8).

Pursuant to the terms of the draft permit, putrescible MSW will be processed indoors at the VRP building, which shall have an impervious floor. Furthermore, such MSW shall be limited to the facility for no more than 48 hours from when it was delivered and shall be containerized by the end of the day. (Ex. DEEP-23, Condition C.5(a)). C&D waste along with non-putrescible MSW must be processed on the tipping floor within the VRP building which, as noted, must be impervious. Outdoor storage of processed C&D waste and non-putrescible MSW must be placed in watertight containers and covered at all times. (Ex. DEEP-23, Condition C.5(b)). Recyclable materials shall be confined to the tipping floor within the VRP building or in containers. (Ex. DEEP-23, Condition C.5(c)).

The tipping area consists of impervious concrete, and no materials will be disposed of on the facility’s site. The VRP building, as modified, will be enclosed (Ex. David Brown testimony at 00:34:35 to 00:34:53) which will assist in reducing any litter that may escape from the building; in addition, the draft permit obligates the Applicant to remove any litter on a daily basis. (Ex. DEEP-23, Condition 6(f)). Outdoor areas that will be utilized to store clean wood, conduct wood chipping activities or compost yard trimming materials shall be developed in such a way to inhibit ponding of water, be shaped to allow adequate stormwater runoff and shall be compliant with any applicable stormwater management requirements of Conn. Gen. Stat, §22a-430(b). (Ex. DEEP-23, Conditions 5(e), 5(f), 5(g)).

For the above reasons, it is clear that design for modification of the existing facility and the operation of the proposed modified facility will prevent pollution to the waters of the State.

iii. Vectors

The draft permit requires that the Applicant operate the facility in a safe manner which includes the responsibility to, among other things, control vectors. (Ex. DEEP-23, Condition 6(f)). Vectors will be controlled by keeping tipping areas clean and transferring materials on a first in, first out basis as soon as practicable. (Ex. APP-9A, Section 8.3); however, in no event may putrescible MSW be stored on the facility's property for more than 48 hours, except during legal holidays. (Ex. DEEP-23, Condition 5(a)). This will assist in the adequate control of vectors. The Applicant also utilizes the services of a professional exterminator contractor to install, monitor and maintain traps and other similar devices to minimize these types of problems. (Exs. APP-15 at A28; APP-17 at A21; and Holyst Testimony at 01:01:17 to 01:01:55).

The Applicant intends to continue to utilize best business practices as it relates to vectors, which will mitigate substantially, if not eliminate, these types of issues. If vectors do become problematic on limited occasions, the Applicant has readily available resources to control such issues.

iv. Fire and Explosion

Due to its size and use capacity, the VRP building is equipped with a modern fire detection and suppression system, which includes a water-based sprinkler system that is in accord with the local building code and approved by the Fire Marshal. (Exs. APP-15 at A33, APP-9A, Section 4.0; and David Brown testimony at 00:39:34 to 00:40:10). There also is a fire hydrant located on the facility site which was installed by the Applicant in the event circumstances warrant its use. (Ex. APP-9A at Section 4.2). Portable fire extinguishers are available as well and the VRP building is constructed out of concrete and metal, which are both non-flammable materials. (Ex. APP-9A at Section 4.2). If a fire occurs, it will be managed with fire suppression equipment located on-site in accordance with the facility's fire suppression procedures and protocols. (Ex. APP-9A at Section 4.3).

The evidence demonstrates that the Applicant will prevent fires and explosions. Furthermore, such events are not likely to occur given the types of wastes accepted and the

processing activities that will be proposed at the modified facility. Nevertheless, in the event that they occur, processes are in place to adequately address the situations.

v. Odor, Dust and Air Quality

Conn. Gen. Stat. §22a-208 requires that the proposed facility "minimize the emissions of objectionable odors, dust, or other air pollutants." (emphasis added). In addition, the modified facility must comply with "applicable regulations of the Department for the Abatement of Air Pollution." *See* RCSA §§22a209-9(k), 22a-209-10.

A. Odor

The design, construction, and operation of the modified facility, as provided in the draft permit and O&M Plan, will minimize odors. To the extent that there is a potential source of odors with the waste categories identified under the draft permit, it is most likely that the putrescible MSW would be the potential source of nuisance odors. Putrescible MSW, and all other materials, will be delivered in covered containers or in covered trucks. All such materials will be tipped, processed and loaded for transfer indoors. (Ex. David Brown testimony at 00:47:48 to 00:48:45). Putrescible MSW must be transferred within 48 hours of delivery on a first in/first out basis. (Ex. DEEP-23, Condition No. 5(a)). Most often, putrescible MSW will be transferred out on the delivery day. To the extent that putrescible MSW is not indoors, it must be containerized by the end of the business day while waiting to be transferred. (Ex. DEEP-23, Condition No. 5(a)).

The Applicant has proven by a preponderance of evidence that the design, construction and operation of the proposed modified facility, as required by the draft permit and O&M Plan, minimize the emission of objectionable odors, safeguard human health, safety, and the environment, and do not cause disproportionately high adverse human health or environmental effects.

B. Dust

Compliance with the draft permit and O&M plan will minimize the emission of fugitive dust. The site driveway and the site are paved with bituminous concrete; all tipping of recyclable material, putrescible MSW and C&D waste will occur inside the VRP building, and all processing of the same will occur indoors. (Ex DEEP-23, Condition Nos. 5(a), (b) and (c)). If needed, the Applicant will apply a spray of water with a hose to reduce fugitive dust as loads are

emptied from incoming containers. (Exs. APP-9A at Section 2.4; David Brown testimony at 00:47:10 to 00:47:13).

The Applicant has operated a solid waste processing facility at the site since 2020. Since that time, there has been a sign at the entrance to the facility inviting parties to register concerns and complaints with a telephone number that is available 24 hours a day, 7 days a week. No resident, business, or public official has complained about fugitive dust emanating from the site. Nor have any other complaints been made by that method. (Ex. Holyst Testimony at 00:56:30 through 00:57:05).

The design, construction and operation of the proposed facility, as required by the draft permit and O&M Plan, minimize the emission of dust. The Applicant has proven by a preponderance of the evidence that there will be no adverse impact on human health, safety, or the environment and no disproportionately high adverse human health or environmental effects.

C. Other Air Pollutants

The draft permit minimizes emissions, including vehicular exhaust, by limiting the amount of solid waste that may be accepted each day; by limiting the days and hours of operation; by requiring that the Applicant effectively manage truck traffic so that queuing of vehicles off-site is mitigated; by requiring that, in most cases, vehicles not be left idling for more than 3 minutes; and by requiring the posting of signs limiting such idling. (Ex. DEEP-23, Condition Nos. B.7, C. 2, C.3, C.4 and C.10). The Applicant's O&M Plan demonstrates that traffic on-site will be managed in conformance with the conditions contained in the draft permit. (Ex. APP-9A Section 2.3). In addition, for the C&D waste stream, the draft permit requires the Applicant to monitor and control airborne lead and asbestos within the enclosed processing area. (Ex. DEEP-23, Condition No. C.7). There is no requirement for such monitoring outside the enclosed area because C&D waste processing will not be allowed to occur outside the building. (Ex. DEEP-23, Condition No. C. 5(b)).

The Applicant has proven by a preponderance of the evidence that the design, construction and operation of the modified facility, as required by the draft permit and O&M Plan, will minimize air pollutants, protect the public's health and the environment and not cause disproportionately high adverse human health or environmental effects.

vi. Conserves Natural Resources

A substantial amount of the materials processed by the modified facility will be recyclables that will be separated, consolidated, marketed for reuse, or delivered to recycling processors. The draft permit also provides that the Applicant should recover a substantial amount of non-designated recyclables from the C&D waste and non-putrescible MSW. (Ex, DEEP-23, Condition No. C.6(m)). In addition, the modified facility will accept yard trimmings for the purpose of creating reusable compost material. (Ex. DEEP-23, Condition No. C.5(g)). The recovery of recyclables will reduce energy and greenhouse gas emissions, land consumption, and potential environmental impacts of landfills. There are no intermediate processing centers for recyclables in the Southington area; therefore, the proposed facility will be a convenient option that will improve local recycling rates. The proposed activities, therefore, will conserve natural resources.

vii. Noise

As noted above, the facility has been in operation since 2020 and, since that time, no person has registered any complaint, let alone one about noise. (Ex. Holyst Testimony at 00:56:30 through 00:57:05). The modified operations will be similar to the current operations, and the fact that a great deal of the activities will occur indoors will minimize and control noise from the activities. In addition, the facility is located in an industrial area and the levels of noise will not be unusual for this area. (Ex. APP-9A, Section 8.4). The Applicant, by a preponderance of the evidence, has proven that noise from the modified facility will not harm the health or safety of the area residents or cause disproportionately high adverse human health or environmental effects.

viii. Traffic

Many of the comments submitted by the public expressed concern about the traffic volume on the westerly end of Lazy Lane. It is important to note that no statute or regulation requires that the Commissioner consider off-site traffic impacts caused by the proposed facility, only traffic issues on the site. (Ex. Brucato testimony at 01:23:33 to 01:23:44). Conn. Gen. Stat. §§22a-208 and 22a-208a, however, are sufficiently broad to allow consideration of the impact of the proposed facility's increased traffic volume may have on the immediate surrounding neighborhood. When addressing the potential traffic impact, the neighborhood in the vicinity of the facility must be evaluated; however, the analysis is limited to the immediate surrounding area

because the Commissioner's authority is limited to the design, construction and operation of the proposed facility.

In this case, the site on which, for four years, the Applicant has operated a facility, is in a well-established industrial zone, zoned I2. (Ex. APP-15 at A30), although there a small number of pre-existing residential uses located west on Lazy Lane within this industrially zoned area. (Ex. APP-9A at Section 7.7). The site is in close proximity to Route 10/Queen Street and, immediately beyond that road, to I-84, both of which provide convenient access to markets and disposal sites. The facility's site is surrounded by industrial properties which includes a trucking company, an industrial park that has 15 to 20 tenants, the local police department and a Superfund site. (Ex. APP-9A at Section 7.7).

In an I2 zone, the Southington zoning regulations permit many types of industrial businesses, including the activities contemplated by the draft permit. Indeed, the Southington planning and zoning commission issued an approval for the current facility in 2015 to accept, process and transfer, among other things, wastes and recyclables as considered in the Application (Ex. APP-17 at A8.). As stated previously, since 2020, the Applicant has accepted, processes and transferred materials from the current facility without one complaint being registered to its complaint hotline. The record demonstrates that the proposed operations are consistent with its current use and the businesses in the immediate area.

When operated at maximum capacity, which is not anticipated to occur every day, David Brown, one of the Applicant's experts, determined that the modified facility could generate approximately 83 additional truck arrivals per day. Spread out over the course of a ten and one-half hour operating window, this potential increase in truck traffic translates to an additional 8 trucks per hour if evenly spaced. (Ex APP-15 at A21; David Brown testimony at 00:26:30 to 00:28:03). This was the only expert testimony presented on the issue and was not contradicted.

Although the draft permit does not restrict the vehicles to a single route, the O&M Plan does provide that the Applicant will continue its current practice of attempting to limit the amount of traffic arriving from and approaching from the western portion of Lazy Lane by, among other things: 1) requiring all tractor trailers to exit to the east when leaving Triano Drive; and 2) directing all trucks to and from the facility under its control to use the eastern portion of Lazy Lane unless servicing customers in the immediate vicinity of the facility to the west of the site. (Exs. APP-9A at Section 7.7; David Brown testimony at 00:45.00 to 00:45:45). It is

important to note that a substantial amount of the vehicular traffic visiting the facility will be single-unit collection trucks which are used daily by contractors to collect residential MSW and recyclables in residential neighborhoods. Even if this facility were not located at the site, there would continue to be truck traffic in this industrial area.

To satisfy its burden in this matter, the Applicant is not required to prove that the proposed facility will have no impact on traffic conditions on the roads surrounding the modified facility. Instead, the Applicant must demonstrate, by a preponderance of the evidence in the record, that impacts to traffic as a result of the operation of the modified facility will not have a disproportionately high adverse effect on human health.

David Brown, the Applicant's expert, credibly testified that there will be no off-site queuing of trucks, that truck traffic will be encouraged to utilize the eastern portion of Lazy Lane toward Route 10 and that the anticipated increase in truck traffic as a result of the modification will be relatively minor. The Applicant has satisfied its burden of proving that the increased volume of traffic, including truck traffic, generated by the modified facility will not have a disproportionately high adverse effect on human health.

ix. Local Approvals

In addition to concerns expressed about the impacts of traffic in this area, members of the public also suggested that the draft permit be denied because updated site plans reflecting the expanded facilities had not been submitted to the Town's regulatory authorities. (Ex. DEEP-30) There is nothing that has been introduced that would require the Department to deny the application because local approvals had not yet been attained. In fact, such local approvals are not within the purview of the Department when examining an application for a facility of this nature. (Ex. Brucato testimony at 01:23:14 to 01:23:27; *see generally City of Danbury v. Klee*, No. HHBCV176036083S, 2019 WL 1569786, at *16 (Conn. Super. Ct. Feb. 26, 2019)¹). The only instance where an applicant must obtain local approvals before the Commissioner may issue

¹ "The commissioner's authority to issue the [type of] permit challenged here derives from the Solid Waste Management Act. . . [T]he proper function of [this type of] . . . DEEP permit does not depend on zoning board approval. The permit is statutorily intended to ensure that the commissioner has determined that a solid waste facility, if built and operated, would not result in the environmental harms described in the statute . . . The second sentence of [Conn. Gen. Stat.] § 22a-208b(b) ensures that the commissioner's determination of environmental impact does not preempt a local municipality's ability to regulate the use of land." *City of Danbury v. Klee*, No. HHBCV176036083S, 2019 WL 1569786, at *14 (Conn. Super. Ct. Feb. 26, 2019).

a solid waste permit is in the instance when a permit for a land disposal facility is sought. *See* Conn. Gen. Stat. §22a-208b(a). That is not the case here.

x. Health, Safety and Welfare and Disproportionately High Adverse Human Health and Environmental Effects

Conn. Gen. Stat. §22a-208 states that the Commissioner must provide for the proper planning, design, construction, and operation of solid waste facilities to safeguard the health, safety, and welfare of the people of Connecticut. Conn. Gen. Stat. §22a-208a provides that, for a request to modify a permit, the Commissioner must conclude that the modified facility will not cause disproportionately high adverse human health or environmental effects.

The standard required to be satisfied in both statutes is similar. The Commissioner is not required to consider the character of the neighborhood because the proposed facility is a combined transfer station/volume reduction facility. The Commissioner, however, may exercise her discretion and consider the character of the neighborhood when determining if the design, construction, and operation of the proposed facility will safeguard the health, safety and welfare of the people or cause disproportionately high adverse human health or environmental effects.

The record shows that the proposed facility is located in a well-established industrial area in close proximity to Route 10/Queen Street and I-84 in Southington. The record proves the proposed facility is consistent with the character of the neighborhood that has remained highly industrial for many decades. The local zoning authority, by issuing its approval in 2015, made a similar finding. (Ex. APP-5).

The Applicant has proven by a preponderance of the evidence that the proposed facility will not create noise, dust, odors, traffic, or emissions offensive or harmful to local residents. The draft permit and the O&M Plan both contain conditions that are intended to safeguard the safety, health, and welfare of the citizens of Southington and the State, and they both contain terms and conditions that will ensure that the modified facility will not cause disproportionately high adverse human health or environmental effects.

At the same time, the modified facility will provide additional resources that will be helpful in addressing a MSW capacity need in the State and will promote and increase recycling of both C&D waste and designated recyclables.

b. Regulatory Criteria.

The relevant regulations that must be satisfied are RCSA §22a-209-4, entitled “Permits for solid waste facilities,” RCSA §22a-209-9, entitled “Solid waste transfer stations,” and RCSA §22a-209-10, entitled “Resource recovery facilities and other volume reduction plants.”

RCSA §22a-209-4 contains a fundamental requirement that any person who wishes to construct or otherwise alter a solid waste facility in Connecticut must obtain a permit pursuant to Conn. Gen. Stat. §22a-208, which permit shall consist of two parts: 1) a permit to construct; and 2) a permit to operate. The regulation then delineates the information that must be provided in the application in order to allow the Commissioner to make a fully informed decision, as well as the processes that must be conducted in order for the public to be informed and to be allowed to express opinions and positions. The Application contains details of all of the information required by RCSA §22a-209-4 including the following:

1. The names and address of the owner/operator of the modified facility. (Ex. APP-6);
2. The names and addresses of all parent and subsidiary entities. (Ex. APP-6);
3. The names and addresses of all partners, corporate officers and directors. (Ex. APP-6);
4. The names of all solid waste facilities with which each of those named above are or have been associated with and their positions and responsibilities. (Ex. APP-6);
5. The facility location. (Ex. APP-6);
6. An explanation of how the proposal relates to the State Solid Waste Management Plan. (Ex. DEEP-2J);
7. The compliance history for the Applicant. (Exs. DEEP-2F and DEEP-3C);

In addition, the regulation requires that the application include a facility plan, including engineering studies and proposals, prepared by an engineer licensed in the State of Connecticut be included which plan shall contain:

1. Detailed drawings and specifications of site structures, methods of volume reduction and storage and a discussion of utility provision. (Ex. APP-6);
2. Approximate volume of each waste type to be handled, a list of types of facility users and municipalities served, associated facilities for the ultimate disposal of the materials and contingency plans for periods of shutdown or breakdown. (Ex- APP-6);

and a copy of a facility operation and maintenance manuals. (Exs. APP-6, APP-9A and DEEP-2K).

The Application contains all of these items, which were prepared by David Brown, an engineer licensed in the State. (Exs. APP-12 and APP-15). Notice of the filing of the Application was published in the Hartford Courant in a timely manner which provided the information required by RCSA §22a-209-4. (Exs. DEEP-2A, APP-8). A public hearing was held on June 5, 2024 after a petition with the minimum 25 signatures was submitted (Exs. DEEP-26 and DEEP-27), and written public comment was allowed to be offered until June 12, 2024. (Ex. DEEP-30).

RCSA §22a-209-4(d) provides that the Commissioner shall issue a permit to construct or to operate upon receipt of satisfactory evidence from the Applicant that:

1. The solid waste facility will be constructed and operated in compliance with applicable statutes and regulations. Adequate testimony was provided by the Applicant's engineers that such would be the case. (Exs. APP-15 and APP-16);
2. The operation of the facility is consistent with the State Solid Waste Management Plan (or the "CMMS"). Such a determination was made by the Department. (Ex. DEEP-2J);
3. Since this is a facility in operation, the present construction and operation is in full compliance with existing laws and permit terms and conditions. In the course of the Department's review, it determined that this was the case. (Exs. DEEP-2F and DEEP-3C); and
4. The owner of the facility has not repeatedly violated statutes, regulations or permits at any solid waste facility, It was determined that that is not the case here. (Ex. DEEP-3C).

The record demonstrates that the Applicant has satisfied the requirements that are contained in RCSA §22a-209-4, as was also concluded by the Department. (Ex. DEEP-3A).

With respect to RCSA §§22a-209-9 and 22a-209-10, there are seventeen criteria contained in RCSA §22a-209-9 and fourteen criteria contained in RCSA §22a-209-10 that the Applicant must satisfy. Of the aggregate thirty-one criteria contained in the two regulations, twelve are similar, if not identical, criteria, and one of those, "Temporary facilities," is not relevant to the matter under consideration. The twelve similar criteria are: 1) an applicant must

comply with the permit requirements of RCSA §22a-209-4; 2) access; 3) certified operator; 4) storage; 5) working area; 6) litter control; 7) restrictions on certain wastes; 8) air quality; 9) fire control; 10) shutdown; 11) measuring procedures; and 12) temporary facilities, again, a criteria that is not relevant in this matter.

The unique criteria contained in RCSA §22a-209-9 which are not contained in RCSA §22a-209-10 are: 1) if a public haul away contract exists, a copy shall be attached to the application; 2) enclosure; 3) screening; 4) storage (a minimum of twenty-four hours storage capacity is required if the facility's design capacity is for more than one hundred tons of solid waste per eight-hour day); 5) air quality (dust and odors from unloading and operation shall be controlled and no open burning shall be conducted); 6) fire control (burning waste, highly flammable or explosive waste shall not be accepted); 7) vector control; and 8) maintenance. The unique criteria contained in RCSA §22a-209-10 which are not contained in RCSA §22a-209-9 are: 1) an application shall include the specifications for all process equipment, and 2) explosion protection.

Evaluation of Common Regulatory Criteria

1. Compliance with RCSA §22a-209-4. As noted above, the Applicant submitted a complete application with the information required by the applicable statutes and regulations necessary for the Commissioner to conclude that the information provided was sufficient to demonstrate the ability of the facility and the operator to comply with the applicable regulations. (Ex. DEEP-3A).
2. Access. Access to the modified facility will be controlled through the use of a fence which is currently in place, locking gates, and signs. A sign shall be posted that states the name of the permittee, hours of operation, authorized users and required safety precautions. (Exs. DEEP-23, Condition Nos. B.3 and C.9 and APP-9A at Section 2.2).
3. Certified Operator. A solid waste facility operator certified by the Commissioner pursuant to RCSA § 22a-209-6 shall be present at the proposed facility at all times during operating hours. (Exs. APP-9A, Section 3.2 and DEEP-23, Condition No. C.8).
4. Storage. The draft permit and the O&M plan provide that no putrescible MSW shall be stored on site for a period greater than 48 hours with the exception of legal holidays, unless authorized by the Commissioner. Putrescible MSW must be unloaded inside the

VRP building, stored inside the VRP building and removed within 48 hours of receipt unless it is a holiday weekend. In addition, putrescible MSW shall be containerized by the end of the business day on which it is received. C&D material should be stored indoors or, if outdoors, in covered, water-tight containers. Recyclables shall be stored in containers. Adequate provisions and other requirements also are contained in the draft permit for storage of regulated wood fuel, clean wood, compost materials, scrap tires, scrap metal, propane tanks, textiles, batteries and other items of “universal waste.” A minimum of 24 hours storage capacity is provided. (Exs. APP-9A and DEEP-23).

5. Working area. The draft permit and the O&M Plan provide that unloading of solid waste shall occur within enclosed areas or within designated areas approved by the Commissioner. (Exs. APP-9A and DEEP-23)
6. Litter control – The draft permit and the O&M plan provide that solid waste shall be confined to the unloading, loading and handling areas, and the facility and adjacent areas shall be kept clean and reasonably free of litter. (Exs. APP-9A and DEEP-23, Condition C.6(f)).
7. Restrictions on certain wastes – The draft permit provides that solid wastes that are not listed in the draft permit are not allowed to be accepted, unless approved in writing by the Commissioner. Periodic and unannounced inspections of the loads will be performed. Inadvertently received materials will be isolated and temporarily stored in a safe manner for off-site transport to an authorized facility. (Ex. DEEP-23, Condition Nos. C.2 and C.6(k)).
8. Air quality. The draft permit and the O&M Plan provide that air emissions, dust and odor resulting from the unloading of solid waste and the operations of the facility shall be managed and controlled to ensure compliance with applicable regulations. The draft permit requires that the Applicant monitor and mitigate the potential for airborne lead and asbestos along with periodic testing and record keeping. (Exs. DEEP-23, Condition No. C.7 and APP-9A).
9. Fire control. Adequate equipment will be in place to control fires, and DEEP must be immediately notified using the DEEP 24-hour emergency response number when a fire occurs. There is a sprinkler system with a dependable public water supply and a fire hydrant located directly on site. (Exs. APP-9A and APP-15).

10. Shut Down. The draft permit and O&M plan provide that if the facility is inoperable, DEEP must be notified within 24 hours of the incident using the DEEP 24-hour emergency response number, and a proper diversion plan for disposal or processing of materials ordinarily received at the facility will be implemented. The Applicant will require its customers to divert deliveries to other permitted facilities. (Exs. APP-9A and DEEP-23).
11. Measuring procedures. The draft permit and the O&M Plan require the maintenance of daily records to measure the types and amounts of waste received, its origin and destination. These daily reports shall be summarized quarterly and submitted to the Department on a quarterly basis. (Exs. APP-9A and DEEP-23, Condition No. C.11).
12. Temporary facilities. As noted above, this is not relevant to this matter.

Additional Criteria Required by RCSA §22a-209-9

1. Enclosure. A building with a roof and enclosed on all sides will be provided in order to control dust and litter. (Exs. David Brown testimony at 00:34:35 to 00:34:44; DEEP-32 (Brucato testimony at p.12)).
2. Screening. Adequate screening from any residential structure is provided. (Ex. APP-9A at p. 2).
3. Vector control. The draft permit and the O&M Plan provide that adequate measures shall be taken to ensure that conditions on the site of the facility are not favorable to vectors. (Exs. DEEP-23, Condition No. C.6(f) and APP-9A at Section 8.3). In addition, an exterminator has been hired and visits the site in order to take preventative measures against pests. (Ex. David Brown testimony at 00:46:25 to 00:45:43.). Vectors also will be controlled by keeping tipping areas clean transferring putrescible MSW off the site within 48 hours. (Ex. DEEP-23, Condition C.5(a)).
4. Maintenance. The draft permit and O&M plan provide that there shall be routine maintenance of the facility. The premises will be maintained and litter will be removed on a daily basis. (Ex. DEEP-23, Condition No. C.6(f) and APP-9A at Section 8.0).

Dust, odors, water discharges and noise will be controlled to assure compliance with all applicable laws and regulations. (Ex. DEEP-23, Condition Nos. C.6(f) and (g)).

Additional Criteria Required by RCSA §22a-209-10

1. Specifications for Process Equipment. The Application and the O&M Plan include specifications on the processing equipment that will be located on the site of the modified facility. (Exs. APP-6 and APP-9A at section 5.0).
2. Explosion. The enclosed portion of the modified facility is equipped with a sprinkler system that will minimize the impact of any explosion in the unlikely event that it occurs. In addition, the O&M Plan and the draft permit contains procedures and protocols that will be followed in the event an explosion occurs. (Exs. DEEP-23 and APP-9A at Section 9.0).

C. Environmental Justice

The Applicant complied with the requirements of Conn. Gen. Stat. §22a-20a, the Environmental Justice statute, that was in effect at that time,² and the Department did not take action on the application for a modified permit until an environmental justice public participation plan (the “EJ Plan”) had been approved.

The Environmental Justice statute requires that “Applicants who...seek... a new or expanded permit from the Department of Energy and Environmental Protection involving an affecting facility that is proposed to be located in an environmental justice community or the proposed expansion of an affecting facility located in such a community, shall (A) file a meaningful public participation plan with such department ... and shall obtain the department's ... approval of such plan prior to filing any application for such permit ...; and (B) consult with ... officials of the town in which the affecting facility is to be expanded to evaluate the need for a community environmental benefit agreement...” *See* Conn. Gen. Stat. § 22a-20a(b)(2). The Applicant submitted and received tentative approval from the Department’s Environmental Justice Program Administrator of their EJ Plan on January 20, 2022, prior to submitting the Application. (Ex. DEEP-2I). In addition, the Applicant met with local officials in order to provide information and discuss the need for a community environmental benefit agreement. All

² Citations to Conn. Gen Stat. § 22a-20a reference the statute before the amendments made by Public Act 23-202.

three local officials, including the Town Manager and Corporation Counsel, indicated that such an agreement was not necessary. (Exs. Holyst testimony at 00:58:09 to 00:59:59 and APP-1). Such an agreement is not a mandatory element to demonstrate compliance with the Environmental Justice statute.

The Environmental Justice statute also provides that “[a public participation] plan shall identify a time and place where an informal public meeting will be held that is convenient for the residents of the affected environmental justice community” and “...identify the methods...by which the applicant will publicize the date, time and nature of the informal public meeting...” *See* Conn. Gen. Stat. §22a-20a(b)(2). The plan clearly identified the date, time and medium to be used for the public informational meeting which, in this instance, given the constraints imposed by the pandemic, was to be held remotely via ZOOM on February 28, 2022. (Ex. APP-1).

The E.J Plan identified proposed outreach efforts to publicize the meeting which included providing actual notice to local leaders and abutting property owners and posting a prominent sign on the site containing all pertinent information regarding the public informational meeting (Ex. APP-1), all of which were approved by the Department’s Environmental Justice Program Administrator. In addition to those forms of notice, the Applicant published notification of the February 28, 2022 meeting in the Hartford Courant on January 31, 2022, not less than ten days nor more than thirty days prior to the meeting as required by the Environmental Justice statute *See* Conn. Gen. Stat. §22a-20a(b)(3). (Ex. APP-3). The notification of the meeting was in the form of a quarter page advertisement in a newspaper of general circulation as required by the Environmental Justice statute. In addition, this is the same newspaper of general circulation utilized by the Department to publish its notice of tentative determination and the notice of site visit, public hearing and the evidentiary hearing. (Exs. DEEP-32 at Page 13 and DEEP-33).

The Environmental Justice statute also directs that “[t]he Department of Energy and Environmental Protectionshall not take any action on the applicant's permit, certificate or approval earlier than sixty days after the informal public meeting.” *See* Conn. Gen. Stat. §22a-20a(b)(5). The Department did not take any action on the Application until July 27, 2022, approximately six months after the public information meeting occurred when the Department issued its Notice of Sufficiency. (Ex. DEEP-3A).

Following execution of the approved EJ Plan, the Applicant submitted an “Environmental Justice Participation Plan Final Report” documenting its outreach efforts. The report was reviewed by Department’s Environmental Justice Program Administrator and subsequently approved. (Ex. DEEP-6).

The requirements contained in the Environmental Justice statute were adhered to by the Applicant and the Department. In addition, the public policy goals of the Environmental Justice statute were met since it is clear that “meaningful public participation” occurred. The Environmental Justice statute defines “[m]eaningful public participation” to contain three components: (A) residents of an environmental justice community have an appropriate opportunity to participate in decisions about the expansion of an existing facility that may adversely affect such residents' environment or health; (B) the public's participation may influence the regulatory agency's decision; and (C) the applicant for an expanded permit seeks out and facilitates the participation of those potentially affected during the regulatory process. *See Conn. Gen. Stat. §22a-20a(a)(3)*. In this instance, the Applicant complied with the requirements contained in the applicable statutes, and the results of this engagement is reflected in the draft permit.

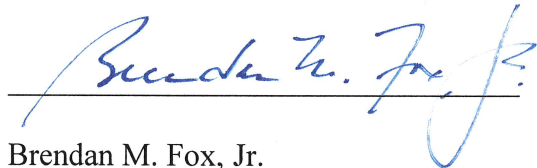
D. Recommendation

The Department’s tentative determination that the Application be approved, as conditioned by the draft permit, is supported by the substantial evidence compiled in the record of this proceeding. The Applicant has met its burden of proving, by a preponderance of the evidence, the proposed activities should be permitted through the credible testimony of expert witnesses and the submission of documentary evidence as described above. It is therefore respectfully recommended that the Commissioner issue the requested permit, incorporating the terms and the conditions of the proposed draft permit.

Respectfully submitted by:

Central Connecticut Resource Recovery, Applicant

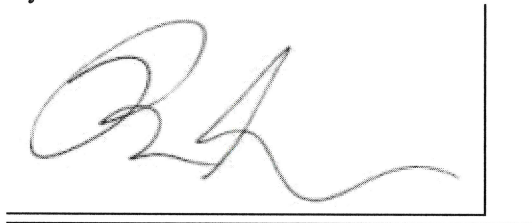
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Certificate of Service

I hereby certify that a copy of the above was electronically delivered to all counsel and pro se parties of record and to the Petitioner at the address below on July 16, 2024.

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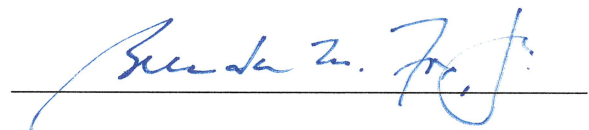
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Connecticut
Department of Energy &
Environmental Protection

**STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION
OFFICE OF ADJUDICATIONS**

IN THE MATTER OF : **APPLICATION NO. 202207376**

**CENTRAL CONNECTICUT
RESOURCE RECOVERY –
SOUTHINGTON** : **APRIL 2, 2024**

SERVICE LIST

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