

***IN THE MATTER OF*** : ***APPLICATION NO. 1996-02422***

***TOWN OF CANTERBURY*** : ***MARCH 31, 1999***

***PROPOSED FINAL DECISION***

***INTRODUCTION***

On November 1, 1996 the Town of Canterbury submitted an application to the Department of Environmental Protection (DEP) Bureau of Waste Management for a permit to construct and operate a municipal solid waste and bulky waste transfer station on Packer Road in Canterbury, Connecticut. I conducted hearings on the application on 33 days between August 18, 1997 and June 30, 1998.

The parties to this proceeding are the Town of Canterbury (the applicant), the DEP Bureau of Waste Management (the staff), Sharlene Stamper, Richard Moffett, Lori Dietz, Jennie

Hatt and Janice Leitch (the citizen intervenors), Christian Wellinghausen, and Denis Yaworski, James Yaworski, Jr., Rose Yaworski, Packer Ltd., LLC, Quinebaug Valley Regional Resources, LLC, and Haul of Fame, Inc. (the Yaworski intervenors). Christopher Deojay also intervened in these proceedings but subsequently withdrew his intervention.

The applicant has submitted an application containing sufficient information for the Commissioner to render a decision on its merits. The traffic impacts of the proposed facility are acceptable and the citizen intervenors have failed to prove that the proposed facility is reasonably likely to unreasonably pollute the natural resources of the state in violation of Conn. Gen. Stat. ' 22a-19. I conclude that, provided the applicant adhere to the terms and conditions of the draft permits to construct and operate, the proposed facility would be constructed and operated in accordance with all applicable legal requirements. I therefore recommend that the requested permits be granted. However, because of conditions at the adjacent Yaworski solid waste landfill, I further recommend that the proposed transfer station not be allowed to operate until the Yaworski landfill is properly closed, and that the individuals and entities responsible for conditions at the landfill be barred from managing the proposed transfer station.

## ***FINDINGS OF FACT***

### A. Procedural History.

1. On or about November 1, 1996 the Town of Canterbury (the applicant) submitted an application to the Department of Environmental Protection (DEP) Bureau of Waste Management, pursuant to Conn. Gen. Stat. ' 22a-208a, seeking permits to construct and operate a municipal solid waste and bulky waste transfer station (the proposed facility) in the Town of Canterbury. (Ex. APP-1)

A prior request by Yaworski, Inc.<sup>1</sup> for a permit to construct and operate a transfer station at the same site as the proposed facility was denied in a final decision issued on December 23, 1994 by Commissioner Timothy R.E. Keeney (*Yaworski, Final Decision*). In a decision on reconsideration issued on May 8, 1995, Commissioner Sidney J. Holbrook, Commissioner Keeney's successor, denied Yaworski, Inc.'s request for reconsideration of that denial (*Yaworski, Reconsideration Decision*). Those decisions were affirmed on appeal. *Final Decision re*

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<sup>1</sup>On or about January 15, 1963, Yaworski, Inc. was organized as a domestic stock corporation in Connecticut with James Yaworski, Sr. as its president, James Yaworski, Jr. as its vice-president and Rose Yaworski as its secretary and treasurer. In 1988, Denis Yaworski joined James Yaworski, Jr. as a vice-president of Yaworski, Inc. (Ex. DEP-53) In 1996, Denis Yaworski became president and director of Yaworski, Inc. and James Yaworski, Jr. its secretary, treasurer and fellow director. (Ex. DEP-51) In 1997, Denis Yaworski continued as president and director of Yaworski, Inc. and Lee Yaworski, as conservator for James Yaworski, Jr. (*see* Ex. INT-96), became its secretary, treasurer and director. (Ex. DEP-50) As of May 15, 1998, both Denis and Lee Yaworski retained their respective positions with Yaworski, Inc. (Ex. DEP-49)

*Yaworski, Inc., Application No. 92015*, December 23, 1994, *Decision on Reconsideration re Yaworski, Inc., Application No. 92015*, aff'd. on appeal, *Yaworski, Inc. v. DEP*, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. CV95-0550682 (June 21, 1996).

2. On or about February 21, 1997, the Commissioner of Environmental Protection (the Commissioner) granted the request of Sharlene Stamper, Richard Moffett, Lori Dietz, Jennie Hatt and Janice Leitch (the citizen intervenors) to intervene pursuant to Conn. Gen. Stat. ' 22a-19. (Docket Item 7)

3. On or about May 22, 1997, DEP published a notice of tentative determination to approve, and hold a public hearing on, the application. (Exs. DEP-11)

4. The staff of the Bureau of Waste Management (the staff) supports issuance of the requested permits and on or about August 13, 1997 prepared draft permits to construct and operate the proposed transfer station. (Exs. DEP-16 & -17) The staff prepared a revised draft permit to operate on or about April 21, 1998. (Ex. DEP-17A) (As used herein, A draft permit to construct@refers to the draft permit to construct prepared by the staff on or about August 13, 1997 and A draft permit to operate@refers to the draft permit to operate prepared by the staff on or about April 21, 1998. Collectively, these two draft permits are referred to as A the draft permits.@ The draft permits are attached hereto as Attachments 1 and 2.)

5. I conducted public hearings on August 18, 1997 and 32 other dates concluding on June 30, 1998. I also conducted a site visit of the proposed facility and Packer Road on August 18, 1997.

6. On August 18, 1997, I granted the requests of Richard Moffett, Sharlene Stamper and Christian Wellinghausen to intervene pursuant to RCSA ' 22a-3a-(K)(1)(B).

7. On November 10, 1997, I denied a petition for intervention filed by Packer Ltd., LLC, Quinebaug Valley Regional Resources, LLC, Haul of Fame, Inc., Denis Yaworski, James Yaworski, Jr. and Rose Yaworski (Yaworski intervenors). On January 30, 1998, I granted a Motion to Reconsider that denial filed by the staff and granted intervenor status to the Yaworski intervenors pursuant to Conn. Gen. Stat. ' 4-177a(d) and RCSA ' 22s-3s-6(k). (Docket Item 74)

8. On April 29, 1998 I granted intervenor status to Christopher Deojay pursuant to RCSA ' 22a-3a-6(k)(1)(B). Mr. Deojay withdrew from these proceedings on May 28, 1998. (Test. C. Deojay, 5/28/98, tr. p. 15)

9. Condition No. 24 of the draft permit to operate of August 13, 1997 would prohibit Yaworski, Inc., Packer Ltd., LLC, Quinebaug Valley Regional Resources, LLC,<sup>2</sup> Haul of Fame, Inc.,<sup>3</sup> Dennis Yaworski, James Yaworski, Jr., Rose Yaworski and Christopher Deojay, or any of their affiliates, agents, employees, representatives or assignees, from participating in the management of the proposed facility. Condition No. 25 of that draft permit would require the

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<sup>2</sup>On July 18, 1996, Packer Limited, LLC and Quinebaug Valley Regional Resources, LLC were formed as limited liability companies in Connecticut, with Denis Yaworski and James Yaworski, Jr. as their respective organizers. (Exs. DEP-31 & -32) Denis Yaworski is also the general manager of both entities. (Ex. APP-44)

<sup>3</sup>On April 18, 1994, Haul of Fame, Inc. was incorporated in Connecticut. (Ex. DEP-33) As of May 15, 1998, Denis Yaworski was its president and director and Lee Yaworski its secretary. (Ex. DEP-39)

applicant to submit the names and qualifications of proposed operators<sup>4</sup> to the Commissioner for his approval prior to their employment by the applicant. (Ex. DEP-17)

Condition No. 24 of the current draft permit to operate would prohibit Yaworski, Inc. and Christopher Deojay, and any business entity they manage, own or organize, from managing the proposed facility. Dennis Yaworski, James Yaworski, Jr. and Quinebaug Valley Regional Resources, LLC, and any business entity they manage, own or organize, would be prohibited from managing the proposed facility only until closure of the adjacent Yaworski landfill (*see infra*, FF-18) in accordance with a closure plan approved by the Commissioner, provided Dennis Yaworski or James Yaworski, Jr. have not violated any environmental laws or regulations prior to the landfill's closure. With slightly different language than the former version, condition no. 25 of the current draft permit to operate would retain the requirement that the applicant submit the names and qualifications of all proposed operators to the Commissioner for his approval prior to their employment by the applicant. (Ex. DEP-17A)

10. The citizen intervenors and Christian Wellinghausen oppose issuance of the

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<sup>4</sup>As used in the solid waste statutes and regulations, the term *operator* refers to the person who is ultimately responsible for maintaining the solid waste facility in conformance with applicable statutes and regulations and the facility permits. [RCSA ' 22a-209-1. A *certified operator* is the *solid waste facility operator* or an employee of the [*sic*] such operator who is present on site and oversees or carries out the daily operation of the facility, and whose qualifications are approved in accordance with ... [RCSA ' 22a-209-6]. *Id.* It is clear from its context, that the term *operator* in Condition No. 25 of the draft permit to operate of August 13, 1997 actually refers to *certified operators* and not to *operators* as those terms are used in the solid waste statutes and regulations.

requested permits. In the alternative, the citizen intervenors request that if the Commissioner grants a permit to operate, he include a permit condition similar to condition no. 24 of the draft permit to operate of August 13, 1997, prohibiting the individuals and entities named therein from managing the proposed facility. The applicant and the Yaworski intervenors support issuance of the requested permits and do not oppose any of the conditions in the current draft permits.

B. The Proposed Facility.

11. The applicant proposes to construct and operate the proposed facility on an approximately 20.7 acre parcel of land located on both sides of Packer Road in Canterbury, Connecticut (the site). The parcels comprising the site are variously owned by Packer Limited, LLC, Yaworski Realty, Inc., the Estate of James J. Yaworski, Jr., acting by conservator Lee Yaworski, and Quinebaug Valley Regional Resources, LLC. The applicant proposes to lease the site from its various owners (Exs. APP-1, -44, -44A; DEP-48; INT-105, -106, -107, -108, -111; *see generally*, test. A. Brown, 6/24/98 & 6/30/98)

12. The proposed facility would consist of a transfer station building and two 40 cubic yard (c.y.) roll-off containers on the west side of Packer Road, a weigh station on the east side of Packer road, and various entrance driveways and internal roadways. The transfer station building is an existing 11,700 square foot enclosed structure located on approximately 1.5 acres with four drop-off bays, a reinforced concrete slab tipping floor, and a 100 cubic yard trailer load out bay with weight scale. (Ex. APP-1) (A map of the site from Ex. APP-44 is attached hereto as

Attachment 3.)

13. The purpose of the proposed facility is to transfer solid waste from a large number of smaller vehicles into a small number of larger vehicle for transportation to other sites for disposal or recycling. (Exs. APP-1, -39; test. J. Otis, 8/18/98, tr. p. 24) Solid waste would be brought to the proposed facility by commercial haulers and by private citizens of the four towns (Canterbury, Plainfield, Griswold and Sterling), which currently use the recycling facility in the northwest corner of the site (the recycling facility) owned and operated by Packer Limited, LLC. (Exs. APP-1 & -47; DEP-4; test of J. Otis, 11/12/97, tr. pp. 75, 142) Solid waste from the proposed facility would be transported to resource recovery facilities, recycling facilities and solid waste landfills for final disposal. (Exs. APP-1 & -12; test. J. Otis, 8/18/97, tr. p. 24)

14. Commercial trucks bringing solid waste to the proposed facility would drive up to the bays on the north side of the transfer station building and deposit their solid waste onto the transfer station building floor. Payloaders would carry the solid waste to the south side of the transfer station building and deposit it into empty trucks which would then transport the waste to its final destination.

Private citizens would deposit their solid waste in one of the 40 c.y. drop-offs placed next to the recycling facility. The applicant would transport these drop-offs to the transfer station building for processing with the commercially-hauled solid waste at least once a day, or sooner if full. (Ex. APP-1; Exs. DEP-16, -17A)



15. The applicant originally requested a permit to process 140,000 tons per year (t.p.y.) of solid waste at the proposed facility, an amount approximately equal to the proposed facility's design capacity. On April 15, 1998, the applicant amended its application to reduce the amount of solid waste it proposed to process to 100,000 t.p.y. The draft permit to operate would authorize the processing of only 65,000 t.p.y. of solid waste. (*Id.*; Ex. APP-39)

16. The Connecticut Solid Waste Management Plan<sup>5</sup> (SWMP) establishes a hierarchy for solid waste management which encourages the use of recycling and resources recovery over land disposal of waste. The SWMP also encourages the use of transfer stations as a means of consolidating the solid waste stream in Connecticut (thus avoiding the transportation of solid waste in small trucks to end destinations) and encourages a regional approach to bulky waste management. (SWMP; test. J. Cimoehowski, 2/10/98, tr. p. 147, 2/19/98, tr. pp. 148, 158-159 & 162, 2/20/98, tr. p. 35) The proposed facility would achieve all three of these goals (FF-1 & FF-13), and is therefore consistent with the SWMP. (Ex. DEP-3)

17. Since 1995, the applicant has operated a transfer station for town residents at its garage on Kinne Road. The temporary permit for that facility issued by the Commissioner on June 28, 1995 expired on August 27, 1995. (Ex. DEP-10; test. N. Dupont, 2/9/98, tr. pp. 43, 45, 156, 175; test. L. VanBuren, 2/19/98, tr. p. 127)

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<sup>5</sup>The SWMP was adopted pursuant to Conn. Gen. Stat. ' 22a-228.

C. Landfill.

18. On February 21, 1974, the Commissioner issued a permit to James Yaworski, Sr. and Yaworski, Inc. to operate a solid waste landfill (the landfill) on a parcel of land adjacent to the proposed facility. The Commissioner issued two additional permits authorizing a major expansion of the landfill on December 22, 1989 and June 6, 1990. The landfill's permittees stopped accepting solid waste in April of 1995, but never closed the landfill pursuant to a plan approved by the Commissioner as required by RCSA ' 22a-209-13. (Ex. DEP-22; test. D. Nash, 2/10/98, tr. pp. 71 & 136; test. J. Fitting, 4/22/98, tr. p. 42)

James Yaworski, Sr. and Rose Yaworski transferred the land on which the landfill is located to Quinebaug Valley Regional Resources, LLC on July 20, 1996. The Commissioner, however, never approved the transfer of the solid waste permits issued to James Yaworski, Sr. and Yaworski, Inc. to any other individuals or entities as required by Conn. Gen. Stat. ' 22a-6(o) and RCSA ' 22a-209-4(g), and the transfer fee required by RCSA ' 22a-209-16 has never been paid. (Exs. DEP-22, -30; INT-106)

A decision on a request for a temporary injunction issued by a judge of the Superior Court on February 25, 1998 requires Yaworski, Inc. to submit a revised closure plan to the Commissioner for his approval, and to close the landfill in accordance with the approved closure plan, within specified time periods. *P.R.I.C.E., Inc., et al. vs. Keeny*, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. CV94-0542469-S (February 25, 1998) (*P.R.I.C.E. Injunction*). The court specifically determined that conditions at the landfill were reasonably likely to unreasonably pollute the air, water and natural resources of the state, and

have imperilled the living conditions of persons living nearby for over five years. (*Id.*, at p. 3 & 4)

19. Residents of Packer Road have experienced odors from the fumes of trucks traveling to, from or within the landfill and from refuse seepage from those trucks onto Packer Road. (Test. J. Leitch, 5/5/98, tr. pp. 112, 142; test. J. Hatt, 5/29/98, tr. pp. 101-102; test L. Dietz, 6/2/98, tr. pp. 48, 50, 65; test. C. Wellinghausen, 6/4/98, tr. p. 26) These residents also observed dust and noise being generated by those trucks and activity at the landfill, and litter coming from within the landfill and from uncovered trucks traveling to the landfill. (Test. D. Nash, 2/20/98, tr. p. 87; test. J. Leitch, 5/5/98, tr. p. 93, 138 & 143; test. J. Hatt, 5/29/98, tr. pp. 93, 101, 104-109; test. L. Dietz, 6/2/98, tr. pp. 46, 48 & 65; test, C. Wellinghausen, 6/4/98, tr. p. 26; test. W. Avery, 6/10/98, tr. pp. 48-49, 112, 117, 122 & 127)

20. The decomposition of solid waste in a solid waste landfill produces gases which can have an unpleasant odor, can pose a risk of explosion, and can be a threat to human health. (Test. D. Nash, 2/20/98, tr. pp. 110, 118; test. of J. Fitting, 4/24/98, p. 43, 4/29/98, p. 70; test. R. LaFrance, 5/5/98, tr. pp. 57-58) One way of reducing or eliminating landfill gases is to collect them by means of a landfill gas collection system and burn them at a controlled temperature and rate of combustion in a flare or series of flares. (Test. R. LaFrance, 5/4/98, tr. pp. 58 & 116, 5/5/98, tr. p. 60, 5/11/98, tr. p. 128) If landfill gases are not properly burned or otherwise collected they disperse into the atmosphere potentially causing additional pollution problems. (Test. R. LaFrance, 5/4/98, tr. pp. 52-53, 5/5/98, tr. p. 61)

21. In May of 1992 the Commissioner issued Yaworski, Inc. a permit to construct and a temporary permit to operate a flare system at the landfill. (Exs. INT-94 and -95) These permits required Yaworski, Inc. to conduct tests of that flare system to determine its compliance with the emission limits set forth in the permits. Pursuant to those permits, Yaworski, Inc. constructed seven gas collection wells and a flare system at the landfill but failed to fully conduct said tests. (Test. R. LaFrance, 5/5/98, tr. p. 23)

On August 17, 1994 the Commissioner and Yaworski, Inc. entered into Consent Order #1379 in which Yaworski, Inc. agreed to investigate why it had failed to complete the flare testing required by the previous permits and to propose remedial actions for eliminating that failure, including a schedule for applying for any additional permits required by the Commissioner. (Ex. INT-93) As of the date of this hearing, Yaworski, Inc. had not completed testing its flare system at the landfill and had submitted an incomplete application for a permit to construct and operate a landfill gas collection system at the landfill. (Test. R. LaFrance, 5/4/98, tr. pp. 67, 75, 86 & 98-100, 5/5/98, tr. p. 38)

22. Consent Order No. 1318A, issued by the Commissioner on May 10, 1994, requires Yaworski, Inc. to: conduct tests to determine the extent of ambient air pollution at and near the landfill; take remedial actions approved by the Commissioner to abate any unacceptable exposures to air pollution at and in the vicinity of the landfill; and monitor air pollution levels at and in the vicinity of the landfill to determine the effectiveness of those remedial measures. (Ex. INT-16; *see also* Ex. INT-15) On January 26, 1996, the Commissioner notified Yaworski, Inc. that the landfill gas sampling report it had submitted as required by Consent Order No. 1318A

was deficient. (Ex. INT-17) As of the date of this hearing, Yaworski, Inc. had not fully complied with Consent Order #1318A. (Test. R. LaFrance, 4/29/98, tr. p. 125, 5/4/98, tr. pp. 42 & 46, 5/5/98, tr. p. 47, 5/8/98, tr. pp. 131-32, 5/11/98, tr. p. 75)

23. On October 25, 1996, DEP issued a Notice of Violation to Yaworski, Inc. based on a determination by DEP staff that odors from the landfill violated Conn. Gen. Stat. ' 22a-174 and RCSA ' 22a-174-23(a)(1). (Ex. INT-14) DEP staff also detected landfill gas odors at and near the landfill on several occasions in 1997. The staff described these odors as being Avery strong@ Avery objectionable@ Aextremely intense@ and Amongst the strongest ... detected at ... landfills.@ (Ex. INT-11; test. J. Fitting, 4/24/98, tr. pp. 44-47, 4/28/98, tr. p. 14, 4/29/98, tr. pp. 69 & 77; test. R. LaFrance, 5/4/98, tr. p. 114)

The citizen intervenors have also detected landfill gas odors near the landfill on several different occasions over the last decade. The citizen intervenors described these odors as Astrong@and Anxious.@ (Test. J. Leitch, 5/5/98, tr. p. 112-117; test. J. Hatt, 5/29/98, tr. p. 102 & 104; test. L. Dietz, 6/2/98, tr. p. 77; test. C. Wellinghausen, 6/4/98, tr. p. 120; test. R. Moffett, 6/12/98, tr. p. 86; test. S. Stamper, 6/17/98, tr. p. 49) Two citizen intervenors testified that the odors were so strong that the odors woke them up from their sleep. (Test. J. Leitch, 5/5/98, tr. p. 124; test. L. Dietz, 6/2/98, tr. pp. 77, 79) The citizen intervenors also testified that they experienced nausea, burning of the throat and mouth, difficulty breathing and swallowing, loss of appetite, and dizziness as a result of these odors. (Test. J. Leitch, 5/5/98, tr. p. 117, 124; test. J. Hatt, 5/29/98, tr. p. 104; test. L. Dietz, 6/2/98, tr. pp. 77, 79)

24. Both Yaworski, Inc. and the DEP have conducted some testing of the air in, and in the vicinity of, the landfill. (Exs. INT-99, -101; Exs. YAW-61 through -64; test. R. LaFrance, 5/4/98, tr. p. 44, & 118-119, 5/8/98, tr. pp. 20-21 & 60, 5/20/98, tr. p. 114) However, the DEP currently has insufficient information to definitively determine whether the air emissions from the landfill pose a risk to public health and safety. (Test. R. LaFrance, 5/4/98, tr. pp. 50-51, 5/11/98, tr. pp. 86 & 88, 5/20/98, tr. p. 80) Full compliance by Yaworski, Inc. with Consent Orders #1318A and #1379 would assist the DEP in making that determination. (Test. R. LaFrance, 5/20/98, tr. p. 93)

25. *The P.R.I.C.E. Injunction* requires Yaworski, Inc., within specified time frames, to: rehabilitate those gas collection wells at the landfill that can be rehabilitated; replace those gas collection wells that cannot be rehabilitated; submit an application to the Commissioner for a permit to construct and operate a landfill gas collection and flare system at the landfill; take all steps necessary to obtain such permits; and install a gas collection and flare system once such a system is permitted by the Commissioner.

26. On June 28, 1990, the Commissioner issued a water discharge permit (the discharge permit) to Yaworski, Inc. authorizing the discharge of leachate<sup>6</sup> from the landfill to the groundwaters of the state. (Ex. DEP-24) In December of 1997, DEP staff observed discoloration in an unnamed stream which traverses the landfill indicating that leachate had

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<sup>6</sup> Leachate means that liquid which results from ground or surface water which has been in contact with solid waste and has extracted material, either dissolved or suspended, from the solid waste. (RCSA ' 22a-209-1)

entered that stream. On several occasions in 1997, DEP staff observed discoloration in wetlands at, or in close proximity to, the Yaworski landfill indicating that leachate from the landfill had entered those wetlands. (Test. J. Fitting, 3/24/98, tr. pp. 61-62, 65, 67-68, 72, 79-81 & 88-90, 4/22/98, tr. pp. 46 & 59, 4/24/98, tr. pp. 89, 93) One of the citizen intervenors observed leachate from the Yaworski landfill entering the Quinebaug River on several occasions after the issuance of the discharge permit. (Test. J. Leitch, 5/29/98, tr. p. 63) The discharge of leachate from the landfill into the unnamed stream, nearby wetlands, and the Quinebaug River is a violation of the discharge permit and is inconsistent with the Connecticut Water Quality Standards.<sup>7</sup> (Test. J. Fitting, 3/24/98, tr. pp. 67-68, 88-90)

27. A properly designed and operated solid waste landfill should not contain free-standing water because such free-standing water interferes with the efficient operation of landfill gas collection wells and can contribute to leachate seeps.<sup>8</sup> (Test. J. Fitting, 4/28/98, tr. pp. 19, 35 & 68-70, 4/29/98, tr. pp. 67, 71-73; test. R. LaFrance, 5/5/98, tr. pp. 10-11) On several occasions in 1996 and 1997, DEP staff observed leachate seeps at various locations within the landfill. (Ex. DEP-22; Ex. INT-11; test. J. Fitting, 3/24/98, tr. pp. 94-96, 4/24/98, tr. p. 20) As of the date of this hearing, those leachate seeps have not been remediated as required by the

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<sup>7</sup>The Connecticut Water Quality Standards were adopted pursuant to Conn. Gen. Stat. ' 22a-426.

<sup>8</sup>A leachate seep is a location where leachate discharges to, and flows across, the ground surface. (Test. J. Fitting, 3/24/98, tr. p. 93, 4/28/98, tr. p. 26)

discharge permit. (Test. J. Fitting, 4/24/98, tr. p. 38, 4/28/98, tr. p. 24, 4/29/98, tr. pp. 10, 15-16, 20-25, 27-28)

On or about December 22, 1997, DEP staff detected elevated water levels in one of the gas monitoring wells at the landfill indicating that precipitation had infiltrated into that well. (Test. J. Fitting, 4/22/98, tr. p. 32) On or about March 8, 1998, DEP staff detected water in all eight of the gas monitoring wells at the landfill indicating that precipitation was entering the landfill quicker than it was draining off. (Test. J. Fitting, 4/24/98, tr. pp.129-130)

28. *The P.R.I.C.E. Injunction* requires Yaworski, Inc., within specified time frames, to: assess the groundwater elevation within the landfill; design and implement, with the approval of the Commissioner, a plan to manage identified leachate seeps on the slopes of the landfill; and design and implement, with the approval of the Commissioner, a plan for a temporary system to collect leachate discharging to the unnamed stream and wetlands near the landfill.

29. From 1988 to his incapacitation sometime on or before October 9, 1996, James Yaworski Jr. participated in the management and control of the Yaworski landfill, including communicating with DEP staff regarding conditions at the landfill, being present at the landfill on a frequent basis, and conducting site inspections of the landfill with DEP staff. (Test. R. LaFrance, 5/20/98, tr. p. 126, 6/17/98, tr. pp. 122, 125 & 126; test. W. Avery, 6/10/98, tr. p. 52; test. S. Gormley, 6/17/98, tr. pp. 96-97)

30. From 1988 to the present, Dennis Yaworski has participated in the management



and control of the Yaworski landfill, including communicating with DEP staff regarding conditions at the landfill, arranging site inspections of the landfill by DEP staff, and filing permit applications with the DEP relating to the operation of the landfill. (Ex. INT-101; Ex. DEP-22; test. R. LaFrance, 5/8/98, tr. pp. 135 & 159, 5/20/98, tr. p. 126, 6/17/98, tr. pp. 122, 127 & 137; test. J. Fitting, 6/17/98, tr. p. 92; test. S. Gormley, 6/17/98, tr. p. 96)

31. From approximately 1990 to the present, Lee Yaworski has participated in the management and control of the Yaworski landfill, including communicating with DEP staff regarding conditions at the landfill and conducting site inspections of the landfill with DEP staff. (Test. R. LaFrance, 5/20/98, tr. p. 126, 6/17/98, tr. p. 122; test. W. Avery, 6/10/98, tr. pp. 37 & 53; test. J. Fitting, 6/17/98, tr. p. 85, test. S. Gormley, 6/17/98, tr. p. 96)

32. From at least 1996 to the present, Christopher Deojay has participated in the management and control of the Yaworski landfill as an independent contractor. In that role he has received reports regarding conditions at the landfill filed by other consultants, communicated with DEP staff regarding conditions at the landfill and permit applications pending with the DEP, and conducted site inspections of the landfill with DEP staff. (Ex. DEP-30; Exs. YAW-61 through -63; test. J. Fitting, 3/24/98, tr. pp. 52, 54, 113 & 116, 3/25/98, tr. pp. 51 & 53, 4/29/98, tr. p. 54, 6/17/98, tr. pp. 86-89; test. R. LaFrance, 5/5/98, tr. pp. 67 & 71, 5/8/98, tr. pp. 105 & 133; test. S. Gormley, 6/17/98, tr. p. 99)

D. Traffic on Packer Road.

33. Packer Road is a winding rural road over rolling terrain<sup>9</sup> located in the southeast corner of Canterbury. It runs for approximately 6000 feet between Butts Bridge Road and the Plainfield town line and varies in width between 20 and 24 feet. There are approximately 20 man-made structures, including approximately 15 residences, located along its length. (Exs. APP-1, -51; Ex. INT-110; test. D. Aubrey, 3/11/98, tr. pp. 129 & 167, 6/24/98, tr. pp. 27, 52, 106)

After crossing the Plainfield town line, Packer Road becomes Packerville Road. Packerville Road then continues in a northeasterly direction until it connects with Canterbury Road (aka Route 14A). Both Canterbury Road and Butts Bridge Road intersect Norwich Road (aka Route 12). Exit 88 of Interstate U.S. Route 395 is located off of Norwich Road north of Canterbury Road. The proposed facility is approximately three miles from that exit. (Ex. APP-51)

34. Since 1987 the applicant has failed to conduct any significant or regular maintenance of Packer Road with the exception of some minor clearing of brush along its shoulders. As a result, the driveable portion of the roadway has narrowed and the road requires

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<sup>9</sup>Traffic safety engineers use three categories to describe the terrain of a road - level, rolling or mountainous. Although Packer Road is level in places and rolling in others, it is characterized as rolling. (Test. D. Aubrey, 3/11/98, tr. pp. 42-44)

resurfacing and other repairs. The narrowness of Packer Road has, in turn, resulted in a tendency of drivers to drive the center line of Packer Road instead of staying on their side of the road and has increased the risk to pedestrians by eliminating or reducing places for them to step off the roadway to avoid passing vehicles. (Ex. INT-28, -80; test. D. Aubrey, 3/11/98, tr. pp. 106, 184) Although the applicant has now painted a center line down the middle of Packer Road, drivers still tend to drive the centerline because of the poor condition of the roadway and its shoulders. (Test. D. Aubrey, 3/11/98, tr. p. 146, 6/24/98, tr. p. 41)

35. Packer Road also has substandard sight lines<sup>10</sup> which increase the safety risks posed to pedestrians and vehicular traffic. (Ex. INT-80) Poor sight lines are particularly problematic with regard to the northerly entrance driveway into the landfill which also serves as both entrance and exit for the recycling facility. (Ex. INT-28; test. D. Aubrey, 3/11/98, tr. p. 198) As a temporary ameliorative measure, the applicant has installed a stop sign at this entrance. The stop sign has created its own safety problem, however, because of a lack of sufficient sighting distance for vehicles heading in a southerly direction to see, and stop for, vehicles stopped at the stop sign. (Ex. INT-28)

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<sup>10</sup>The term "sight lines" refers to the distance a person seated in a vehicle can see unimpeded in a particular direction. The National Institute of Traffic Engineers has developed sight line guidelines which have been adopted by the Connecticut Department of Transportation. Those guidelines are expressed in terms of a range, based on the nature of the road in question, estimated travel speed, actual travel speed and turning direction. (Test. R. Bass, 11/10/97, tr. pp. 36, 134; test. D. Aubrey, 3/11/98, tr. pp. 45-46, & 95, 6/24/98, tr. p. 123)

36. Residents of Packer Road have experienced difficulties pulling out of their private driveways onto Packer Road, have had problems walking safely along Packer Road, and have observed trucks and/or cars backed up on Packer Road waiting to get into the landfill or the recycling facility. (Test. J. Leitch, 5/5/98, tr. pp. 102, 137 & 151, 5/28/98, tr. p. 30; test. J. Hatt, 5/29/98, tr. p. 91; test. L. Dietz, 6/2/98, tr. p. 54; test. C. Wellinghausen, 6/4/98, tr. p. 76) The back-up of vehicles on Packer Road tended to be worst on Saturday mornings, when citizen traffic into the landfill and recycling facility was heaviest. (Test. J. Leitch, 5/28/98, tr. p. 30; test. W. Avery, 6/10/98, tr. pp. 99-100; test. D. Aubrey, 6/24/98, tr. pp. 31, 53)

37. During the years the landfill was at its operating peak, it generated approximately 90 truck trips<sup>11</sup> per day. *Proposed Final Decision re Yaworski, Inc.*, Application No. 92015, September 13, 1994. Because of a decrease in activity at the landfill (*see supra*, FF-18), the volume of traffic on Packer Road is now less than half of what it was during the landfill's peak operating years. (Test. D. Aubrey, 3/11/98, tr. pp. 110-112 & 137-38, 6/24/98, tr. p. 20; *see also* test. J. Leitch, 5/28/98, tr. p. 17; test. J. Hatt, 5/29/98, tr. p. 112) If the proposed facility were operating, the volume of traffic on Packer Road would be approximately two-thirds to three-quarters of the traffic volume during the peak operating years of the landfill. (Test. D. Aubrey, 3/11/98, tr. p. 138)

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<sup>11</sup> A truck trip is a single trip by a truck either into or out of the proposed facility. (Test. R. Bass, 11/10/97, tr. pp. 86-87, 127)

38. In evaluating the traffic impacts to Packer Road of the proposed facility, the applicant and the staff have focused primarily on trucks which are 25 cubic yards or larger because such trucks would carry the bulk of the waste brought to the proposed facility and all of the waste transferred out of it. (Exs. APP-1, -39; test. R. Bass, 11/10/97, tr. pp. 52, 57, 74, 117 & 121; test. J. Otis, 11/12/97, tr. p. 74) The volume of smaller vehicles (cars and small trucks) entering and leaving the proposed facility would be roughly equivalent to the volume of such vehicles during the peak operating years of the landfill. (Test. R. Bass, 11/10/97, tr. p. 85)

If the proposed facility is permitted at the annual tonnage set forth in the draft permit to operate, it would generate approximately 76 truck trips per day on weekdays and approximately 38 truck trips per day on Saturdays. (Ex. APP-39) The proposed Yaworski transfer station would have generated approximately 152 truck trips per day. *Yaworski, Final Decision.*

39. To address traffic safety on Packer Road, the draft permits would require the applicant to undertake the following:

- (a) construct a new entrance driveway into the proposed facility on the west side of Packer Road, approximately mid-way between the existing south and north entrances to the landfill;
- (b) perform general maintenance and repair to Packer Road, including trimming back brush and overhanging tree limbs, edging the roadway to achieve at least a 20 foot width, patching and leveling the shoulder area with hot mix asphalt, and painting a single center line strip over its entire length;
- (c) provide access to the citizen drop-offs via the new entrance driveway and a new

interior road to be constructed between the new entrance road and the recycling facility;

- (d) require all vehicles entering the proposed facility with solid waste to use the new driveway;

- (e) place a locked gate across the current entrance to the recycling facility (the north entrance) to prevent public access via that entrance;
- (f) restrict the use of the south entrance to empty trucks arriving to pick up solid waste for transfer to end destinations; and
- (g) require all commercial truck traffic to or from the facility to access or egress Packer Road via Butts Bridge Road. (Exs. DEP-16, -17A)

40. To address potential queuing problems on Packer Road during operation of the proposed facility, the applicant has agreed to widen the new access driveway to 32 feet to allow room for three lanes (one for egress, one for ingress and one for truck stopping). (Ex. APP-44; test. D. Aubrey, 6/24/98, tr. p. 61; R. Cody, 6/30/98, p. 61)

41. To address potential dust generation from truck traffic inside the proposed facility, the draft permit to construct would require the applicant to pave the new entrance driveway from Packer Road to the internal driveway to the recycling facility and the applicant has agreed to install recycled bituminous asphalt on all unpaved roads within the proposed facility. The south entrance is already paved. (Ex. APP-1; Ex. DEP-16; *see*, test. J. Otis, 11/12/97, tr. p. 126))

42. The citizen intervenors called Donald Aubrey, a traffic safety expert<sup>12</sup> retained by the applicant, as their witness. Mr. Aubrey testified that if the requested permits were granted, and if all of the conditions relating to traffic in the draft permits were met, with some minor additions,<sup>13</sup> Packer Road would be safe for both pedestrians and vehicular traffic. (Ex. INT-80; test. D. Aubrey, 3/11/98, tr. pp. 182-183, 6/24/98, tr. pp. 69, 83) Mr. Aubrey's opinion regarding traffic safety on Packer Road was also consistent with the opinion of a traffic expert called by the applicant, Mr. Bass. (Ex. APP-36; test. R. Bass, 11/10/97, tr. p. 132)

Mr. Aubrey's conclusions were based on his years of training and experience in the field, personal observation of conditions on Packer Road over several years, review of existing traffic studies relating to Packer Road, and a two-day traffic count conducted on Packer Road on June 20 and 22, 1998. (Ex. APP-35; Exs. INT-28, -80; Ex. DEP-47; test. D. Aubrey, 3/11/98, tr. pp. 34, 74, 80 & 96-98, 6/24/98, tr. pp. 13, 16, 37, 73 & 74) Mr. Aubrey specifically concluded the following:

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<sup>12</sup>Mr. Aubrey is a licensed professional engineer and land surveyor with a Bachelor of Science degree in civil engineering. He is the former director of public works and town engineer for the Town of Mansfield and city engineer of the City of Willimantic. He is also the former director of the Connecticut Association of Street and Highway Officials, and currently owns his own engineering consulting firm. (Ex. APP-35)

<sup>13</sup>In addition to the improvements to Packer Road set forth in the draft permit to construct, Mr. Aubrey recommends the placement of MC800 oil (or its equivalent) and trap rock along the shoulders of Packer Road after the shoulders are repaired with hot mix asphalt, and the removal of the stop sign at the intersection of the north entrance driveway. (Test. D. Aubrey, 3/11/98, tr. pp. 67, 150, 170, 190)



- (a) maintaining or restoring Packer Road's 20 foot roadway width is both achievable, and consistent with AASHTO<sup>14</sup> standards and anticipated traffic flows (Ex. APP-12; test. D. Aubrey, 3/11/98, tr. pp. 81, 109, 110 & 157, 6/24/98, tr. pp. 66 & 74);
- (b) the new entrance driveway can meet Connecticut Department of Transportation site line guidelines if constructed with a 60 foot turning radius<sup>15</sup> and maximum feasible site lines (test. D. Aubrey, 3/11/98, tr. p. 95, 6/24/98, tr. pp. 12 & 43; *see also*, test. J. Otis, 11/12/97, tr. p. 85);
- (c) the site lines associated with the existing south entrance do not present a significant safety risk if the use of that entrance is restricted to ingress only (test. D. Aubrey, 3/11/98, tr. p. 105; *see also*, test. J. Otis, 11/12/97, tr. pp. 83 & 90);
- (d) Packer Road can safely handle the peak hourly volumes of traffic which are reasonably likely to be associated with operation of the proposed facility (test. D. Aubrey, 6/24/98, tr. pp. 60-65); and
- (e) repairing and improving the shoulders to Packer Road would improve the site

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<sup>14</sup>In 1984, the American Association of State Highway and Transportation Officials (AASHTO) adopted a set of safety standards to address both vehicular and pedestrian traffic. These standards apply to the construction of new roads and major repairs to existing roads and thus do not specifically apply to the repairs the draft permit to construct requires to Packer Road. The standards are, however, a useful measure of the efficacy of those repairs. (Test. D. Aubrey, 3/11/98, tr. pp. 131, 164, 166 & 185, 6/24/98, tr. pp. 50, 123)

<sup>15</sup>The applicant has agreed to construct the new driveway with a 60 foot turning radius. (*See* R. Cody, 6/30/98, tr. p. 60)

lines, and thus the over-all safety, of Packer Road (test. D. Aubrey, 3/11/98, tr. pp. 43-44).

## ***CONCLUSIONS***

A. No solid waste facility may be constructed or operated without permits approved by the Commissioner. Conn. Gen. Stat. ' 22a-208a. In exercising his permitting authority, the Commissioner is required to

examine all .... proposed solid waste facilities and provide for their proper planning, design, construction, [and] operation .... in a manner which ensures against pollution of the waters of the state, prevents the harboring of vectors, prevents fire and explosion and minimizes the emission of objectionable odors, dust or other pollutants so that the health, safety, and welfare of the people shall be safeguarded and enhanced and the natural resources and environment of the state may be conserved, improved and protected. Conn. Gen. Stat. ' 22a-208.

The Commissioner has also adopted detailed regulations establishing standards for the issuance of permits to construct and operate solid waste facilities generally, RCSA ' 22a-209-4, and transfer stations specifically, RCSA ' 22a-209-9.

The parties have raised the following questions regarding the pending application: 1) is the application complete; 2) are the traffic impacts of the proposed facility acceptable; 3) is the proposed facility reasonably likely to have the effect of unreasonably polluting the air, water or other natural resources of the state in violation of Conn. Gen. Stat. ' 22a-19; 4) is the site a suitable location for the proposed facility; and 5) should the individuals and entities listed in condition number 24 of the draft permit to operate of August 13, 1998 be barred from managing the proposed facility? These issues will be addressed seriatim.

B. The citizen intervenors have requested that I recommend denial of the application on the basis that it is incomplete. (Docket Item 177) In support of this request they assert that several items in the application are either missing or are inaccurate.

The decision as to what information must be included in a solid waste permit application is a matter within the commissioner's discretion. *Preston v. Department of Environmental Protection*, 218 Conn. 821, 829 (1991). I have reviewed the claims of incompleteness cited by the citizen intervenors and conclude that the record contains sufficient information for the commissioner to render a decision on the merits of the application. Accordingly, I deny the citizen intervenors' request that I recommend denial of the application on the basis of its incompleteness.

C. The citizen intervenors claim that the truck traffic associated with operation of the proposed facility would pose a risk to pedestrians and other vehicles using Packer Road. In support of their claim, the citizen intervenors presented evidence of their own experiences living and driving on Packer Road. (FF-36) The Commissioner has the authority to consider the traffic impacts of the proposed facility pursuant to Conn. Gen. Stat. ' 22a-208. *Yaworski, Final Decision; see also, City Recycling, Inc. v. State of Connecticut*, 247 Conn. 751, 757 (1999).

The proposed facility would generate approximately 76 large truck trips per day on weekdays. (FF-38) The transfer station proposed by Yaworski, Inc. and rejected by two Commissioners in part because of its unacceptable traffic impacts, would have generated 152 truck trips per day in addition to the 90 truck trips already being generated at the time by the

landfill. (FF-38) Because the landfill is no longer accepting solid waste (FF-18), the level of truck traffic on Packer Road if the proposed facility were permitted would be less than a third of the level found unacceptable in connection with Yaworski Inc.'s transfer station application.

The draft permit to operate would require the applicant to take a number of steps to improve traffic safety on Packer Road, including constructing a new entrance driveway and new roadways within the proposed facility, repairing Packer Road and its shoulders, requiring truck traffic to and from the proposed facility to enter or leave Packer Road via Butts Bridge Road, closing the north entrance, and restricting the use of the south entrance to in-coming empty trucks. (FF-39) I am recommending additional permit conditions to improve the safety of Packer Road. These conditions would require the applicant to remove the stop sign at the junction of Packer Road and the north driveway, install trip indicators to monitor truck traffic into and out of the proposed facility, install appropriate signage along Packer Road and inside the proposed facility, and make additional repairs to the shoulders of Packer Road.

Mr. Aubrey, a traffic safety expert very familiar with traffic conditions on Packer Road, testified that if the proposed facility were operating the overall traffic levels on Packer Road would be about two-thirds to three-quarters of the traffic volume during the landfill's peak operating years and that Packer Road can safely handle the volume of traffic likely to be generated by the proposed facility. He also testified that the proposed facility would not pose an unreasonable risk to traffic or pedestrians on Packer Road if constructed and operated in accordance with the conditions of the draft permits. (FF-37, FF-42) The citizen intervenors failed to offer substantial and credible contrary evidence. Accordingly, I conclude that the traffic impacts of the proposed facility do not justify denial of the requested permits.

D. The citizen intervenors have asserted that the proposed facility will unreasonably pollute, impair or destroy the public trust in the air, water or other natural resources of the state in violation of Conn. Gen. Stat. ' 22a-19 and have identified dust, noise, litter and air pollution (from large truck exhausts) as the forms of unreasonable pollution they allege are reasonably likely to result from the operation of the proposed facility. As the moving party, the burden of establishing the reasonable likelihood of unreasonable pollution is on the citizen intervenors.

*Manchester Environmental Coalition v. Stockton*, 184 Conn. 51, 57 (1981)

In support of their ' 22a-19 claim, the citizen intervenors have pointed to the volume of large truck traffic associated with the proposed facility and the fact that the adjacent landfill generated dust, noise, litter and truck exhaust in the past. (FF-19) The citizen intervenors, however, have failed to address the significant differences between the landfill and the proposed facility. The landfill is an open air facility, while most of the transfer station's activities would take place inside an enclosed building. (FF-14) In addition, the landfill generated a considerable amount of truck traffic and dust from the placement of fill, while there is no placement of fill involved in the operation of the proposed facility. *Proposed Final Decision re Yaworski, Inc., Application No. 92015*, September 13, 1994; *Yaworski Final Decision*; see also test. R. Bass, 11/10/97, tr. p. 87.

At the insistence of the staff, the applicant has twice lowered the amount of solid waste the proposed facility would process (FF-15), reducing significantly the levels of dust, noise, litter and exhaust the facility is likely to generate. In addition, the draft permits contain a number of conditions which would further reduce the levels of those pollutants and their impacts on local residents, including limiting the hours of operation of the proposed facility, and requiring the

applicant to remove litter from inside the proposed facility and neighboring properties and to pave a portion of the new entrance driveway. (FF-39, FF-41) I am recommending additional permit conditions to further reduce the level of pollutants generated by the proposed facility and their impacts on local residents. These conditions would require that trucks entering the facility be covered or enclosed and contain full loads to the maximum extent practical. I would also require the applicant to pick up litter on Packer Road along the proposed facility, install trip indicators to monitor truck traffic to and from the proposed facility, cover all unpaved roads within the proposed facility with recycled bituminous asphalt, and widen the new entrance driveway. (See FF-40)

As discussed in the next two sections, I am also recommending that the proposed facility not be operated until the adjacent landfill is properly closed and that the individuals and entities responsible for conditions at the landfill not be allowed to manage the proposed facility. These two recommendations would reduce the background levels of pollutants in the affected neighborhood and help ensure that the proposed facility is operated in an environmentally responsible manner.

The citizen intervenors have provided little evidence on the specific nature and extent of pollutants reasonably likely to result from operation of the proposed facility or the threat to the natural resources of the state those pollutants would pose. They have, for example, failed to establish that any of the pollutants they have identified are reasonably likely to occur at levels in excess of any statutory or regulatory standard or otherwise result in any violation of law. They have also failed to address what impacts the conditions in the draft permits would have on the levels of pollutants likely to be generated at the proposed facility.

The proposed facility would serve a beneficial public purpose and is consistent with statewide policies for the processing of solid waste. (FF-13, FF-16) Given the paucity of evidence of unreasonable pollution, the reduced size of the proposed facility, and the permit conditions to control the levels of pollutants likely to be generated by the proposed facility and their impact on local residents, I conclude that the citizen intervenors have failed to carry their burden of proving that the proposed facility is reasonably likely to result in unreasonable pollution of the state's natural resources. Accordingly, I conclude that their ' 22a-19 allegations are not supported by the record.

E. The citizen intervenors assert that the proximity of the proposed facility to the landfill renders the site an unsuitable location for a transfer station because conditions at the landfill would pose a health risk to persons using the proposed facility. The Commissioner is required by Conn. Gen. Stat. ' 22a-208 to consider the issue of site suitability to ensure ~~A~~that the health, safety, and welfare of the people of the state shall be safeguarded ... .@See, *Yaworski, Final Decision*.

The landfill has a long history of air and water pollution problems which remain unresolved. (FF-18 through FF-28; *see also, Yaworski, Final Decision and Yaworski Injunction*) Because the owners and operator of the landfill have not completed the tests, studies, and remedial actions previously required by the Commissioner, I am unable to determine the precise risk to the general public posed by conditions at the landfill. (FF-18, FF-21, FF-22, FF-24 through FF-28) While I am unable to conclude that conditions at the landfill warrant denial of the requested permits, there is sufficient evidence in the record for me to conclude that gases



from the landfill have already adversely affected nearby residents and may pose a significant risk to persons using the proposed facility. (FF-20 through FF-25) I recommend, therefore, that the applicant not be allowed to operate the proposed facility until the landfill is closed pursuant to a closure plan approved by the Commissioner, including the installation of an approved landfill gas collection system.

The Commissioner may condition the granting of a permit on the performance of acts by parties other than an applicant as long as those conditions are reasonable. *Vaszauskas v. Zoning Board of Appeals*, 215 Conn. 58,63 (1990); *Final Decision re Wheelabrator Putnam, Inc.*, Application Nos. 199601559, 199601555, 199601558, February 13, 1998. Imposition of such a condition is particularly appropriate here because the individuals and entities who own and manage the landfill are parties to this proceeding, own the land on which the proposed facility is to be located, and stand to benefit financially from operation of the proposed facility. (FF-11, FF-18, FF-29 through FF-32)

Because the owner of the landfill is currently under court order to close the landfill pursuant to a closure plan approved by the Commissioner, including installation of a landfill gas collection system, *Yaworski Injunction*, requiring the applicant to delay operation of the proposed facility until the landfill is properly closed should not result in an undue delay in commencing operation of the proposed facility while protecting the public health, safety and welfare. I have prepared a proposed permit condition to address this recommendation.

F. The draft permit to operate initially submitted into the record of this proceeding would have excluded certain named individuals and entities associated with the landfill from

managing the proposed facility. The revised draft permit to operate now before me would exclude Christopher Deojay and Yaworski, Inc. from such management, but would allow Denis Yaworski, James Yaworski, Jr. and Quinebaug Valley Regional Resources, LLC to manage the proposed facility under limited conditions. (FF-4, FF-9) The citizen intervenors urge me to recommend permit language similar to that of the previous draft permit to operate, while the staff, the applicant, and the Yaworski intervenors support the language of the current draft permit to operate.

Two Commissioners denied Yaworski, Inc. a permit to operate a transfer station at the same location in part because of Yaworski Inc.'s poor compliance history in connection with its operation of the landfill. *Yaworski, Final Decision; Yaworski, Decision on Reconsideration*. A judge of the superior court affirmed those two decisions on that specific basis. *Yaworski, Inc. v. DEP*, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. CV95-0550682 (June 21, 1996).

The record contains no evidence that Yaworski, Inc.'s management of the landfill has improved in any significant manner since the denial of its transfer station application. Leachate and odor problems continue to plague the landfill and Yaworski, Inc. continues its failure to comply with orders and permits duly issued by the Commissioner. (FF-19, FF-21, FF-22, FF-23 through FF-28) Despite the fact that the landfill stopped accepting solid waste in April of 1995, the landfill has yet to be closed pursuant to a closure plan approved by the Commissioner. (FF-18) A decision issued by a judge of the superior court recently concluded that conditions at the landfill constitute unreasonable pollution of the air, water and natural resources of the state and have imperilled the lives of persons living nearby. That decision orders Yaworski, Inc. to

address the pollution problems at the landfill, and to close the landfill properly. *Yaworski*

*Injunction*

James Yaworski, Jr., Denis Yaworski and Lee Yaworski are all corporate officers and/or directors of Yaworski, Inc. and, along with Christopher Deojay, have been actively involved in the management of the landfill during these years of continued noncompliance. (FF-29 through FF-32) All four individuals must be held accountable for their prolonged and continued failure to comply with numerous final decisions of the Commissioner requiring that the landfill be operated properly and that deleterious conditions at the landfill be remediated.

As noted previously, the Commissioner is required by Conn. Gen. Stat. ' 22a-208 to protect the public health, safety and welfare and assure that solid waste facilities in Connecticut are lawfully operated. The Commissioner is also authorized by Conn. Gen. Stat. ' ' 22a-208a and RCSA 22a-209-4(c)(3) to impose reasonable conditions on permits to operate a solid waste facility. Barring individuals with a long history of poor environmental compliance in connection with one solid waste facility from managing another solid waste facility is clearly a reasonable means of protecting the public health, safety and general welfare and deterring future non-compliance with environmental laws and regulations. *See, Final Decision re Quinnipiac Group, Inc., Application No. 90-411, January 2, 1991; Ruling on Motion in Limine, April 9, 1998 (Docket Item 119).* I therefore recommend that the permit to operate prohibit James Yaworski, Jr., Denis Yaworski, Lee Yaworski and Christopher Deojay from managing the proposed facility.

To help ensure that the proposed facility is operated in an environmentally responsible manner, I further recommend that a condition similar to condition no. 25 of the draft permit to operate of August 13, 1997 be included in the permit to operate. Such a condition would require the applicant to obtain the Commissioner's written approval of any certified operator the applicant intends to employ at the proposed landfill.

## ***RECOMMENDATIONS***

In light of the foregoing, I conclude that provided the applicant adheres to the terms and conditions of the draft permits, as modified below, the proposed facility would be constructed and operated in accordance with all applicable legal requirements. I therefore respectfully recommend that the Commissioner issue the requested permits incorporating the terms and conditions set forth in the draft permits, with the following modifications:

### A. Permit to Construct

1. In condition no. 2, section A~~h~~ delete A"March 19, 1997" and substitute A"June 23, 1998."

2. In condition no. 2, delete the last paragraph and substitute the following: A"The permittee shall comply with all the terms and conditions of this permit. This permit consists of the conditions contained herein, and the plans and specifications described in this section.

Violations of any provision of this permit is subject to enforcement action pursuant to Conn.

Gen. Stat. ' ' 22a-6, 22a-208, 22a-225 and 22a-226, and any other applicable provisions of law."

3. In condition no. 3, add A"or the requirements of this permit." after A"law."

4. In condition no. 7, delete A"drop off area" and A"center" and replace with A"facility."

5. Delete condition no. 8a. and substitute the following: A"Construct a new entrance driveway for citizen and commercial access to the facility. Said driveway shall be 32 feet wide, with a turning radius of 60 feet and maximum achievable sight lines at its intersection with Packer Road, as otherwise shown on the plans submitted with the application referenced in condition no. 2 of this permit."

6. In condition no. 8b., first sentence, delete ~~A~~the existing roadway~~@~~and substitute ~~A~~Packer Road.~~@~~
7. In condition no. 8b., second sentence, add the following after ~~A~~surface~~@~~ ~~A~~ and placing MC800 oil or its equivalent, and a surface seal coat of chip stone surface (3/8" traprock), over the shoulder areas after they have been patched and leveled with hot mix asphalt.~~@~~
8. In condition no. 8, add a new section ~~A~~d~~@~~as follows: ~~A~~install appropriate signage within the facility and along Packer Road to advise both commercial and residential drivers of the traffic patterns and restrictions required by this permit and the permit to operate.~~@~~
9. In condition no. 8, add a new section ~~A~~e~~@~~as follows: ~~A~~Remove the stop sign located at the intersection of the north entrance driveway and Packer Road.~~@~~
10. Condition no. 9 should be deleted and replaced with the following: ~~A~~Access to the recycling facility drop-off area shall be provided via the new entrance driveway referenced in condition no. 8 of this permit. Prior to issuance of the permit to operate, the permittee shall construct a driveway connecting the new entrance driveway and the recycling facility, as shown on Sheet 3 of 3 of the plans referenced in condition no. 2 of this permit, to provide such access.~~@~~
11. In condition no. 10, delete ~~A~~s~~@~~and insert ~~A~~its~~@~~ delete the word ~~A~~center~~@~~and insert ~~A~~facility~~@~~and add the following at the end of the sentence after ~~A~~permit~~@~~ ~~A~~and install recycled bituminous asphalt on all unpaved roads within the facility.~~@~~
12. After condition no. 11, add a new condition as follows, and renumber the conditions that follow accordingly: ~~A~~The permittee shall install trip indicators, of a type and at locations approved in writing by the Commissioner, along the new entrance driveway and south entrance driveway, to record the number of commercial trucks entering or leaving the facility,

their weight, and the date and time of their arrival or departure. @

13. In condition no. 16, delete ~~After July 1, 1971,~~. @

B. Permit to Operate

1. In condition no. 2h, delete ~~March 19, 1997~~ and substitute ~~June 23, 1998~~. @

2. In condition no. 2, delete the last paragraph and substitute the following: ~~The permittee shall comply with all the terms and conditions of this permit. This permit consists of the conditions contained herein, and the plans and specifications described in this section.~~

Violations of any provision of this permit is subject to enforcement action pursuant to Conn. Gen. Stat. ' ' 22a-6, 22a-208, 22a-225, 22a-226, and any other applicable provisions of law. @

3. In condition no. 3, add ~~For the requirements of this permit.~~ after ~~law~~. @

4. In condition no. 6, delete ~~drop-off area~~ and ~~center~~ and substitute ~~facility~~. @

5. Delete condition no. 7 and substitute the following: ~~The permittee shall accept no more than 65,000 tons per year and 228 tons per day, on a monthly average, of solid waste as defined in the Facility's O&MP. The permittee shall assure that solid waste is deposited in the transfer station building only by commercial vehicles and that private individuals deposit their waste only in the containers described in condition no. 6. Any unacceptable waste left at the facility shall be transferred within 24 hours to a solid waste facility permitted to accept such waste.~~ @

6. Delete condition no. 10 and substitute the following: Solid waste shall be stored at the facility on an emergency or temporary basis only. Such waste shall be stored inside the transfer station building in accordance with ' 22a-209-9 of the RCSA, and only in an amount not to exceed 228 tons for a time period not to exceed 24 hours. The permittee shall not store, or allow any other person to store, waste outside the transfer station building at any time. @

7. In condition no. 11, first sentence delete Recyclables drop-off area and substitute Citizen recycling facility. @

8. Delete condition no. 12 and substitute the following: The permittee shall assure that the central entrance driveway, referenced as optional on sheet 3 of 3 of the plans referenced in Condition No. 2 of this permit, is used by commercial vehicles to service both this facility and the recycling facility and is the sole route used by citizens to access the recycling facility and the municipal solid waste and bulky waste drop-off area. @

9. Delete condition no. 13 and substitute the following: Prior to operation of the facility, the permittee shall ensure that the existing main entrance driveway to the recycling facility is closed to public access and is used only to service the recycling facility and landfill as set forth in the facility's O&MP referenced in condition no. 2 of this permit. @

10. After condition no. 14 and before condition no. 15, insert a new condition as follows and renumber the conditions that follow accordingly: To the extent practicable, the permittee shall require that commercial trucks bringing solid waste to, or removing solid waste from, the facility carry full loads so that truck trips are minimized. @



11. After condition no. 14 and before condition no. 15, insert a new condition as follows and renumber the conditions that follow accordingly: ~~A~~Prior to operation of the facility, the permittee shall close the transfer station it operates at its Kinne Road garage. @

12. In condition no. 15, insert ~~A~~The @ at the beginning of the sentence and add ~~A~~for the term of this permit @ at the end of the sentence after ~~A~~permittee. @

13. In condition no. 16, second sentence, delete ~~A~~be solely responsible for operating @ and insert ~~A~~operate. @

14. In condition no. 19, delete the third sentence and substitute the following: ~~A~~The permittee shall remove all litter on a daily basis from the site, surrounding properties, and along Packer Road from the south to north entrance driveways. The permittee shall require that all commercial trucks entering or leaving the facility be either covered or enclosed. @

15. In condition no. 22, delete ~~A~~after July 1, 1971. @

16. In condition no. 23, add a new Section ~~A~~c @ as follows: ~~A~~The daily readings from the trip indicators installed pursuant to the requirements of the permit to construct indicating the number of commercial vehicles entering or leaving the facility, their weight, and the date and time of their arrival or departure. @

17. Delete condition no. 24 and substitute the following: ~~A~~The permittee shall not allow Yaworski, Inc., Packer, Ltd. LLC, Quinebaug Valley Regional Resources, LLC, Haul of Fame, Inc., Denis Yaworski, James Yaworski, Jr., Lee Yaworski, Christopher Deojay or any of their affiliates, corporate organizers, agents, directors, owners, officers, employees, representatives or assignees to participate in the management of this facility. ~~Management=~~ includes the positions identified by the permittee in Attachments G&H to its permit application

as: facility supervisor (contractor); supervisor or operator certified by the department; and facility emergency response coordinator. ~~Management~~ also includes the direction and supervision of the day-to-day operations of the facility regardless of the job title of the individual who so directs or supervises. Nothing in this paragraph shall preclude any of the aforementioned persons or entities from responding to any emergency that may occur at the facility or the site at which it is located, or from complying with any other requirement of law or department permit requirement.@

18. Delete condition no. 25 and substitute the following: ~~A~~Prior to employing or retaining any operator, the permittee shall submit to the Commissioner for his review and written approval the name and qualifications of such proposed operator(s), whose qualifications have been certified pursuant to Section 22a-209-6 of the RCSA. The permittee shall assure that each individual under the supervision of such certified operators is given sufficient training to identify waste received at the facility which is not acceptable at the facility and to take proper action in handling such waste.@

19. Delete condition no. 26 and substitute the following: ~~A~~This permit does not relieve the permittee of the responsibility to maintain and operate the facility in continuous compliance with all applicable provisions of federal, state, and municipal law, including the federal Occupational Safety and Health Act.@

March 31, 1999  
Date

/s/ Donald H. Levenson  
Donald H. Levenson, Hearing Officer