

# STATE OF CONNECTICUT

**AUDITORS' REPORT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SPECIAL REVIEW OF THE  
NEWHALL NEIGHBORHOOD PROJECT**

**August 14, 2006**

**AUDITORS OF PUBLIC ACCOUNTS  
KEVIN P. JOHNSTON ♦ ROBERT G. JAEKLE**

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**BACKGROUND:**

After pollution was found at the Hamden Middle School and the area immediately surrounding the Newhall neighborhood, the Commissioner of the Department of Environmental Protection (DEP) ordered the four responsible parties to enter into a legal consent order to take corrective action. A request to conduct a review of the subsequent DEP decision to expand testing of properties outside the Consent Order boundary was forwarded to our Office by State Senate Majority Leader Martin M. Looney and State Representative Peter F. Villano, and was initiated by several residents of the Prospect Hill neighborhood in Hamden, Connecticut. The Prospect Hill neighborhood lies to the east of the Consent Order boundary and several residents felt that the Department of Environmental Protection had no justification for extending the testing for pollution into their neighborhood. These residents submitted a "Residents' Report on Soil Sampling In The Prospect Hill Neighborhood of Hamden, Connecticut: Scientific, Ethical, and Legal Concerns with The Study Headed By The Connecticut Department of Environmental Protection", dated March 15, 2006. In this report the residents point out what they felt was wrong with the justification for the testing in their neighborhood as well as deficiencies in this testing. These residents also prepared two other Residents' Reports. The first one was dated January 2, 2006, entitled "Residents' Report: Questions and Concerns about Soil Sampling and Remediation Plans for the Prospect Hill Neighborhood of Hamden, Connecticut" and the second report was an Addendum to the January 2, 2006 Report and was dated January 10, 2006. We have since received a supplemental report dated June 23, 2006.

## **INTRODUCTION:**

In response to the pollution found at the Hamden Middle School and some other properties in the surrounding neighborhood, the Commissioner of the Connecticut DEP identified four parties responsible for cleaning up the site. The four responsible parties are the Town of Hamden, the South Central Connecticut Regional Water Authority, the Connecticut State Board of Education, and the Olin Corporation. (See maps, attachments A & B) In July 2001, the Commissioner of DEP ordered the four responsible parties to identify the location of pollution and to remove and/or contain it. In April 2003, the four parties agreed to a legal settlement known as a consent order. A consent order is a legal agreement signed by agencies, individuals, businesses, and/or other parties associated with a polluted property. The consent order establishes facts about the pollution and requirements for corrective action. Consent orders are a way to prevent costly, time-consuming lawsuits but carry the same legal weight as a court order issued after a trial. Because the parties have already agreed on the actions in the consent order, there is usually no delay in starting the work needed to resolve the problem. The consent order outlines the duties of each responsible party in cleaning up the pollution in the Newhall neighborhood. (See Newhall info website & Consent Order No. SRD-128) This was an important step because it allowed the clean-up actions to start at the public school and park properties as well as the residential properties where people live.

**FINANCIAL MATTERS:**

The complainants raised two basic issues that we consider here under the caption of financial matters. The first issue regards whether the representative of the DEP Commissioner had the authority to approve the various elements of the contract, including the addendums to the contract. In this regard, we found that the language in the contract definitions which stated that the Commissioner of DEP shall mean the Commissioner of the Department of Environmental Protection or a designated agent of the Commissioner combined with various delegations of authority by the Commissioner supports the validity of the contract approval. The second major issue concerns whether or not State requirements for competitive bidding or competitive negotiation were met. In regard to this issue, we found that the apparent requirement was that of competitive negotiation. It appears that at least most of the basic requirements of competitive negotiation were met. Relative to this matter of competitive negotiation and other matters raised in this report, we plan to refer this and other matters to the Office of the Attorney General for further review and consideration.

**Questions Raised as to the DEP's Planning and Standards Division Director's Authority to Approve Contracts etc.:**

Throughout the contract it is mentioned that "the Commissioner of DEP, in his sole discretion" has the authority to do a variety of things. The DEP indicates that this discretion is given to various DEP officials by the Commissioner's Delegation of Authority to these individuals.

The complainants state that virtually all of the allocation of State funds to Loureiro Engineering Associates (LEA) for its work on the Newhall site and the Perimeter Investigation were done on a questionable and apparently non-contractual basis. They also state that the expansion of the scope of LEA's services was improperly authorized and, hence, illegal. They maintain that any change of this nature could only be made with the written authorization of the Commissioner of the DEP and with the solicitation of bids. The complainants also state that "In sum, we have concerns about the core legality of LEA's involvement at the Newhall site and of LEA's participation in the decision-making, implementation, and evaluation of the Perimeter Investigation. The materials in our possession suggest that the expansion, both in the term and the scope of LEA's work for the State of Connecticut, and the extensive compensation that they received, were not allowable under law or contract."

We found that the DEP had originally retained Loureiro Engineering Associates under an existing State contract, 023-A-17-0612-C, the State's master contract for Hazardous Spill Response, Recovery, Removal and Disposal. Section 4.2 of this contract had listed 36 contractors approved to conduct sub-surface investigations (See attachment C) and Section 4.3 had listed 36 contractors approved for sub-surface clean-up. (See attachment D) It should be noted that 33 of these contractors, including LEA, were approved for both the sub-surface investigation as well as the sub-surface clean-up.

LEA was chosen from this existing State contract by Elsie Patton, who was delegated the authority to do so by the DEP Commissioner. On May 6, 2003, former Commissioner Arthur Rocque, Jr. amended the Delegation of Authority issued October 23, 1997, to include actions under the jurisdiction of the Director of Planning and Standards in the Bureau of Waste

Management. Subsequently on December 10, 2004, Commissioner Gina McCarthy delegated her statutory powers, including but not limited to, any delegation of authority in specific cases, in the manner set forth in the delegation of authority from former Commissioner Arthur J. Rocque, Jr., including all modifications and additions to that delegation authorized by former Commissioner Arthur J. Rocque, Jr. (See attachment E)

Although it appears that Elsie Patton had the authority to choose the contractor, the question was raised by the complainants as to whether or not she had the authority to extend the contract period beyond 30 days and/or the authority to approve the hiring of subcontractors. Sections 5.5.2 of the contract (page 28 of the contract - See attachment F) requires that “When the Commissioner of DEP, in his sole discretion has determined that any of the conditions specified in Section 5.5(1) or 5.5(2) [(page 26 of the contract - See attachment G)] of this Bid and Contract exist, he may request that at least two or more contractors submit to the DEP, for its review and approval, a written proposal for providing whatever response activities the Commissioner deems necessary.” Under Section 5.5 “The DEP recognizes there are situations where, pursuant to this Bid and Contract that: (1) despite the abatement of an emergency condition at a site, cessation of response activities may pose a threat to human health and the environment.” We believe that Section 1.0.2, under contract definitions, (page 1 of the contract) (See attachment H) which states that “Commissioner of DEP” shall mean the Commissioner of the Department of Environmental Protection or a designated agent of the Commissioner provided this authority for Elsie Patton to extend the contract under the provisions of Section 5.5 of the contract.

The DEP argues that, under the Delegation of Authority issued first by Commissioner Rocque and then affirmed by Commissioner McCarthy, Elsie Patton was authorized to extend the duration of the existing contract under the provisions of Sections 5.5.2 and 5.5(1). They cite that the conditions at the Newhall Neighborhood pose a threat to both human health and the environment. It was with this threat in mind that the contract with LEA was extended continually. The complainants argue, however, that only the DEP Commissioner has the authority to extend the contract and this authority was not delegated to Elsie Patton. However, as shown above, it appears that under section 1.0.2 of the contract and the Commissioner’s Delegation of Authority to Elsie Patton, she was so authorized.

In addition, Section 7.1.1 of the contract (See attachment I) provides that “A contractor shall not employ the services of a subcontractor, or allow labor, equipment or materials to be provided on a subcontract basis, unless such use is authorized by the Commissioner of DEP in writing or is authorized pursuant to Sections 5.5.1 or 5.5.2 of this Bid and Contract.” As shown in item five of the Delegation of Authority dated May 6, 2003, the delegation of authority is limited to the selection of contractors from the State Master Contract for Services and the Spill Contract to perform actions pursuant to Section 22a-449(a) or Section 22a-133e of the General Statutes. Again DEP argues that the authorization to hire or approve the hiring of subcontractors was given to Elsie Patton with the Commissioner’s “Delegation of Authority”. It appears to us that the Section 1.0.2 definition that “Commissioner of DEP shall mean the Commissioner of Environmental Protection or a designated agent of the Commissioner” provided the authority to Elsie Patton to approve the use of subcontractors.

One of the subcontractors hired by LEA, and whose expenditures were included in LEA’s total billable amounts, was LEA-Cianci or, as they are now known, Loureiro Contractors Inc. A

subcontract was put out for the remediation of various properties in the Newhall neighborhood. Although three bids were received, LEA-Cianci was the only company that had the required OSHA 40 hours certification and/or returned the bid documentation. Although the original subcontract was for \$18,050 and the scope was included under addendum four to the contract, as of July 11, 2006, LEA-Cianci had billed LEA a total of \$92,499. Authorization for an additional \$63,050 was granted through addendum 8, leaving a balance of \$11,399 of billings over this authorization. Section 1-86e of the General Statutes (Consultants and independent contractors. Prohibited activities) specifies that “(a) No person hired by the state as a consultant or independent contractor shall: ...(2) Accept another state contract which would impair the independent judgment of the person in the performance of the existing contract; or ...” Although the remediation apparently needed to be done immediately, we believe that a subsidiary of a prime contractor should not be hired as a subcontractor. DEP has indicated that it is now considering a policy where they will not permit this to occur in the future. We recommend that they adopt and adhere to such a policy.

On July 3, 2003, LEA submitted a request for proposals (RFP) to 16 firms specializing in providing public involvement coordination services on environmental projects. In response to this request, LEA received proposals from six firms. The proposals were evaluated by LEA for responsiveness relative to the minimum requirements stipulated in the RFP, including each firm’s management and technical approach to providing the requested services. Based on the initial evaluation, four firms were scheduled for a formal interview process. On August 6, 2003, formal interviews were conducted at the DEP in Hartford. In general, the format for each interview allowed for a 30 to 45 minute presentation by the firm, followed by an open question and answer session. For the interview process, each firm was asked to demonstrate their ability: to work with two or more technical consultants and to synthesize their individual work products into cogent public information materials; to work with existing community advocates or advocacy groups in integrating them into the public involvement process; and to work with distressed communities as well as communities of multi-ethnic and/or racial heritage. Based on this formal selection and interview process, LEA recommended to the DEP on August 19, 2003, that Fitzgerald and Halliday, Inc. provide the requested public involvement coordination services for the Newhall Neighborhood project.

On August 20, 2003, Elsie Patton authorized LEA to subcontract the services of Fitzgerald and Halliday, Inc. to facilitate the implementation of the Public Involvement Plan for the Newhall Neighborhood Project. To date, DEP has authorized LEA to bill the DEP over \$500,000 for these subcontracted services. We believe that DEP should have contracted directly with a public involvement contractor. DEP has now contracted directly with Fitzgerald and Halliday, Inc.

Our review disclosed that the Loureiro Engineering Associates has been billing the DEP for services rendered as far back as April 2003 exceeding the sixty (60) day maximum for emergency service contracts by almost three years. The scope of work and the contract value increased through an Approval of Proposal for Environmental Engineering Services, etc. and subsequent Addenda 1-7. This increased the total contract value to \$1,177,804. Our review disclosed that LEA has invoiced the DEP \$1,641,241 for work completed through May 2006. Written approval for this additional work totaling \$463,437 has not been obtained as of June 28, 2006. However, what we found was that payments of \$193,084 were made to LEA beyond the approved addenda and that the remaining amount of \$270,353 apparently represents work

already completed but for which written approval has not been granted and for which payment has not been made. As of June 28, 2006, LEA has submitted addenda 7A and 8 increasing the total contract value by an additional \$590,152 which will cover services through June 30, 2006. We believe that the DEP should not allow its contractors to expend or commit funds without first obtaining written authorization to do so.

Bond funds totaling \$18,000,000 were authorized to the DEP by Sections 13(a)(3) and 33(a)(3) of Special Act 95-20 for the containment, removal or mitigation of identified hazardous waste disposal sites. Between September 2001 and March 31, 2006, the DEP has requested and received bond funds totaling \$2,455,000 from the State Bond Commission to continue the existing remedial investigation/feasibility study of properties in the Newhall Street neighborhood in Hamden. We noted that approximately \$300,000 of the total expenditures was related to efforts to determine whether contamination existed outside of the Consent Order boundaries. This \$300,000 expenditure appears to fall within the purpose for which DEP requested the bond funds. However, whether the two subsections of Special Act 95-20 which were the source of the \$2,455,000 actually authorize the expenditure of funds outside of “identified hazardous waste disposal sites” (the Newhall Consent Order site) may be questionable. Nevertheless, it does appear that funding from Section 13(a)(4) of Special Act 95-20, which authorizes the expenditure of up to \$5,000,000 for an urban site remediation program, probably would provide funding for the efforts to determine whether contamination existed outside of the Consent Order boundaries. We thus recommend that DEP ensure that such expenditures are charged to an appropriate funding source.

It should be noted that prior to the hiring of Loureiro Engineering, the DEP had used the aforementioned contract to hire another contractor for clean-up and/or investigation work related to this project. Because the DEP was not satisfied with this company’s performance, they were not awarded additional work.

We asked the DEP why they only used one contractor for the work outside the Consent Order boundary and were told that they were satisfied with the work performed by LEA and felt that it would be counterproductive to re-bid each time additional work was needed. Additionally they felt that a new contractor would have to familiarize itself with the remediation site and that this would set back the timetable for completing this work. We were also informed that, because the DEP’s Planning and Standards Division had only two and one-half employees assigned to this project, they thought it would be more cost effective to have the hiring of subcontractors done by LEA. Supporting documentation was provided to DEP by LEA for the awarding of contracts to the subcontractors. DEP informed us that its employees also reviewed and monitored all work done by the contractor (LEA) as well as any work done by the subcontractors.

#### **New Contract:**

Effective June 1, 2006, through May 31, 2009, there is a new master contract for the investigation and remediation of contamination and/or pollution entitled “Environmental Investigations and Remedial Action Services” (Contract Award #05PSX0271). We were informed by DEP officials that 17 contractors responded to DEP’s RFP (request for proposal). From those submitting RFPs seven contractors were placed on a partial master contract award list and two supplemental award lists; an additional contractor is expected to be added after they meet certain minimum contractual requirements i.e. insurance liability limits. LEA was one of

those eight approved to do investigations and/or remediation in the State. We were also informed that the DEP has decided to hire LEA to continue its work in the Newhall Neighborhood site.

### **Requirements for “Competitive Bidding” or Competitive Negotiation”**

The complainants believe that DEP did not award the contract to LEA in accordance with requirements for competitive bidding. We thus attempted to determine exactly what bidding requirements apply to the contract award and to determine if there was compliance with those requirements.

The stated purpose of DEP’s Request For Proposal from LEA was to seek services specializing in the discovery, investigation, evaluation, mitigation, and remediation of contaminated media, etc. DEP’s authority for this stems from Sections 22a-133a to 133j of the Connecticut General Statutes (CGS). However, Sections 22a-133a to 133j do not appear to relieve DEP of any purchasing requirements set forth in the CGS, so it appears that DEP had to comply with the applicable parts of Section 4 of the CGS.

We were informed by the Department of Administrative Services (DAS) that the services needed by DEP should be classified as “contractual services” (Sec 4a-50 of the CGS). We attempted to understand from the DAS representative responsible for this contract how the procedures used by DEP to obtain the services from LEA comply with the requirements for “competitive bidding” or “competitive negotiation” as required by purchasing requirements of Chapter 58 of the CGS which appear to be applicable unless specifically waived. We were told by the DAS representative that the applicable requirements that must be satisfied when a Request For Proposal is issued are those requirements that relate to “competitive negotiations.” This appears reasonable because the competitive negotiation requirements seem designed for situations where the quality of the services is the most important consideration. Matters of public safety, such as these contamination issues in the Newhall area, seem to demand that the quality of services must be the most important consideration.

Section 4a-52-16 of the Regulations of Connecticut State Agencies delineates the requirements for a competitive negotiation. The minimum factors for the evaluation of requests for proposals are:

- The plan for performing the required services;
- Ability to perform the contractual services as reflected by technical training and education; general experience, and specific experience in providing the required.... contractual services; and the qualifications and abilities of personnel proposed to be assigned to perform the contractual services;
- The personnel, equipment, and facilities to perform the contractual services currently available or demonstrated to be made available at the time of contracting; and
- A record of past performance of similar work in regard to....contractual services.

Sub-section g of Section 4a-52-16 requires that “the Commissioner shall select, in the order of their respective qualification rankings, no fewer than three acceptable proposers (or such lesser number if less than three acceptable proposals were received), deemed to be the best qualified...” Sub-section h specifies that “the Commissioner shall negotiate a contract with the best qualified proposer for the required....contractual services at a compensation that is fair and reasonable.”



To understand whether all of these requirements were met, we looked at State Contract 023-A-17-0612-C, the State's contract for Hazardous Spill Response, Recovery, Removal and Disposal (Emergency Response Master Contract). It is under this contract that awards for responses to emergency spill conditions are awarded when the spill occurs. Obviously, in such situations there is no time to take any further steps toward obtaining a request for proposal relative to the specific spill. However, for awards for specific work made under this contract for non-emergency situations, the complainants appear to be asking the question of whether a further request for proposal should have been made of all of the companies that had been approved to do such work under the Emergency Response Master Contract. We noted that the DEP decided to send the request for proposal only to LEA. We always question whether a decision that does not provide for multiple proposals is in the best interests of the State. However, based on the criteria of Section 4a-52 of the CGS, LEA was on the list of contractors approved under the Emergency Response Master Contract so the selection appears to have met the legal requirements. Since it appears that LEA met the requirements necessary to be considered under the competitive negotiation regulation, the issue of cost then becomes one of negotiating a cost that is acceptable to the State in that it must be considered to be fair and reasonable. Since the cost structure had already been approved under the Emergency Response Master Contract, it would appear that the cost criteria would have to be deemed as being met. While our conclusion is that the competitive negotiation requirement was probably satisfied, we intend to refer this and other matters to the Attorney General's Office for his review and consideration.

On October 7, 2005, DAS announced a Request for Proposals to provide Environmental Investigation and Remedial Action Services specified for the Department of Environmental Services, Contract Award No. 05PSX0271 (Non-Emergency Remediation Master Contract). DEP's authority for this is derived from Sections 22a-133a to 133j of the CGS. The objective of this RFP was to establish a pool of resources that offer various environmental investigation and remedial action services from which proposals could be requested for remediation work that is long term in nature. Emergency service awards would continue to be made under the Emergency Response Master Contract.

The Evaluation/Award/Implementation section of the RFP for the Non-Emergency Remedial Master Contract begins on Page 17 of the RFP and explains how contractors will be selected from the pool for specific work projects. In an email to DEP, a DAS representative indicated that one of the goals of the Non-Emergency Remedial Master Contract was to ensure a pool of resources that will support competitive quotations. The evaluation section explains that submissions will be scored, ranked and considered for contract award in a specified manner. The contract award section indicates that the State reserves the right to award the contract in a manner deemed to be in the best interest of the State including but not limited to determining the number of awardees it deems necessary in fulfilling the required services. The implementation section indicates that DEP will select a contractor in accordance with one of two paragraphs titled "Standard Contract Use" and "Specialized Contract Use."

The "Standard Contract Use" paragraph states that DEP will request a work plan and cost estimate for required services from all awarded contractors. The contractors will then be required to submit a work plan and cost estimate that will accomplish the requested work task. DEP will then evaluate each of the proposals and authorize the selected contractor to proceed. DEP may then provide comments or other conditions to revise the selected contractor's work plan. Although the term "Competitive Negotiation" is not used in the RFP, the procedures in this

paragraph closely follow the general requirements of a competitive negotiation, as specified in Section 4a-52-16 of the Regulations of Connecticut State Agencies.

The “Specialized Contract Use” paragraph states that DEP “will request a workplan and cost estimate after providing a detailed scope of services request from contractors deemed to be the most qualified and consistent to the initial selection of the award.” This requirement seems consistent with both the spirit and intent of the competitive negotiation provisions. However, the paragraph continues with the statement that “At the discretion of the State, and to serve the State’s best interests, the State may select a single contractor to submit a work plan and cost estimate. The State’s best interests are determined by factors that include special expertise, past performance, project knowledge, time sensitivity, or other factors determined by the State.” This provision appears to have been included so that DEP could hire LEA to continue working on the Newhall Perimeter Project. As we stated above, we always question whether a decision that does not provide for multiple proposals is in the best interests of the State. However, based on the criteria of Section 4a-52 of the CGS, LEA was on the list of contractors approved under the Non-Emergency Remediation Master Contract so the selection appears to have met the legal requirements. It appears that LEA probably met the basic requirements necessary to be considered under the competitive negotiation regulation, and the same comments made relative to the original contract in regard to cost considerations apply to the issue of cost under the new contract.

While our conclusion is again that the competitive negotiation requirement would probably be deemed to have been satisfied, we do not believe this is an appropriate practice. It does not facilitate the goal of supporting competitive quotations as was indicated by DAS as an objective of the Non-Emergency Remedial Master Contract. We intend to refer this and other matters to the Attorney General’s Office for his review and consideration. Also, we will recommend that DEP should always obtain competitive quotations to procure non-emergency remediation services by sending requests for proposals to all companies that have been pre-qualified to perform such services.

## **OTHER MATTERS:**

We have read the report by LEA regarding their investigation of pollution in perimeter areas around the Newhall Consent area and examined the associated maps showing the extent of the pollution they reported finding. We also examined a small sample of communications sent by LEA to the residents informing them of the results of testing on their property. We found that the factual information reported by LEA seemed to be appropriately supported by laboratory testing that appears to indicate the validity of the test information. We did find that there were a few reporting errors in summaries of test results presented to residents, as discussed below, but that such errors would not indicate the sample testing results should be questioned or should not be used in the process of making determinations about what remediation efforts may be necessary. We also had some reservations about the effectiveness of the reporting done by LEA to the residents in regard to the usefulness of the information communicated to the individual residents, as discussed below, but these concerns again do not reflect on the validity of the sample results or the sample results' ultimate usefulness in helping to reach conclusions about what remediation action may eventually be required. Based on our understanding of the information reported by LEA and the information presented by the complainants, we can not reach the complainants' conclusion that the information presented by the complainants proves that the information developed by LEA is false or misleading in its entirety, even though certain elements of a few individual test borings have been proven to have been incorrectly reported.

## **Justification for Going Outside the Consent Order Boundary:**

The Consent Order also established boundaries limiting the area in which the responsible parties were required to clean-up the pollution. The DEP is responsible for the identification and/or remediation of pollution under Section 22a-5a of the General Statutes. Because testing indicated polluted fill right up to the Consent Order boundary in many areas and because a number of residents outside the boundaries requested that testing be done on their properties, additional sampling was done outside the Consent Order boundaries. A review of the documentation on hand shows that nine property owners outside the Consent Order boundary requested that their property be tested. Three of the nine requesting testing were located east of the Consent Order boundary.

The DEP hired Loureiro Engineering Associates, Inc. (LEA) to test areas outside the Consent Order boundary. Contamination was found primarily to the west and south of the Consent Order boundary and to a lesser extent to the east, which included the Prospect Hill neighborhood. Although the complainant states that no justification was apparent for the testing in the Prospect Hill area, a review of a map prepared by Malcolm Pirnie, the consultant hired by Olin Corporation and which did the testing inside the Consent Order boundary, indicated that testing revealed contamination right up to the Prospect Hill boundary. The map also shows question marks for the areas leading into the Prospect Hill neighborhood. It is for this reason that testing was done by LEA outside the boundary to the east. Malcolm Pirnie could not and did not do any testing beyond the Consent Order boundary.

## **Violation of the Access Agreements with Residents:**

The complainants state that "This access agreement was restricted to a narrow purpose: We did not grant the contractors carte blanche to search for the presence of contaminants on our

properties wherever they could be found.” They also state that neither the DEP nor LEA were authorized to do a general survey.

We reviewed the access agreement letter. The Soil Sampling Access Agreement signed by the residents states “This letter authorizes the Connecticut Department of Environmental Protection and its agents, representatives, employees, and contractors (‘the Department’), to enter upon the property located at \_\_\_\_\_ for the purpose of ***observing site conditions and collecting appropriate soil samples as part of the testing to locate the extent of landfill materials*** in the Newhall neighborhood.” Emphasis added. (See attachment J)

In reading this it appears that the contractor had not only the right to observe but to take the soil samples that it felt were necessary in order to locate the extent of the landfill materials.

### **A Flawed Sampling Protocol:**

The complainants state that the Environmental Protocols for sampling and analysis are contained in SW-846, which is the EPA publication entitled *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* and is the Office of Solid Waste’s official compendium of analytical and sampling methods that have been evaluated and approved for use in complying with the Resource Conservation and Recovery Act regulations. The complainants also state that “The most serious deviation from EPA protocols was in the general sampling methodology, particularly the methods used to select sampling locations and depths. EPA protocol (SW-846) stipulates that random three-dimensional sampling is the appropriate method for identifying the presence of waste in landfill.”

Although SW-846 does not look favorably on judgmental sampling, - “the problem with this approach is that it tends to lead to sloppy science and wrong conclusions” - the DEP used this method of sampling. The DEP had LEA take samples from areas that looked like contamination existed (bare spots, stressed vegetation, etc.) because they believe that bare spots would be the area where exposure to pollution would most likely occur.

EPA states that “. . . analysts and data users are advised that, except where explicitly specified in a regulation, ***the use of SW-846 methods is not mandatory*** in response to Federal testing requirements.” Emphasis added.

### **EPA Guidelines for Soil Sampling:**

EPA’s Preparation of Soil Sampling Protocols: Sampling Techniques and Strategies states that, for soil sampling, there are two portions of the soil that are important to the environmental investigator. The surface layer (0 – 6 inches) reflects the deposition of airborne pollutants, especially recently deposited pollutants and also pollutants that do not move downward because of attachment to soil particles. On the other hand, pollutants that have been deposited by liquid spills, by long-term deposition of water soluble materials, or by burial may be found at considerable depth. The methods of sampling each of these are slightly different, but all make use of one of two basic techniques. Surface soil sampling can be divided into two categories - - - the upper 6 inches and the upper 3 feet.

The complainants ask why the EPA's guidelines for surface soil sampling (i.e. 0 – 6 inches depth) was not used but instead LEA took its surface samples in the 0 – 3 inches range.

We confirmed with the Connecticut Department of Public Health that it was their recommendation that the DEP have LEA test surface samples in the 0 – 3 inch depth range. The Health Department wanted testing done at the 0 – 3 inch depth because children would come in contact with pollutants at this level and testing at both parks inside the Consent Order boundaries at the 0 – 6 inch level showed high levels of contaminants.

The Complainants stated that when retesting was done using the EPA's Protocols the results revealed levels of arsenic and lead to be considerably lower than levels reported by DEP - and below levels considered to be unsafe. However, supporting documentation was not provided to DEP and therefore we did not verify this claim.

### **Complainants Question Lead Remediation Standards Used:**

The Complainants state that “with the apparent complicity if not the direction of DEP and DPH staff, LEA deliberately misrepresented the State remediation standards for lead in all of the soil sampling reports.” Additionally “The remediation standard requirement for lead, well known to all environmental and health professionals in the State, is 500 mg/kg in Connecticut (the EPA standard is 1200 mg/kg). Yet in each of the LEA soil sampling reports, 400 mg/kg is stated as the state remediation standard.”

Although the printed State of Connecticut Regulations of the Department of Environmental Protection (page 33 of 66) shows the Residential Criteria for lead to be 500 mg/kg and 1,000 for Industrial/Commercial, these regulations are outdated and are in the process of being revised to be in line with both the Connecticut Department of Public Health and the United States Environmental Protection Agency standards. Both these Agencies show the standard to be 400 mg/kg for residential areas. As shown in the Federal Register/Vol. 66 No. 4/ Friday January 5, 2001 / Rules and Regulations, the EPA established the following standards for bare residential soil: a hazard standard of 400 parts per million (1 mg equals 1 part per million) of lead in play areas or 1,200 parts per million average for bare soil in the remainder of the yard.

The Agency for Toxic Substances and Disease Registry, under the jurisdiction of the United States Department of Health and Human Services, did a Public Health Assessment of the Newhall Street Neighborhood. This assessment, which can be found at <http://atsdr1.atsdr.cdc.gov/HAC/PHA/NewhallStreet/newhall-p2.html>, states that “Adults and children of the Newhall Street neighborhood could come into direct contact with contaminated surface soil while working or playing in their yards. Exposure could occur through direct skin contact (dermal), eating soil particles adhered to fingers or food items (ingestion) or breathing soil particles in the air (inhalation). Children have a greater potential for exposure to soil than do adults. Children have more opportunities for contact with soil because they play on the ground and in bare soil. Children also have greater hand-mouth activity, which leads to more soil ingestion than is common for adults. In addition, children have a greater sensitivity than do adults to the harmful health effects from lead exposure.” They also state that the Connecticut Department of Public Health believes it is reasonable to assume that children would not spend less than 50 percent of their playtime in their yards.

It should also be noted that the current EPA and the State Department of Public Health's standard for lead of 400 mg/kg was used not only by LEA but by Malcolm Pirnie, the EPA and the State Department of Public Health in the testing of soil in the Newhall area.

### **Errors Made During the Testing of or in the Reporting of Test Results:**

As reported in the "Residents' Report on Soil Sampling in the Prospect Hill Neighborhood of Hamden, Connecticut," numerous errors were noted in the documentation of the Prospect Hill neighborhood investigation.

#### **False Photodocumentation:**

We concur with the complainants that there were obvious inconsistencies between the site conditions depicted in photographs, the dates on the photographs, and the Chain of Custody of the soil samples from the sites.

The complainants stated that dates on the photodocumentation were false because foliage present in the photographs was inconsistent with the date associated with the photograph. Photographs that were reportedly taken at sites in February through April show deciduous trees with full foliage.

The complainants indicated that photographs of the sampling sites belie many of the surface conditions that LEA reports, conditions that were supposedly the justification for sampling at those sites. There are several cases of "bare spots" that are not bare and "high traffic" areas that are not high traffic areas.

#### **Errors, Misinformation, and False Claims:**

The complainants stated that the soil sampling report for 47 Homelands Terrace reported that "As shown in Table 3, acenaphthylene, was reported to be present in samples obtained from the 0 to 0.25-foot and 1.5 to 2-foot intervals of soil boring SB-7-274-02. The concentration reported for this PAH [Polynuclear Aromatic Hydrocarbons] are above the RDEC [Residential Direct Exposure Criteria]. The concentrations for these samples were reported to be 1,030 micrograms per kilogram (ug/kg) and 2,770 ug/kg, respectively." However, the concentrations for these samples should have been reported as 1.03 milligrams per kilogram (mg/kg) and 2.77 mg/kg.

We concur with the complainants that the problem is that the concentrations for these samples were erroneously reported in **micrograms (ug/kg)** and should have been reported in **milligrams (mg/kg)** as the RDEC for acenaphthylene is **1,000 milligrams** (page 31 of 66 State of Connecticut Regulations of the Department of Environmental Protection). There are 1,000 micrograms to a milligram.

This homeowner received a letter dated November 15, 2005, which stated that "Based on the laboratory analyses of soil samples collected from your property, constituents of concern were reported to be present in soils at concentrations above state remediation standards." This report was not correct since, as shown above, the concentration of PAHs were certainly well below the RDEC.

The complainants indicated that several minor errors in reporting were also noted: for example a brick walkway was reported as a concrete sidewalk, a garage was reported as being a shed, the report for 25 Morse Street had 26 Morse Street shown on the reference line, etc.

We believe that DEP should review the contents of all of the letters sent by LEA to the residents of the Newhall Perimeter Area to ensure that none of the other letters contained information that was not supported by the scientific results of the testing.

#### **Individual Communications Sent by LEA to Residents:**

We reviewed a small sample of the communications sent out by LEA in September and November 2005 to residents of the Perimeter Study whose properties had been sampled by LEA. We reviewed these communications even though we recognized that we do not have a scientific background that can allow us to reach any scientific conclusions regarding what actions were required. We did this review because we thought that it would be an important step in aiding us to understand how these communications would affect the residents of the Perimeter Study testing area.

Each communication consisted of a brief two paragraph explanatory letter with multiple attachments. Our review found that the information that was presented, with a couple of exceptions, was factual and supported by valid test evidence. However, we felt that for each introductory letter we reviewed where any substance was found on the property that exceeded the recommended limit for that substance, the factual presentation of that information might create an impression that there was a more serious environmental problem with that property than was suggested when we reviewed the detailed supporting documents. Our impression was that the presentation of the factual information could have been accompanied by language more easily understood by residents who were unlikely to have the scientific background to understand the implications of the factual information being presented. Such language could have qualified the extent of the problem and indicated what the effect of the problem would likely be and what corrective action would likely be necessary. To the extent that this information was unknown, the communication could have stated that such information was unknown. Subsequent letters sent out by DEP on November 28, 2005, did not appear to appreciably improve this situation.

We wish to emphasize again that we do not have a scientific background that can allow us to reach any supported conclusions regarding what the factual information presented means in terms of what remediation will be required. What we are trying to point out is that the communications from LEA and the DEP did not provide sufficient information for residents to understand the extent of the problem and what remediation was likely to be necessary. In summary, we found the communications might not be useful to the residents of the area, and could produce anxiety in any resident who received this type of report. The Commissioner of DEP has shown her sensitivity to the residents concerns in this area by sending a letter dated March 2, 2006, to the residents indicating her intention to investigate what she considered to be serious questions that had been raised about the way in which the soils investigation of the Prospect Hill area was conducted and the concerns about the conclusions that DEP has drawn from that data.

**The Commissioner of DEP Indicated Her Concern for These Problems:**

Commissioner Gina McCarthy, in her letter dated March 2, 2006, to property owners in the Prospect Hill area, addresses the confusion and misunderstanding that has resulted from the Department's letter of November 28, 2005, and acknowledges and responds to concerns that some residents have raised concerning the soil sampling and reporting conducted by the DEP contractor, Loureiro Engineering Associates, Inc. (LEA). She indicates that serious questions have been raised about the way in which the soil investigations of the Prospect Hill area was conducted and the conclusions that DEP has drawn from that data. She further stated that "As a result, DEP is launching a more detailed evaluation of the sampling investigation reports. The evaluation will take into consideration all the comments and concerns of area residents . . ." She further provided some clarification in that while the DEP letter of November 28, 2005, offered to conduct remediation on some properties, no determination has been made that remediation is warranted and that the DEP is aware that in some instances residents received letters conveying incorrect information about their property. She states that she regrets these mistakes very much and will take all necessary actions to correct them. She then concluded that at this point no one should conclude on the basis of the soil sampling data reported to date that the Prospect Hill area is now part of the Newhall Street neighborhood clean up effort.

**Most Recent Allegation Made by the Complainants:**

We reviewed the most recent allegation by the complainants which included observation regarding the property at 38 Alling St. The complainants claim that this property "was established in 1862" and that this fact is sufficient to dispute LEA's sampling report that indicated that "fill consisting of slag was identified at two of the three boring locations at this property." The complainants indicate that fill was not used at the time the home was supposedly built. However, we noted that the town of Hamden's property records indicate that the house mentioned by the claimants was built in 1920. If the town records are accurate and if the DEP's information that the filling of the Newhall area started in the late 1800s, as claimed at the Newhall Remediation Project Public Meeting on December 13, 2005, is correct, the complainant's claim regarding this matter does not appear to be supported. Moreover, this assertion by the complainants that the test results were false seems to be based on an implicit assumption that fill could not have been added to the back yard of the residence at some time after the house was built. Although we have no basis for knowing that such an assertion is either true or false, we believe that it is certainly possible that a resident might have wanted fill for a low or marshy spot on the property, or for any number of reasons.

The claimants also suggest that, because a cemetery was established on the same street in 1855, it follows that the nature of all of the land in the immediate area was at such a level that fill could not be added. The claimants characterize LEA's report as stating that the entire area between St Mary Street and Dixwell Avenue lies on a landfill. However, our review of the test results for individual properties in the area show that, for some properties, only a minority of the test borings indicated the presence of fill close to the surface while borings at other properties showed fill at greater depths. Those properties that showed fill at greater depths were closer to the area within the consent area that had previously been determined to have fill at greater depths. This detailed information for individual properties is consistent with LEA'S summary report which states that the depth of fill in this area was less at the western end of the area, where



this property mentioned by the claimants is, and is also consistent with the computer generated topographical maps produced by LEA which purport to tell the probable depth of the fill in the area. More specifically, this map appears to be supported by the results of LEA's test drillings and is consistent with the earlier testing results of the adjacent consent area which were produced by Malcom Pirnie.

We emphasize that we do not have the expertise to reach scientific conclusions regarding the interpretation of these test results in terms of what remediation actions are necessary. To do so would require that we hire our own experts in this area to review the testing already performed by LEA and perhaps expand on that testing. However, based on the evidence we have reviewed, we do not believe such a step is warranted since the laboratory tests were done by independent labs and support the detailed information presented by LEA. Nevertheless, we are recommending that DEP carefully review the results of LEA's testing before deciding on a final course of action, and perform any additional testing that may be required to identify the scope of any needed remediation, as the Commissioner of DEP has already indicated in her letter to the residents will be done.

## **CONCLUSION AND RECOMMENDATIONS**

It appears that the Department of Environmental Protection was justified in extending the testing in the Prospect Hill neighborhood based upon the results of testing right up to the Consent Order boundary. We concluded that errors were made in the reporting of results and in the communication of these results to residents. The Department should have responded to residents concerns in a timely manner and acknowledged the fact that misinformation was disseminated. If they had sent out corrected letters and results in a timely manner maybe the residents concerns would have been alleviated.

Of major concern is that, although the State Bond Commission authorized the expenditures of funds totaling \$2,455,000 for the containment, removal or mitigation of identified hazardous waste disposal sites, the contract and addendum thereto with LEA has only been approved for expenditures totaling \$1,177,804. Our review disclosed that LEA has invoiced DEP in the amount of \$1,641,241 for work that has already been completed. See Recommendation 6.

It should also be noted that the Department of Environmental Protection is conducting its own internal review of these complaints. As this review is still ongoing, no conclusions have yet been reached by the Department.

As a result of this review, we are making the following recommendations to the Department of Environmental Protection.

1. DEP should review the contents of all of the letters sent by LEA to the residents of the Newhall Perimeter Area to ensure that none of the other letters contained information that was not supported by the scientific results of the testing.
2. DEP should review and assess the contents and the usefulness of any communications regarding the results of testing, the interpretation of the impact of those results on the residents, and any proposed remediation efforts before such communications are published, either by direct mailings to residents, or through other methods of communication.
3. DEP should expeditiously review the results of the testing and come to a conclusion regarding what remediation action the DEP recommends should be taken. Even as we recommend this, we recognize that there may be disagreement among the concerned parties regarding what should be done. Nonetheless, DEP should quickly analyze the specific testing results and inform those residents whose homes may require additional testing in order to determine if any remediation should be done. DEP should immediately inform any residents, if they have not already been informed, that it has already been determined that their properties do not contain pollution that needs remediation.
4. DEP should always use competitive negotiation to procure non-emergency remediation services by sending requests for proposals to all companies that have been pre-qualified to perform such services.

5. We recommend that DEP ensure that the expenditures to determine whether contamination existed outside of the Consent Order boundaries are charged to an appropriate funding source.
6. Contractors providing services to the DEP should not be allowed to hire its subsidiaries as sub-contractors. The DEP should hire companies providing contractual services directly rather than allowing DEP's remediation contractors to subcontract such services.
7. DEP should not allow its contractors to expend or commit funds without first obtaining prior written authorization to do so.

Edward C. Wilmot  
Principal Auditor

Approved:

Kevin P. Johnston  
Auditor of Public Accounts

Robert G. Jaekle  
Auditor of Public Accounts



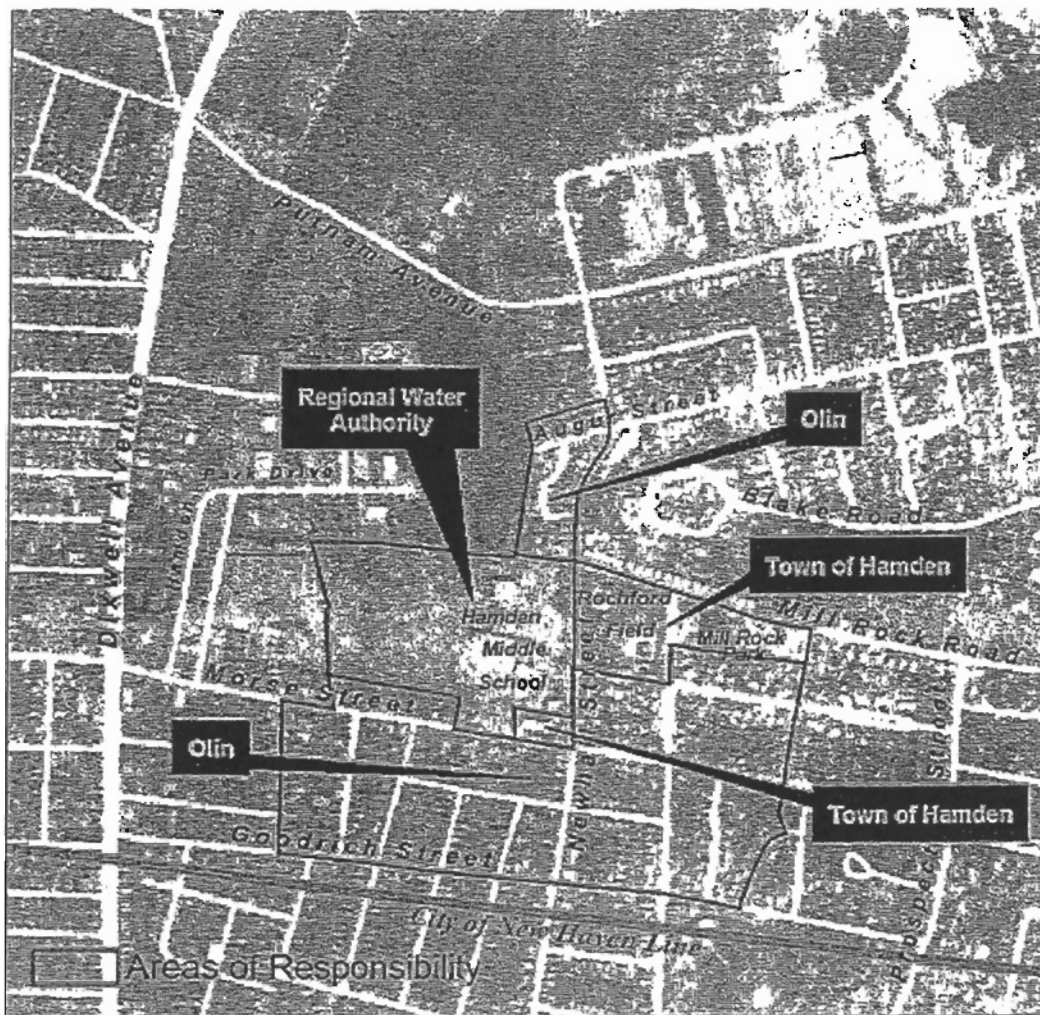


EXHIBIT B

4.2 Sub-surface Investigation

B = Both Emergency and Scheduled Response

S = Scheduled Response Only

1. AARON ENVIRONMENTAL (S)
2. ADVANCED ENVIRONMENTAL (S)
3. ANCHOR ENGINEERING SERVICES (S)
4. APEX ENVIRONMENTAL (S)
5. CLEAN HARBORS ENVIRONMENTAL SERVICES (B)
6. CONNECTICUT TANK REMOVAL (B)
7. CONSULTING ENVIRONMENTAL ENGINEERS, INC. (S)
8. DIVERSIFIED ENVIRONMENTAL SERVICES, INC. (S)
9. DIVERSIFIED TECHNOLOGY CONSULTANTS (S)
10. EARTH TECHNOLOGIES, INC. (B)
11. ECS MARIN (B)
12. ENPRO SERVICES, INC. (B)
13. ENVIROMED SERVICES, INC. (S)
14. ENVIRONMENTAL SERVICES, INC. (B)
15. ENVIROSHIELD, INC. (B)
16. FACILITY SUPPORT SERVICES, LLC (S)
17. FLEET ENVIRONMENTAL SERVICES (B)
18. FUSS & O'NEILL (B)
19. GZA ENVIRONMENTAL (S)
20. HALEY & ALDRICH (S)
21. HANDEX OF CONNECTICUT (B)
22. HERBERT RECOVERY SYSTEMS, INC. (B)
23. LFR d/b/a LEVINE FRICKE (B)
24. LINCOLN ENVIRONMENTAL, INC. (B)
25. LOUREIRO ENGINEERING (B)
26. MALCOLM PIRNIE, INC. (S)
27. METCALF & EDDY, INC. (B)
28. MILLER ENVIRONMENTAL GROUP (B)
29. OASIS ENVIRONMENTAL CONTRACTING (B)
30. SCIENTECH, INC. (S)
31. SHAW ENVIRONMENTAL (S)
32. SHIRE CORP. (B)
33. SMC ENVIRONMENTAL (B)
34. SOVEREIGN CONSULTING, INC. (B)
35. TIGHE & BOND, INC. (B)
36. TRI-S ENVIRONMENTAL SERVICES (B)

4.3 Sub-surface Cleanup

B = Both Emergency and Scheduled Response

S = Scheduled Response Only

1. AARON ENVIRONMENTAL SERVICES, INC. (S)
2. ADVANCED ENVIRONMENTAL (S)
3. ANCHOR ENGINEERING SERVICES (S)
4. APEX ENVIRONMENTAL (S)
5. CLEAN HARBORS ENVIRONMENTAL SERVICES (B)
6. CONNECTICUT TANK REMOVAL (B)
7. CONSULTING ENVIRONMENTAL ENGINEERS, INC. (S)
8. DIVERSIFIED ENVIRONMENTAL SERVICES, INC. (S)
9. EARTH TECHNOLOGIES, INC. (B)
10. ECS MARIN (B)
11. ENPRO SERVICES, INC. (B)
12. ENVIROMED SERVICES, INC. (S)
13. ENVIRONMENTAL MAINTENANCE SERVICES (B) > ~ ~
14. ENVIRONMENTAL REMEDIATION SERVICES (B)
15. ENVIRONMENTAL SERVICES, INC. (B)
16. ENVIROSHIELD, INC. (B)
17. FACILITY SUPPORT SERVICES, LLC (S)
18. FLEET ENVIRONMENTAL SERVICES (B)
19. FUSS & O'NEILL (B)
20. GZA ENVIRONMENTAL (S)
21. HALEY & ALDRICH (S)
22. HANDEX OF CONNECTICUT (B)
23. HERBERT RECOVERY SYSTEMS, INC. (B)
24. LFR d/b/a LEVINE FRICKE (B)
25. LINCOLN ENVIRONMENTAL, INC. (B)
26. LOUREIRO ENGINEERING (B)
27. MALCOLM PIRNIE, INC. (S)
28. METCALF & EDDY, INC. (B)
29. MILLER ENVIRONMENTAL GROUP (B)
30. OASIS ENVIRONMENTAL CONTRACTING (B)
31. SCIENTECH, INC. (S)
32. SHAW ENVIRONMENTAL (S)
33. SHIRE CORP. (B)
34. SMC ENVIRONMENTAL (B)
35. SOVEREIGN CONSULTING, INC. (B)
36. TRI-S ENVIRONMENTAL SERVICES (B)





STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



TO: All Staff  
FROM: Gina McCarthy, Commissioner  
RE: Delegation of Authority  
DATE: December 10, 2004

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DELEGATION OF AUTHORITY

The purpose of this memorandum is to identify, as comprehensively as practicable and in a single document, those powers statutorily vested in me that I am delegating to the Department's management and staff. This delegation in no way limits my authority to personally exercise such powers; moreover, I may at any time revoke or amend this delegation. In addition, any power not specifically delegated may be exercised only by the Commissioner.

Accordingly, I hereby revoke all delegations of authority made prior to this date to any deputy commissioner, bureau chief, director, or other department employee, and pursuant to Conn. Gen. Stat. § 22a-2, I hereby delegate my statutory powers, including but not limited to, any delegation of authority in specific cases, in the manner set forth in the October 30, 1997 delegation of authority from former Commissioner Arthur J. Rocque, Jr., including all modifications and additions to that delegation authorized by former Commissioner Arthur J. Rocque, Jr..

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EXHIBIT E





STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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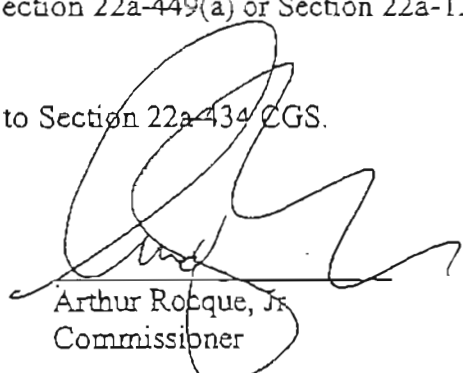
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Delegation of Authority

Pursuant to Connecticut General Statutes 22a-2, I hereby amend the Delegation of Authority issued October 23, 1997 as follows, for actions under the jurisdiction of the Director of Planning and Standards in the Bureau of Waste Management.

1. Approvals under Section 22a-133k1 through 2 RCSA, for the following: variances from the Remediation Standards, alternative criteria, criteria for additional polluting substances, alternate methods for determining compliance, and approvals for reuse of polluted soil.
2. Releases of Environmental Land Use Restrictions that are not required to be recorded on the land records.
3. Approvals of reports, studies, investigations, plans, specifications, schedules or other proposals for actions.
4. Decisions to either retain within the Department, or defer to a Licensed Environmental Professional. Oversight of investigations and remedial decisions under Sections 22a-133v, 22a-133w, 22a-133x, 22a-133y and 22a-134 et seq CGS.
5. Selection of contractors from the State Master Contract for Services and the Spill Contract to perform actions pursuant to Section 22a-449(a) or Section 22a-133e, CGS.
6. Issue certificates of compliance pursuant to Section 22a-434 CGS.

May 6, 2003  
Date

  
Arthur Roque, Jr.  
Commissioner



pursuant to Conn. Gen. Stat. §22a-6k(b); issue variances, including variances under R.C.S.A. §22a-209-11; sign contracts and agreements between the Department and any person, including agreements with federal agencies under Conn. Gen. Stat. §22a-96, contracts with consultants, and grants and loans under Conn. Gen. Stat. §§22a-217 through 22a-219b, 22a-471, 22a-477k, 22a-478, 22a-27k, 22a-271, 22a-112, and 22a-113a; approve consultants and other contractors to be employed or retained by the Department; approve requests for travel authorization, subject to approval by appropriate authorities; sign vouchers relating to travel by Department employees; authorize the use of funds under Conn. Gen. Stat. §22a-430; approve appraisers and other contractors to be employed or retained by the Department in connection with acquisitions of land or interests in land; authorize lease agreements under Conn. Gen. Stat. Chapter 447; appoint conservation officers under Conn. Gen. Stat. §26-5; declare closed and open seasons under Conn. Gen. Stat. Chapter 490; authorize the disposal of vessels under Conn. Gen. Stat. §15-11a; issue boating safety certificates under Conn. Gen. Stat. Chapter 268; disapprove municipal ordinances under Conn. Gen. Stat. §15-136; make declaratory rulings and issue orders and make referrals to the Attorney General's office to enforce any statute, regulation, permit, or order administered or issued by me.

## II

### Office of Adjudications

To the Director of the Office of Adjudications, the adjudicators under his supervision, and their successors, I hereby delegate, subject to any procedures I may require, the authority to:

- a. Conduct hearings and associated proceedings in accordance with the Department's Rules of Practice, R.C.S.A. §§22a-3a-2 et seq.
- b. Render proposed final decisions, pursuant to Conn. Gen. Stat. §4-179, in contested cases concerning license applications.
- c. ~~Subject to my approval, render final decisions, pursuant to Conn. Gen. Stat. §4-180, in contested cases concerning enforcement actions.~~ See 12-5/99, 8/29/2000
- d. Approve requests for compensatory time by employees of the Office of Adjudications.

III.

Office of Communications and Education

To the Director of the Office of Communications and Education, and her successors, I hereby delegate, subject to any procedures I may require, the authority to:

- a. Serve as primary liaison between the Department and the media.
- b. Authorize uses of the Department's official logo.

IV.

Office of Environmental Review

To the Staff of the Office of Environmental Review, and their successors, I hereby delegate, subject to any procedures I may require, the authority to:

- a. Submit comments on the Commissioner's behalf to the Connecticut Siting Council established under Conn. Gen. Stat. § 16-50j.
- b. Submit comments to state agencies on the Commissioner's behalf under the Connecticut Environmental Policy Act, Conn. Gen. Stat. Chapter 439, Part 1, and to federal agencies on the Commissioner's behalf under the National Environmental Policy Act, 42 U.S.C. §§4331 et seq.

V.

Office of Long Island Sound Programs

Director of the Office of Long Island Sound Programs. To the Director of the Office of Long Island Sound Programs, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. §§22a-28 through 22a-35, 22a-359 through 22a-363f, 22a-383 through 22a-387, and Chapter 444, and subject to any procedures I may require, the authority to:

- ✓ a. Issue notices of violation.
- b. Issue rejections for insufficiency under R.C.S.A. §22a-3a-2(e).
- ✓ c. With his or her staff, appear on my behalf, pursuant to Conn. Gen. Stat. §22a-110.

before a municipal board or commission.

- ✓ d. Approve municipal harbor management plans pursuant to Conn. Gen. Stat. §22a-113m.
- ✓ e. Approve requests for compensatory time and overtime pay by employees of the Office of Long Island Sound programs.
- ✓ f. With respect to Conn. Gen. Stat. §§22a-32 through 22a-35 and 22a-359 through 22a-363f, issue newspaper notices, notices to public officials, and other public notices required by law, including notices of license applications, but excepting notice of proposed regulations under Conn. Gen. Stat. §4-168.
- ✓ g. Issue tentative determinations on license applications under Conn. Gen. Stat. §22a-6b.
- ✓ h. Subject to the concurrence of the Commissioner's counsel, render advice as to whether a license is required by law, except when such advice constitutes a declaratory ruling under Conn. Gen. Stat. §4-176.
- ✓ i. Issue certificates of permission pursuant to Conn. Gen. Stat. §22a-363b.
- j. Exercise any authority delegated to the Assistant Director of the Office of Long Island Sound Programs.

Assistant Director of the Office of Long Island Sound Programs. To the Assistant Director of the Office of Long Island Sound Programs, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. §§22a-28 through 22a-35, 22a-359 through 22a-363f, 22a-383 through 22a-387, and Chapter 444, and subject to any procedures I may require, the authority to:

- a. Except as otherwise provided herein, approve documents and actions submitted or taken pursuant to orders or licenses.
- b. Issue notices of insufficiency under R.C.S.A. §22a-3a-5(c)(3).
- c. Pursuant to Conn. Gen. Stat. §22a-363b(c), require permit applications and notify applicants of ineligibility for a certificate of permission.

## VI.

### Bureau of Administration

To the Chief of the Bureau of Administration and his successors, I hereby delegate, subject to any procedures I may require, the authority to:

- a. Subject to my approval, authorize the hiring, promotion, and reassignment of Department personnel.
- b. Represent the Commissioner in labor negotiations and disputes.
- c. In connection with financial services: authorize allotments; sign bank drafts; represent the Commissioner before the Bond Commission concerning requests for bond authorizations signed by the Commissioner; authorize personal services agreements and agreements with other agencies; authorize federal letters of credit and wire transfers of funds; approve requests for travel and overtime pay in the Bureau of Administration, subject to approval by appropriate authorities; approve requests for compensatory time by employees of the Bureau of Administration.
- d. Authorize procurement of materials and maintenance services.
- e. Authorize lease agreements.

## VII

### Bureau of Waste Management

Chief of the Bureau of Waste Management. To the Chief of the Bureau of Waste Management and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapters 446d, 446e, and those provisions of Chapter 445 administered by the Bureau, subject to any procedures I may require, the authority to:

- a. Approve closure plans for facilities regulated under the Department's hazardous waste and solid waste regulations.
- b. Approve requests for compensatory time and overtime pay by employees of the Waste Management Bureau.
- c. Issue newspaper notices, notices to public officials, and other public notices required by law, including public notices of license applications, but excepting notices of proposed regulations under Conn. Gen. Stat. §4-168.
- d. Issue or deny permits under Conn. Gen. Stat. §22a-454 to persons acting as contractors to contain, remove, or otherwise mitigate the effects of spillages, discharges, or other losses of substances regulated under such section.
- e. Approve assignments under R.C.S.A. §22a-209-13(h) of a property owner's postclosure maintenance and monitoring responsibilities to another person.

- f. Approve contracts under Conn. Gen. Stat. §22a-213 for solid waste management.
- g. Issue notices to designees under R.C.S.A. §§22a-2a-1(b)(4) and 22a-2a-2(b) describing actions to be taken to abate a violation.
- h. Issue written reports to chief elected officials under Conn. Gen. Stat. §22a-285j.
- i. Issue tentative determinations on license applications under Conn. Gen. Stat. §22a-6h.
- j. Subject to the concurrence of the Commissioner's counsel, render advice as to whether a license is required by law, except when such advice constitutes a declaratory ruling under Conn. Gen. Stat. §4-176.
- k. Issue or deny certificates of registration pursuant to Conn. Gen. Stat. §22a-66c, pesticides use permits pursuant to Conn. Gen. Stat. §22a-66z, pesticide registrations pursuant to Conn. Gen. Stat. §22a-49, and experimental pesticide use permits pursuant to Conn. Gen. Stat. §22a-51.
- l. Exercise any powers or authority delegated to the Director and Assistant Director of the Pesticides, PCBs, Underground Storage Tanks, and Marine Terminals Division, to the Director of the Oil and Chemical Spills Division, and to the Director and Assistant Director of the Waste Engineering and Enforcement Division.

Director of Pesticides, PCBs, Underground Storage Tanks, and Marine Terminals Division. To the Director of the Bureau of Waste Management's Pesticides, PCBs, Underground Storage Tanks, and Marine Terminals Division, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapter 441 and those provisions of Chapter 446k which are administered by such Division, and subject to any procedures I may require, the authority to:

- a. Except as otherwise provided herein, approve documents and other actions submitted or taken pursuant to order or licenses.
- b. Issue notices of violation.
- c. Issue rejections for insufficiency under R.C.S.A. §22a-3a-2(e).
- d. Certify pesticide applicators and issue permits for aircraft application of pesticides under Conn. Gen. Stat. §22a-54.
- e. Grant or deny requests for authorization to conduct activities regulated by a general permit.
- f. Exercise any authority delegated to the Assistant Director of the Pesticides, PCBs,

- SEE ALSO 3/11/02 DELEGATION

Underground Storage Tanks, and Marine Terminals Division.

Director of Waste Engineering and Enforcement Division. To the Director of the Bureau of Waste Management's Engineering and Enforcement Division, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapter 446d and 446e, and subject to any procedures I may require, the authority to:

- a. Except as otherwise provided herein, approve documents and other actions submitted or taken pursuant to order or licenses.
- b. Issue notices of violation.
- c. Issue rejections for insufficiency under R.C.S.A. §22a-3a-2(e).
- d. Approve under Conn. Gen. Stat. §22a-134m days for collection and disposal of household hazardous chemicals.
- e. Grant or deny requests for authorization to conduct activities regulated by a general permit.
- f. Issue certificates of compliance or revocation under Conn. Gen. Stat. §22a-225(e).
- g. Certify solid waste facility operators under R.C.S.A. §22a-209-6.
- h. Exercise any power or authority delegated to the Assistant Director of the Waste Engineering and Enforcement Division.

Director of Oil and Chemical Spills Division. To the Director of the Bureau of Waste Management's Oil and Chemical Spills Division, and his successors, I hereby delegate, with respect to those provisions of Conn. Gen. Stat. Chapter 445 and 446k which are administered by such Division, and subject to any procedures I may require, the authority to:

- a. Select contractors from the State Master Contract for Services to perform actions pursuant to Conn. Gen. Stat. §22a-449(a).

Assistant Director of Pesticides, PCBs, Underground Storage Tanks, and Marine Terminals Division. To the Assistant Director of the Bureau of Waste Management's Pesticides, PCBs, Underground Storage Tanks, and Marine Terminals Division, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapter 441 and those provisions of Chapter 446k which are administered by such Division, and subject to any procedures I may require, the authority to:

- a. Issue notices of insufficiency under R.C.S.A. §22a-3a-5(c)(3).



Assistant Director of Waste Engineering and Enforcement Division. To the Assistant Director of the Bureau of Waste Management's Engineering and Enforcement Division, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapter 446d and 446e, and subject to any procedures I may require, the authority to:

- a. Issue notices of insufficiency under R.C.S.A. §22a-3a-5(c)(3).

## VIII

### Bureau of Air Management

Chief of the Bureau of Air Management. To the Chief of the Bureau of Air Management and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapters 446a and 446c, subject to any procedures I may require, the authority to:

- a. Issue or deny certificates for burning pursuant to R.C.S.A. §22a-174-17(b)(3).
- ✓ b. Approve requests for compensatory time and overtime pay by employees of the Air Management Bureau.
- ✓ c. Issue newspaper notices, notices to public officials, and other public notices required by law, including public notices of license applications, but excluding notices of proposed regulations under Conn Gen. Stat. §4-168.
- ✓ d. Subject to the concurrence of the Commissioner's counsel, render advice as to whether a license is required by law, except when such advice constitutes a declaratory ruling under Conn. Gen. Stat. §4-176.
- ✓ e. Certify under Conn. Gen. Stat. § 12-81(52) that structures and equipment are used primarily for the purpose of reducing, controlling, or eliminating air pollution.
- ✓ f. Approve municipal noise ordinances under Conn. Gen. Stat. §22a-73(c).
- g. Issue notices to designees under R. C. S.A. § 22a-2a-1(b)(4) and 22a-2a-2(b) describing actions to be taken to abate a violation.
- h. Issue tentative determinations on license applications under Conn. Gen. Stat. §22a-6h.
- i. Exercise any authority delegated to the Director and Assistant Director of the Air Engineering and Enforcement Division and the Director of the Monitoring and Radiation Division.

Director of Air Engineering and Enforcement Division. To the Director of the Bureau of Air Management's Engineering and Enforcement Division, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapter 446c, and subject to any procedures I may require, the authority to:

- a. Except as otherwise provided herein, approve documents and actions submitted or taken pursuant to orders or licenses.
- b. Issue notices of completeness of applications under R.C.S.A. §22a-174-3(d)(2).
- c. Issue certificates of compliance and revocation under Conn. Gen. Stat. §22a-178(g).
- d. Issue rejections for insufficiency under R.C.S.A. §22a-3a-2(e).
- e. Grant or deny requests for authorization to conduct activities regulated by a general permit.
- f. Exercise any authority delegated to the Assistant Directors of the Air Engineering and Enforcement Division.
- g. Issue notices of violation.

Director of Monitoring and Radiation Division. To the Director of the Bureau of Air Management's Monitoring and Radiation Division, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapter 446a, and subject to any procedures I may require, the authority to:

- a. Issue notices of violation.
- b. Issue rejections for insufficiency under R.C.S.A. §22a-3a-2(e) and notices of insufficiency under R.C.S.A. §22a-3a-5(c)(3).
- c. Give security clearances for Department staff to utility companies.
- d. Render advice to persons regulated under Conn. Gen. Stat. §22a-148 on the need to register sources.
- e. Request commitments from private companies to assist during nuclear emergencies.
- f. Comment on engineering or shielding plans submitted by persons regulated under Conn. Gen. Stat. §§22a-148 or 22a-150.

g. Submit Department radiation monitoring data to the U.S. Nuclear Regulatory Commission.

Assistant Director of Air Engineering and Enforcement Division. To the Assistant Director of the Bureau of Air Management's Engineering and Enforcement Division, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapter 446c, and subject to any procedures I may require, the authority to:

- a. Issue notices of insufficiency under R.C.S.A. §22a-3a-5(c)(3).

## IX.

### Bureau of Water Management

Chief of the Bureau of Water Management. To the Chief of the Bureau of Water Management, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapters 446i, Part I, 446j, and 446k, and those provisions of Chapter 445 which are administered by such Bureau, and subject to any procedures I may require, the authority to:

☒ Approve requests for compensatory time and overtime pay by employees of the Water Management Bureau.

☒ Issue newspaper notices, notices to public officials, and other public notices required by law, including public notices of license applications, but excepting notices of proposed regulations under Conn. Gen. Stat. §4-168.

c. Maintain under Conn. Gen. Stat. §22a-478(a) a priority list of eligible water quality projects.

d. Identify under §208(a)(2) of the Federal Clean Water Act areas with substantial water quality control problems.

e. Approve under R.C.S.A. §22a-39-11.7 the adoption of municipal inland wetlands regulations.

f. Certify under Conn. Gen. Stat. § 12-81(51) that structures and equipment are used primarily for the purpose of reducing, controlling, or eliminating water pollution.

g. Issue certificates of approval under Conn. Gen. Stat. §22a-405.

h. Issue notice to designees under R.C.S.A. §§~~22a-2a-1~~(b)(4) and ~~22a-2a-2~~(b) describing actions to be taken to abate a violation or source of pollution.

i. Approve municipal floodplain ordinances pursuant to contract between the Federal Emergency Management Agency and the Connecticut Office of Emergency Preparedness ("Community Assistance Program").

☒ j. Issue tentative determinations on license applications under Conn. Gen. Stat. §22a-6h.

☒ k. Subject to the concurrence of the Commissioner's counsel, render advice as to whether a license is required by law, except when such advice constitutes a declaratory ruling under Conn. Gen. Stat. §4-176.

☒ l. Exercise any authority delegated to the Director and Assistant Director of Water Permitting, Enforcement and Remediation Division, the Director and Assistant Directors of the Inland Water Resources Management Division, and the Director of the Water Planning and Standards Division.

Director of Water Permitting, Enforcement, and Remediation Division. To the Director of the Bureau of Water Management's Water Permitting, Enforcement, and Remediation Division, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapter 446k, and those provisions of Chapter 445 which are administered by such Division, and subject to any procedures I may require, the authority to:

a. Except as otherwise provided herein, approve documents and actions submitted or taken pursuant to orders or licenses.

b. Issue notices of violation.

☒ c. Issue rejections for insufficiency under R.C.S.A. §22a-3a-2(e).

☒ d. Approve plans and specifications for remedial actions under Conn. Gen. Stat. §22a-451.

☒ e. Select contractors from the State Master Contract for Services to perform actions pursuant to Conn. Gen. Stat. §22a-449(a).

f. Issue certificates of compliance under Conn. Gen. Stat. §22a-434.

☒ g. Issue certificates of water treatment plant operator competency under R.C.S.A. §22a-416-7.

h. Grant or deny requests for authorization to conduct activities regulated by a general permit.

i. Exercise any authority delegated to the Assistant Director of Water Permitting.

Enforcement, and Remediation Division.

Director of Inland Water Resources Management Division. To the Director of the Bureau of Water Management's Inland Water Resources Management Division, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. §§22a-36 through 22a-45, Chapters 446i (Part I) and 446j, and those provisions of Chapter 446k which are administered by such Division, and subject to any procedures I may require, the authority to:

- a. Except as otherwise provided herein, approve documents and actions submitted or taken pursuant to orders or licenses.
- b. Issue notices of violation.
- c. Issue rejections for insufficiency under R.C.S.A. §22a-3a-2(e).
- d. Issue certificates of registration under R.C.S.A. §22a-409-1(d).
- 2. e. Issue notices under R.C.S.A. §22a-402-2 of need for maintenance or an engineering study.
- ✓ f. Approve state agency certifications under Conn. Gen. Stat. §25-68d.
- ✓ g. Grant or deny requests for authorization to conduct activities regulated by a general permit.
- ✓ h. Issue notices of completeness of diversion applications under Conn. Gen. Stat. §22a-371.
- i. Exercise any authority delegated to the Assistant Director of the Inland Water Resources Management Division.

Director of Water Planning and Standards Division. To the Director of the Bureau of Water Management's Water Planning and Standards Division, and his successors, I hereby delegate, subject to any procedures I may require, the authority to:

- a. Approve water supply plans pursuant to Conn. Gen. Stat. §25-32d.

Assistant Director of Water Permitting, Enforcement, and Remediation Division. To the Assistant Director of the Bureau of Water Management's Permitting, Enforcement, and Remediation Division, and his successors, I hereby delegate, with respect to Conn. Gen. Stat. 446k and subject to any procedures I may require, the authority to:

- a. Issue notices of insufficiency under R.C.S.A. §22a-3a-5(c)(3).

Assistant Directors of Inland Water Resources Management Division. To the Assistant Directors of the Bureau of Water Management's Inland Water Resources Management Division, and their successors, I hereby delegate, with respect to Conn. Gen. Stat. §§22a-36 through 22a-45, Chapters 446i (Part I) and 446j, and those provisions of Chapter 446k which are administered by such Division, and subject to any procedures I may require, the authority to:

- a. Issue notices of insufficiency under R.C.S.A. §22a-3a-5(c)(3).

X

Bureau of Natural Resources

Chief of the Bureau of Natural Resources. To the Chief of the Bureau of Natural Resources and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapters 490, 494, and 495, and subject to any procedures I may require, the authority to:

- ✓ a. Approve requests for compensatory time and overtime pay by employees of the Bureau of Natural Resources.
- ✓ b. Issue newspaper notices, notices to public officials, and other public notices required by law, including public notices of license applications, but excepting notices of proposed regulations under Conn. Gen. Stat. §4-168.
- ✓ c. Subject to the concurrence of the Commissioner's counsel, render advice as to whether a license is required by law, except when such advice constitutes a declaratory ruling under Conn. Gen. Stat. §4-176.
- ✓ d. Issue or deny certificates of completion in accordance with Conn. Gen. Stat. §26-31.
- e. Issue or deny the following licenses: Licenses to hunt, fish, and trap pursuant to Conn. Gen. Stat. §26-27; licenses to conduct hunting or fishing guide services pursuant to Conn. Gen. Stat. §26-31b; licenses to hunt with dog packs pursuant to Conn. Gen. Stat. §26-39; game breeders' licenses pursuant to Conn. Gen. Stat. §26-40; permits to transfer, sell, or deliver threatened and endangered species pursuant to Conn. Gen. Stat. §26-40d; licenses for dealers in raw fur pursuant to Conn. Gen. Stat. §26-42; licenses for bait dealers pursuant to Conn. Gen. Stat. §26-45; licenses to take wildlife for crop damage control and license for nuisance wildlife control pursuant to Conn. Gen. Stat. §26-47; permits for private shooting preserves pursuant to Conn. Gen. Stat. §26-48; permits for management of salmon, pheasant, and turkey pursuant to Conn. Gen. Stat. §26-48a; permits for liberation of artificially propagated birds pursuant to Conn. Gen. Stat. §26-49; permits for field dog trials pursuant to Conn. Gen. Stat. §26-51; permits for shooting birds at field dog trials pursuant to Conn. Gen. Stat. §26-52; custodian permits pursuant

to Conn. Gen. Stat. §26-54; permits to import, possess, or liberate wild fish, birds, quadrupeds, amphibians, and reptiles pursuant to Conn. Gen. Stat. §26-55; wild hare and rabbit importation permits pursuant to Conn. Gen. Stat. §26-56; transportation and exportation permits pursuant to Conn. Gen. Stat. §26-57; taxidermists' licenses pursuant to Conn. Gen. Stat. §26-58; mounting permits pursuant to Conn. Gen. Stat. §26-59; and permits to collect wildlife for scientific and educational purposes pursuant to Conn. Gen. Stat. §26-60; provided that such Bureau Chief may not issue complimentary hunting and fishing licenses to nonresidents pursuant to Conn. Gen. Stat. §26-33.

f. Exercise any authority delegated to the Director of the Fisheries Division, to the Director of the Wildlife Division, and to the State Forester.

Director of Fisheries Division. To the Director of the Bureau of Natural Resources' Fisheries Division, and his successors, I hereby delegate, with respect to Chapters 490, 493, and 494, and subject to any procedures I may require, the authority to:

- a. Issue rejections for insufficiency under R.C.S.A. §22a-3a-2(e) and notices of insufficiency under R.C.S.A. §22a-3a-5(c).
- ✓ b. Represent the State on the Atlantic States Marine Fisheries Compact pursuant to Conn. Gen. Stat. §26-295.
- ✓ c. Represent the State on the Connecticut River Atlantic Salmon Compact pursuant to Conn. Gen. Stat. §26-302.

✓ State Forester. To the State Forester in the Bureau of Natural Resources, and his successors, I hereby delegate, subject to any procedures I may require, the authority to:

- a. Issue or deny applications for forester certification, supervising forest products harvester certification, and forest products harvester certification pursuant to Conn. Gen. Stat. §§23-65h(c)(1) through (6).

## XI.

### Bureau of Outdoor Recreation

Chief of the Bureau of Outdoor Recreation. To the Chief of the Bureau of Outdoor Recreation and his successors, I hereby delegate, with respect to Conn. Gen. Stat. Chapter 268 and those provisions of Title 23 administered by such Bureau, subject to any procedures I may require, the authority to:

✓ Approve requests for compensatory time and overtime pay by employees of the Bureau of Outdoor Recreation.

✓ Issue newspaper notices, notice to public officials, and other public notices required by law, including public notices of license applications, but excepting notices of proposed regulations under Conn. Gen. Stat. §4-168.

✓ Subject to the concurrence of the Commissioner's counsel, render advice as to whether a license is required by law, except when such advice constitutes a declaratory ruling under Conn. Gen. Stat. §4-176.

✓d. Accept animals by purchase or gift for exhibition in state parks in accordance with Conn. Gen. Stat. §23-13.

✓e. Designate state property on which possession or drinking of alcoholic beverages is prohibited pursuant to R. C. S.A. §23-41(e)(1).

✓f. Approve the use of state property for no more than 30 days by vendors and concessionaires pursuant to §23-41(h).

✓g. Submit applications for municipal and other official authorizations required for the Department's conduct of activities on state property.

✓h. Exercise any authority delegated to the Director of the Field Services and Boating Division and to the Director of the Land Acquisition and Property Management Division.

Director of Field Services and Boating Division. To the Director of the Bureau of Outdoor Recreation's Field Services and Boating Division, and his successors, I hereby delegate, subject to any procedures I may require, the authority to:

a. Issue or deny boating safety certificates in accordance with Conn. Gen. Stat. §15-140c, as amended.

b. Issue or deny certificates of personal watercraft operation in accordance with Conn. Gen. Stat. §15-140f.

Director of Land Acquisition and Property Management Division. To the Director of the Bureau of Outdoor Recreation's Division of Land Acquisition and Property Management Division, and his successors, I hereby delegate, with respect to Titles 23 and 26 and subject to any procedures I may require, the authority to:

a. Serve as the primary liaison between the Department and the National Park Service in connection with distribution of monies from the federal Land and Water Conservation



Fund, provided such director may not sign agreements or contracts relating thereto.

b. Negotiate with respect to land acquisitions by the Department, provided such director may not sign agreements or contracts relating thereto.

c. Serve as the primary liaison with cooperatives under the Recreational and Natural Heritage Trust Fund.

## XII.

### Other Functions

Inspections, preparation and signing of correspondence, memoranda, inspection reports, and other routine administrative activities may be undertaken by appropriate Department employees, as determined by the Department's managers.

the Commissioner of DEP, the written authorization of the Commissioner granting such extension and all such approvals are attached to or accompany each request for reimbursement.

5.5.1.5. All of the provisions of this Bid and Contract, except for those relating to the rates of reimbursement, shall apply to all of the response activities performed by a contractor under an authorization by the DEP Official pursuant to section 5.5.1. above.

5.5.2. When the Commissioner of DEP, in his sole discretion, has determined that any of the conditions specified in section 5.5.(1) or 5.5.(2) of this Bid and Contract exist, he may request that at least two or more contractors submit to the DEP for its review and approval, a written proposal for providing whatever response activities the Commissioner deems necessary. \*

Each written proposal submitted by a contractor shall include the following:

- (a) a description of the position(s) a contractor would employ to provide the requested response activities and the hourly or other rate a contractor would charge, stated separately, for each position;
- (b) a description of each piece of equipment a contractor would use to provide the requested response activities, the hourly, daily, weekly and monthly or other rate a contractor would charge for such equipment and the fair market value of all such equipment;
- (c) if special equipment is being designed and/or configured for a site, the specifications, design criteria and/or performance standards for any such equipment;
- (d) a description of all the materials a contractor would use to provide the requested response activities and the unit or other price a contractor would charge for such materials;
- (e) a description of any other item or cost, not listed above in section 5.5.2.(a) through 5.5.2.(d), that a contractor would use or charge for to provide the requested response activities, an explanation of why such items or costs are necessary and the rate or price a contractor would charge, stated separately, for each item or cost;
- (f) an estimate of how long a contractor will be able to provide the requested response activities, including a starting date. This estimate should also note any days when the requested response activities cannot be provided and all foreseeable difficulties a contractor may have in providing the requested response activities;
- (g) whether a contractor, at the time of submitting its proposal, provides similar services, equipment or materials to any other agency of the State, and if so, a contractor shall indicate the contract award number for the contract, the State agency involved, the labor, equipment and/or materials provided and the rates or price for such labor, equipment and/or materials;
- (h) an estimate of the total costs of all labor, equipment, materials and other items or costs, to the extent that such an estimate can be made;
- (i) any other information a contractor deems necessary or believes would be helpful to the DEP in evaluating its proposal; and
- (j) any other information requested by the DEP.

When considering any proposal submitted by a contractor pursuant to this provision, the Commissioner of DEP may request that certain modifications be made, including but not limited to, changes in price, or that additional information be provided. The Commissioner, in his sole discretion, may determine when a proposal is complete or incomplete. After review, the

The rates for materials in Attachment A shall apply only for the first thirty (30) days a contractor provides services to the DEP at a site beginning on the day the DEP first requests that a contractor provide services at a site. If at the end of this thirty (30) day period the Commissioner, in his sole discretion, determines that continuing response activities at a site are necessary, the Commissioner may authorize that such materials be provided at their rates in Attachment A to a contractor's bid for up to, but no more than thirty (30) additional days beginning from the expiration of the initial thirty (30) day period. Any such authorization by the Commissioner shall be in writing and no verbal authorization from any DEP official or from any other person shall be binding upon the DEP. If a contractor continues performing either response or any other service(s) at a site for the DEP pursuant to section 5.5.2. of this Bid and Contract, the only type of material costs for which a contractor may seek reimbursement and the only rates chargeable for such materials shall be those authorized by the Commissioner of DEP pursuant to section 5.5.2. of this Bid and Contract and not those set forth in Attachment A.

#### **5.5. PAYMENTS FOR LABOR, EQUIPMENT AND/OR MATERIALS NOT IN ATTACHMENT A**

The DEP recognizes there are situations where, pursuant to this Bid and Contract that:

- (1) despite the abatement of an emergency condition at a site, cessation of response activities may pose a threat to human health and the environment;
- (2) the response activities deemed necessary by the Commissioner may require the use of unconventional or uncommon equipment and/or materials or equipment and/or materials that must be designed and/or configured to meet conditions unique to a site; and
- (3) the items in Attachment A to a contractor's bid may not be adequate to respond to an emergency. Authorization to procure, use and obtain reimbursement for any such labor, equipment, material and/or any other item is set forth in sections 5.5.1. and 5.5.2. below.

**5.5.1. Emergencies:** The DEP acknowledges that there may be certain emergencies where the items in Attachment A to a contractor's bid may not be adequate to respond to such an emergency. In such situations, if the DEP Official determines, in his/her sole discretion, that an emergency condition actually exists or has the potential to exist at a site, the DEP Official may authorize a contractor, verbally or in writing, to obtain labor, equipment and/or materials not in Attachment A to such contractor's bid or any other item the DEP Official deems necessary to respond to an actual or potential emergency.

Any such authorization by the DEP Official shall expire thirty (30) days after it is given. If at the end of this thirty (30) day period the Commissioner of DEP, in his sole discretion, determines that an emergency condition continues to exist at a site, the Commissioner may extend the authorization given by the DEP Official and allow a contractor to continue using labor, equipment, materials and/or other items not in Attachment A to said contractor's bid. Any such authorization by the Commissioner of DEP shall be in writing and shall last for up to, but not more than, thirty (30) days from the date the authorization from the DEP Official expires and shall not be extended or renewed.

SPECIAL BID AND CONTRACT TERMS AND CONDITIONS  
HAZARDOUS SPILL RESPONSE RECOVERY, REMOVAL AND DISPOSAL SERVICES

SECTION 1  
PROVISIONS FOR BID

1.0. DEFINITIONS.

As used in this Special Bid and Contract Terms and Conditions ("Bid and Contract"), unless specified otherwise, the following terms shall have the following meanings:

1.0.1. "Attachment A" (also referred to as the "Proposal Schedule") shall mean Attachment A to the bid submitted by a bidder. "Attachment A1" shall mean Attachment A1 to the bid submitted by a bidder. "Attachment B" (Equipment Value Schedule) shall mean Attachment B to the bid submitted by the bidder. If such bidder is awarded a contract Attachment A, Attachment A1 and Attachment B will be converted to an "Award Schedule" which latter on may be modified in accordance with the terms and conditions by the issuance of an appropriate Award Supplement.

1.0.2. "Commissioner of DEP" shall mean the Commissioner of Environmental Protection or a designated agent of the Commissioner.

1.0.3. "DEP" shall mean the Connecticut Department of Environmental Protection or any agent designated by the Commissioner to act on behalf of the Department.

1.0.4. The terms "chemical liquids", "hazardous waste", "oil or petroleum", "solid, liquid or gaseous products" and "waste oil" shall be defined as those terms are defined in Connecticut General Statutes §22a-448, including any amendment thereto.

1.0.5. "Remedial action" shall be defined as that term is defined in Connecticut General Statutes §22a-133a, including any amendment thereto.

1.0.6. "Day" shall mean a calendar day.

1.0.7. "Week" shall mean any consecutive seven (7) day period.

1.0.8. "Month" shall mean thirty (30) consecutive days.

1.0.9. "DEP Official" shall mean the Department employee with the authority to take any action authorized by this Bid and Contract, including but not limited to the authority to coordinate, direct and oversee any and all response activities taken at a site by a contractor pursuant to this Bid and Contract.

1.0.10. "Environmental law" shall mean Title 22a of the Connecticut General Statutes, including all chapters contained therein, the Table of Federal Laws provided on Table 1 and all regulations promulgated under the aforementioned State and federal statutes.

1.0.11. "Occupational Safety and Health Law" shall mean Chapter 571 of Title 31 of the Connecticut General Statutes, the federal Occupational Safety and Health Act of 1970, and all regulations promulgated under the aforementioned State and federal statutes.

1.0.12. "Continuing emergency" shall mean a situation designated by the DEP Commissioner wherein the safety and welfare of the State require continued services beyond the initial sixty (60) days of emergency services (reference Section 5.5.1. & 5.6.).

1.0.13. "DAS" shall mean Department of Administrative Services.

1.0.14. "DEP" shall mean Department of Environmental Protection.

1.0.15. "Immediate response" shall mean a response in which a contractor shall be available twenty four (24) hours per day, seven (7) days per week including Saturdays, Sundays and all federal and State holidays and will be expected to begin implementation of on-scene response activities at a site within a maximum of two (2) hours of being contracted by the DEP.

1.0.16. "Scheduled response" shall mean a response in which a contractor schedules with the DEP's On Scene Response Coordinator (OSRC) when response activities will need to begin.

1.0.17. "State" shall mean the State of Connecticut.

#### 1.1. PURPOSE AND INTENT

With this invitation to bid the Department of Environmental Protection (DEP) seeks services from bidders specializing in the discovery, investigation, evaluation, mitigation, and remediation of contaminated media, surface water, groundwater, land, waters of the State including offshore or coastal waters or other contamination resulting from the discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum, chemical liquids, solid, liquid or gaseous products, waste oil, or hazardous wastes. In addition, the DEP seeks services from bidders capable of containing, removing, transporting and/or disposing of biomedical waste or asbestos containing material.

Other State agencies and political subdivisions who identify a need for the emergency environmental services contained herein must contact the DEP, Bureau of Waste Management at (860) 424-3024 to avail themselves of the services contained in this bid.

Each bidder must demonstrate in its bid that it is qualified and has the capability to effectively respond to emergency or non-emergency incidents or undertake other response activities deemed necessary by the Commissioner of DEP.

The Department of Administrative Services (DAS), Procurement Services intends to award a contract on behalf of the DEP to several bidders to ensure that services deemed necessary by the Commissioner of DEP are available at any time and at any location within the State. In addition to the services described above, bidders will be expected to provide expert advice and/or testimony in

release and hold the State, including all persons employed by the State, harmless against all claims, suits, damages, costs, litigation expense, attorneys fees, judgments, liability of any kind, associated with or regarding actual or alleged patent or latent defects in any such equipment and/or materials, including but not limited to actual or alleged defects in material or quality, design, capability or performance. In addition, a contractor warrants that it has good title to all equipment and/or materials used by said contractor in the performance of this Bid and Contract.

If the Commissioner of DEP determines that any work performed by a contractor pursuant to this Bid and Contract is defective or deficient in any material respect, said contractor shall be liable for all costs of correcting such work, including but not limited to, costs for labor, equipment, material and/or any other item deemed necessary by the Commissioner.

#### 6.5. REQUIRED PROTECTIONS

With respect to all work performed pursuant to this Bid and Contract, a contractor shall:

- (1) continuously and adequately protect the work performed at a site, including but not limited to, all equipment and/or materials against damage from any cause; and
- (2) provide and maintain safeguards for the protection of the public and for all persons undertaking response actions at a site, including but not limited to, posting adequate warning signs or taking steps to prevent the public from entering certain areas.

#### 7.0. DESIGNATED CONTRACTOR

The DEP may designate one contractor to coordinate specific projects under this Bid and Contract, especially in situations where there is more than one contractor providing services at a site. The designated contractor shall be the sole point of contact for all issues arising at the site, including but not limited to contractual, payment or project related issues and shall not receive any additional reimbursement for being so designated.

#### 7.1. SUBCONTRACTORS

7.1.1. A contractor shall not employ the services of a subcontractor, or allow labor, equipment or materials to be provided on a subcontract basis, unless such use is authorized by the Commissioner of DEP in writing or is authorized pursuant to section 5.5.1. or 5.5.2. of this Bid and Contract.

7.1.2. In the event that a contractor receives the authorization described in section 7.1.1. of this Bid and Contract, to have labor, equipment, materials or other items provided on a subcontract basis said contractor shall:

- (1) assume sole and full responsibility for all such labor, equipment, material(s) and/or other items(s) provided and shall release and hold the State harmless from any suit, claim, damage, loss, injury, litigation expense, attorneys fee, judgments, liability of any kind, or other compensation regarding any labor, equipment, material and/or other item provided on a subcontract basis;
- (2) remain responsible for ensuring that a subcontractor or any equipment, material and/or other item provided on a subcontract basis, fully complies with all applicable provisions of this Bid and Contract; and
- (3) ensure that any such labor, equipment, material and/or other item provided is covered by insurance policies which meet the requirements of section 7.7. of this Bid and Contract.

7.1.3. The terms and conditions regarding reimbursement for a contractor, who in response to a DEP

December 13, 2004

RE: Soil Sampling Access Agreement  
Hamden, Connecticut

Dear

This letter authorizes the Connecticut Department of Environmental Protection and its agents, representatives, employees and contractors ("the Department"), to enter upon the property located at \_\_\_\_\_ for the purpose of observing site conditions and collecting appropriate soil samples as part of the testing to locate the extent of landfill materials in the Newhall neighborhood.

1. I/we are the owners of the property listed above.
2. The Department will give no less than 24 hours notice prior to its intended entry upon the property. Said notice will be made by telephone to the owners of the property.
3. A letter reporting the results of the assessment and sampling will be mailed to the owners of the property once the investigation is completed.
4. The Department's contractor will carry a commercial general liability insurance policy in the amount of one million dollars (\$1,000,000) during the time it performs work on this property.
5. This agreement shall be in effect for a period of 120 days; however, this agreement may be extended by the mutual written agreement of the parties prior to the expiration of its terms.

Please indicate your agreement with these terms and conditions by signing and dating below

\_\_\_\_\_  
Signature/

12-16-04  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Phone Number

EXHIBIT ~~2~~ 1