R-39 REV. 1/77

IMPORTANT: Read Instructions on bottom of Certification Page before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations.

STATE OF CONNECTICUT

REGULATION

OF

SECRETARY OF THE STATE
LEGISLATION & ELECTIONS
ADMINISTRATION DIVISION
2006 JUN 30 AM 11:46

NAME OF AGENCY

Environmental Protection

Concerning

Abatement of Air Pollution

Amendment of Section 22a-174-100 – Permits for construction of indirect sources

Section: 1

Section 22a-174-100 of the Regulations of Connecticut State Agencies is amended to read as follows:

Section 22a-174-100. Permits for construction of indirect sources.

(a) [Definition of an indirect source and applications for indirect source construction permits.] Definitions. As used in this section:

[(a)](1) [Notwithstanding the definition of indirect source in section 22a-174-1, for the purpose this section an indirect source of air pollution means:] "Indirect source of air pollution" means, notwithstanding the definition of "indirect source" in section 22a-174-1 of the Regulations of Connecticut State Agencies:

[(i)](A) Any new highway on a new location in the state highway system, except projects for bridge replacement or elimination of railroad crossing hazards,

[(ii)](B) Any new expressway interchange service added to the state highway system, or

[(iii)](C) Any new lane, greater than [a] one mile in length and connecting either signalized intersections or expressway interchanges, added to the state highway system[.] ; and

[For the purposes of this regulation, the term "state highway system" shall have the same meaning as is provided in chapter 237 of the Connecticut General Statutes, as from time to time may be amended. Effective October 1, 1974, no person shall construct, modify, install or cause the construction, modification or installation of any indirect source of air pollutants or part thereof without applying for and obtaining an indirect source construction permit from the Commissioner. No applications for permits for new or modified indirect sources received by or pending before the Commissioner September 1, 1979 shall be affected by any amendments to this section.]

[(a)](2) [Those new or modified indirect sources which are not required to obtain an indirect source permit under subsection (a)(1) shall, upon request of the Commissioner, furnish information to him which may be of a type and form similar to that required of applicant for indirect source permits.] "State highway system" means "state highway system" as that term is described in sections 13a-14 and 13a-15 of the Connecticut General Statutes.

[(a)(3) The Commissioner may publish and from time to time revise guidelines which will assist owners or operators of new or modified indirect sources in determining whether they are required to obtain an indirect source permit under subsection (a)(1), or whether they may be required to furnish information to the Commissioner under subsection (a)(2).]

(b) Applicability and applications for indirect construction permits.

(1) No person shall construct, modify, install or cause the construction, modification or installation of any indirect source of air pollutants or part thereof unless such person has either applied for and obtained an indirect source permit from the commissioner pursuant to this section or

proceeded in compliance with subsection (i) of this section. Any indirect source permit application pending before the commissioner on the effective date of this section may be withdrawn and the owner or operator may either re-submit such application or proceed in accordance with subsection (i) of this section.

[(a)(4)] (2) Application for an indirect source permit shall be made by the owner or operator of the proposed indirect source on forms [furnished by the Commissioner] provided by the commissioner. Each application shall include siting information; descriptions of the structures, facilities or installations involved; the nature, source and quantity of uncontrolled and controlled emissions; traffic flow information; the proximity of the indirect source to existing and projected transportation services; and [such] any other information [as] the [Commissioner"] commissioner may require.

[(a)(5)] (3) No new or modified indirect source shall be exempt from the [permit] requirements of this [subsection] section because of a division of ownership or because of the pattern or timing of development.

[(a)(6)] (4) [For the purpose of determining whether construction or modification of an indirect source was commenced prior to October 1, 1974, construction] Construction or modification shall be deemed to have commenced for any portion of an indirect source when site preparation, including clearing and grading is complete and the following [four] three steps have been completed:

[(i)] (A) Detailed plans of the proposed indirect source are available and have received all necessary federal, state or local approvals; [required by federal, state or local statutes, ordinances, regulations or procedures;]

[(ii)] (B) Environmental impact statements have been prepared and reviewed as required by federal or state statutes, regulations or procedures; and

[(iii) All necessary building permits for site preparation and foundation construction have been issued in accordance with state and local statutes, ordinances, regulations or procedures;]

[(iv)] (C) The installation of structural components or materials has started as part of a continuous program of construction.

[(b)] (c) Standards for granting indirect source permits.

[(b)(1) A Stage I indirect source permit review shall be a transportation system level review. Prior to July 1, 1980 no stage I indirect source permit shall be required. After July 1, 1980, no stage I indirect source permit shall be granted until the Commissioner finds, upon evidence submitted by the applicant or otherwise made part of the application record, that the new or modified source for which a permit is requested is

(i) a part of a regional or statewide plan deemed to be in conformance with the most current federally approved state implementation plan, or

(ii) a part of a plan deemed to be in non-conformance with the state implementation plan, but determined to be exempt for the non-conformance restrictions placed on that plan.

(b)(2) A stage II indirect source permit review shall be a transportation corridor level review. No stage II indirect source permit shall be granted until the Commissioner finds, upon evidence submitted by the applicant or otherwise made part of the application record, that

(i) The impact of the new or modified source on the corridor in which the source is to be located will meet all applicable state and national ambient air quality standards not addressed in the Stage I permit review, for which there is an impact analysis methodology acceptable to the Commissioner, and

(ii) After July 1, 1980 a stage I indirect source permit has been granted for the new or modified source.

A stage II indirect source permit shall be valid for one year after issuance. However, upon adoption by the Commissioner of a methodology for assessing compliance with any state or national ambient air quality standards for particular matter and lead, a stage II indirect source shall be valid until such time as a stage III permit is issued.

(b)(3) A stage III indirect source permit review shall be a project level review. No stage III indirect source permit review shall be granted until the Commissioner finds, upon evidence submitted by the applicant or otherwise made part of the application record, that a stage II indirect source permit has been granted for the new or modified source and is valid at the time of application for the stage III permit, and that,

(i) for each intersection impacted by the new or modified source no violations of the applicable carbon monoxide standards will result where such violations do not presently exist, or

(ii) where violations of the applicable carbon monoxide standards do exist, the new or modified indirect source will not exacerbate (increase more than 0.5 parts carbon monoxide per million parts air, by volume) any existing violation of the carbon monoxide standard.

For purposes of this subdivision (b)(3), the determination as to whether or not violations of the applicable carbon monoxide standards will result where such violations do not presently exist, and the determination as to whether or not present violations of applicable carbon monoxide standards will be exacerbated, shall be based upon an assessment of the concentrations of carbon monoxide predicted to occur at all times beyond one year after the estimated date of completion.]

(1) The commissioner shall not grant an indirect source permit unless the applicant has submitted an application consisting of:

(A) A transportation system level review to determine the proposed indirect source is:

(i) a part of a regional or statewide plan deemed to be in conformance with the most current federally approved state implementation plan, or

(ii) a part of a plan deemed to be in non-conformance with the state implementation plan, but determined to be exempt for the non-conformance restrictions placed on that plan; and

(B) A project level review to determine that:

(i) for each intersection impacted by the proposed indirect source no violation of the applicable carbon monoxide standard as set forth in section 22a-174-24(i) of the Regulations of Connecticut State Agencies will occur where such violation does not exist at the time of permit application, or

(ii) where a violation of the applicable carbon monoxide standard as set forth in section 22a-174-24(i) of the Regulations of Connecticut State Agencies does occur at the time of permit application, the proposed indirect source

will not increase ambient concentrations of carbon monoxide by more than 0.25 parts per million.

(2) An indirect source permit application shall be made in a format specified by the commissioner and shall contain any other information required by the commissioner.

[(c)] (d) Actions on applications for indirect source permits.

[(c)(1) An application will not be deemed to have been received by the Commissioner until all information, papers and documents required in support of the application have been submitted in proper form. The Commissioner shall acknowledge the receipt of an application within ten (10) working days. In cases which the Commissioner deems that not all information, papers, and documents required of the application have been submitted in proper form, the Commissioner shall so notify the applicant within ten (10) working days of the submission of such information, papers and documents.

(c)(2)(1) For a stage I indirect source permit, the Commissioner shall render a decision within 5 working days of acknowledgement of receipt of a stage I permit application.

(ii) For a stage II indirect source permit, and a stage III indirect source permit, the Commissioner shall complete the preliminary evaluation of the air quality data contained in the application for any permits within 30 working days of acknowledgement of receipt of the applications.

(c)(3) Notwithstanding the provisions of subsection (c)(4), the Commissioner shall not issue a decision approving or denying an application for either a stage II or stage III indirect source permit until the applicant:

(i) Shall have made available for thirty (30) calendar days, in the region in which the proposed construction or modification will be located, a copy of the application and a copy of the Commissioner's preliminary evaluation of the air quality data contained in the application; and shall provide for receipt and consideration of public comment during the thirty (30) calendar day period.

(ii) Shall have published by prominent advertisement in the region affected a notice of the location of the application, the availability of the Commissioner's preliminary evaluation specified in subsection (c)(2)(ii), above, and the procedure available to the public to file comments, and

(iii) Shall have submitted to the Commissioner an affidavit certifying that the conditions of subsections (c)(3)(i) and (c)(3)(ii) have been met.

(c)(4) Except where the public hearing is held under subdivision (a)(4), the Commissioner shall inform an applicant for either a stage II or a stage III indirect source permit of the decision of the Commissioner approving or denying the permit within ten (10) working days of the close of the public comment period specified in subdivision (c)(3)(i). The Commissioner may, on notice to the applicant extend the time for acting on the application an additional thirty (30) working days, to a total time of forty (40) working days.

(c)(5) When a public hearing is held under subdivisions (h)(4) on an application for an indirect source permit, the Commissioner shall inform the applicant of the decision approving or denying the application within (30) working days following receipt of the record of hearing.

(c)(6) The Commissioner shall briefly set forth in any notice of approval or denial of an application for an indirect source permit the

basis for the determination.

(c)(7) The Commissioner may impose any reasonable requirements, standards, or conditions upon approval of any permit.]

(1) The commissioner shall not approve or deny an application for an indirect source permit until:

(A) The commissioner has determined that the applicant has submitted a complete application;

(B) The applicant causes to be published a notice of application of the indirect source permit in the region in which the proposed indirect source will be located;

(C) The applicant has made available for at least thirty (30) calendar days, in the region in which the proposed indirect source will be located, a copy of the indirect source permit application for public inspection and comment; and

(D) The applicant submits to the commissioner an affidavit certifying that the conditions of subparagraphs (A) through (C) of this subdivision have been met.

(2) The commissioner shall notify an applicant for an indirect source permit of the commissioner's decision to approve or deny the permit within thirty (30) calendar days of the close of the public comment period specified in subdivision (1)(C) of this subsection unless a public informational meeting is held under subsection (g) (4) of this section. The commissioner may, on notice to the applicant, extend the time for acting on the application an additional thirty (30) calendar days, to a total time of sixty (60) calendar days.

[(d)](e) Revocation, [or] modification and expiration of indirect source permits.

[(d)](1) The [Commissioner] commissioner may revoke or modify an indirect source permit if:

[(i)](A) Prior to the commencement of construction or modification authorized by the permit, [it is determined by the Commissioner that] the commissioner determines the new or modified indirect source is in non-compliance with the conditions of the [permits] permit; or

[(ii)](B) The construction or modification authorized by the permit is not begun within five years from the date of issuance of the [stage III "] indirect source construction permit, ["] or such other period as is [allowed by] specified in the permit; or

[(iii)](C) During construction or modification, work is suspended for one year or more, or for such other period as is specified in the permit.

[(d)](2) For the purposes of subdivision [(d)](1)(B) and (C) of this subsection, if by order of a court of competent jurisdiction the construction or modification authorized by the permit is not begun or is suspended, then the period of such court-ordered delay shall not be included in the time period [allowed by] specified in the permit.

[(d)](3) For the purposes of subdivision (1)(B) of this subsection, if [If] construction of the new or modified indirect source will not [be undertaken] commence within the time period specified in the [stage III] indirect source permit, the holder of such permit shall apply for renewal of the permit [at least forty-five (45) calendar days prior to the expiration date of said permit] prior to commencing construction.

(4) The commissioner may place an expiration date within any permit issued pursuant to this section. Such expiration date may not exceed five (5) years from the date of permit issuance.

(f) Transfer and renewal of indirect source permits.

[The holder of an indirect source permit may not transfer it without prior written notification to the Commissioner. Each new owner or operator or holder of the indirect source permit shall be responsible for complying with all applicable regulations and with the conditions of the permit.]

(1) Any permit issued under this section shall be transferred in accordance with the provisions of section 22a-6o of the Connecticut General Statutes.

(2) Any permit issued pursuant to this section and containing an expiration date may be renewed by filing a request for renewal in a manner prescribed by the commissioner at least ninety (90) calendar days prior to the expiration date of such permit.

(3) Notwithstanding subdivision (2) of this subsection, the commissioner may not require the renewal of an indirect source permit issued under this section unless such indirect source no longer conforms with plans, specifications or other information submitted to the commissioner under subsection (c) of this section.

(4) In lieu of renewal in accordance with subdivision (2) of this subsection, the permittee may proceed in accordance with the provision of subsection (i) of this section, provided that the permittee notifies the commissioner at least ninety (90) calendar days prior to the expiration date of such permit.

[(f)Notice of approval, denial, revocation or modification of indirect source permits.

(f)(1) Notice of denial, revocation, or modification of any indirect source permit shall set forth the reasons for the action taken and such denial, revocation, or modification shall take final effect thirty (30) days after the date of service on the notice, unless a hearing is requested prior to the expiration of the thirty (30) day period.

(f)(2) Any party aggrieved by approval, denial, revocation, or modification of a permit may obtain an adjudicative hearing thereon by filing a written answer and request for hearing in accordance with section 22a-8-2 of the Rules of Practice of the Department with thirty (30) days of the date of service of the notice.

(f)(3) The revocation or modification of an indirect source permit pursuant to subsection (d) shall not be effective if the failure to comply with the requirements is remedied to the satisfaction of the Commissioner within thirty (30) calendar days after service of the notice of revocation or modification.]

(g) Public [information and hearing procedures] notices and informational meetings.

[(g)](1) [In all cases where there is a requirement of legal notice the Commissioner shall cause the applicant for an indirect source permit to publish at his own expense all notices of hearings and other notices required by law.] The commissioner shall cause to be published, at the applicant's expense, any public notice required to be published pursuant to subsection (d)(1)(B) of this section.

[(g)](2) The [Commissioner] commissioner shall inform the public of:

[(i)] (A) All indirect source permit applications received; and

[(ii)] (B) [all decisions approving, denying, revoking, or modifying any] Any decision to approve, deny, revoke or modify an indirect source permit.

[(g)] (3) [While a decision is pending on an indirect source permit application any person may file a written comment or may file a written objection setting forth the basis of the objection in detail and opposing approval of the permit in its entirety or requesting that specific conditions be attached to it. Objection may be accompanied by a request for a hearing.] Any person may file written comment on any indirect source permit application during the public comment period or at a public informational meeting if one is held.

[(g)] (4) [A public hearing on either a stage II or a stage III permit application may be held by the Commissioner:] The commissioner may hold a public informational meeting on an indirect source permit application or a proposed alternative to such permit application under subsection (i) of this section either at the discretion of the commissioner or following receipt of a request for a public informational meeting by twenty-five (25) or more people or an association representing twenty-five (25) or more people.

[(i) Pursuant to a request for a hearing according to subsection (g)(3);

(ii) Whenever it is required by these regulations or by any applicable state or federal laws;

(iii) At the discretion of the Commissioner; or.

(iv) Upon the request of any municipality.

Any public hearing required by this regulation may be held as part of a public hearing required by other state or federal laws or regulations. Following the close of the hearing, the Commissioner shall make a decision based on all available evidence, including the record of the hearing and the recommendation of the hearing examiner, if any, as to whether to approve or deny the indirect source permit. Notice of such decision shall be published according to subsection (g)(2).]

(5) Following the close of the public informational meeting, the commissioner shall make a decision as to whether to approve or deny the indirect source permit application.

(h) Signature.

[No indirect source permit issued under this section shall be effective until the applicant or his duly authorized representative shall have signed the permit, which signature shall constitute an agreement to abide by any terms and conditions therein.] Notwithstanding the provisions of section 22a-174-2a of the Regulations of Connecticut State Agencies, no indirect source permit issued under this section shall be effective until the applicant or a duly authorized representative of the applicant signs the permit. Such signature shall constitute an agreement to abide by the terms and conditions set forth in such permit.

[(i) Local and regional participation in indirect source review.

(i)(1) Upon the request of the governing body of any municipality or other political subdivision, the Commissioner may designate the municipal planning and zoning agency, the regional planning agency, or any other responsible municipal or regional agency or official as designee of the municipality for the purpose of making comments and recommendations on applications for indirect source permits.

(i)(2) The Commissioner may publish and revise, from time to time, guidelines, which shall assist the designated agencies in assessing the impact of any proposed indirect source on the development or resource allocation goals of the municipality or region.

(i)(3) In addition to the other evaluations made pursuant to this section the Commissioner may evaluate the effect of the proposed construction or modification upon any plan for development or plan for resource allocation proposed by the municipality or region.

(i)(4) The Commissioner shall submit a copy of the application for an indirect source permit along with his evaluation and analysis to the designated agency of any affected municipality for its review. Any designated agency wishing to make comments or recommendations with regard to a pending application must respond within thirty (30) working days following its receipt of the application from the Commissioner.

(i)(5) Upon request of any municipality which has a designated agency under the provisions of subsection (i)(1) the Commissioner may assist the municipality in formulating a plan for development or a plan for air resource allocation for the purpose of allowing the municipality and region to maximize the benefits of its utilization of the air resource within the limits imposed by air quality considerations.

(i)(6) The Commissioner may establish an indirect source advisory committee composed of municipal and regional officials to advise the Commissioner on procedures concerning the evaluation of indirect source permits and to assist the Commissioner in fostering increased municipal and regional cooperation in attaining and maintaining applicable ambient air quality standards.]

(i) Alternative means of compliance.

(1) In lieu of the requirements set forth in subsections (a) through (h) of this section, the owner or operator of a proposed indirect source may comply with the provisions of this subsection.

(2) The owner or operator of the proposed indirect source shall prevent any idling of diesel engines during the construction or modification of such indirect source in accordance with the provisions of section 22a-174-18 of the Regulations of Connecticut State Agencies.

(3) In order to qualify for the alternative compliance provisions set forth in this subsection, the owner or operator of the proposed indirect source shall:

(A) Conduct all required conformity determinations for transportation plans, transportation improvement plans and Federal Highway Administration and Federal Transit Administration projects according to the requirements of 40 CFR Part 93, as may be amended;

(B) Determine consistency of transportation plans and transportation improvement programs with any applicable motor vehicle emissions budgets in the state implementation plan for air quality by performing regional emissions analyses for all non-attainment and maintenance areas for ozone, carbon monoxide and particulate matter; and

(C) Conduct local scale carbon monoxide and particulate matter emissions and ambient impact analyses on intersections within the project area identified by the commissioner for the following project types:

(i) Projects requiring National Environmental Policy Act or Connecticut Environmental Policy Act documentation;

(ii) Projects involving:

(I) any new highway on a new location in the state highway system, except projects for bridge replacement or elimination of railroad crossing hazards,

(II) any new expressway interchange service added to the state highway system, or

(III) any new lane, greater than one mile in length and connecting either signalized intersections or expressway interchanges, added to the state highway system; and

(iii) Any project location identified in the applicable state implementation plan for air quality as sites of violation or possible violation of a national or state ambient air quality standard.

(4) The commissioner shall approve, in writing, an owner or operator of an indirect source to proceed under this subsection only after such owner or operator has demonstrated to the commissioner's satisfaction that the construction or modification of such indirect source will proceed in accordance with the provisions of this subsection and in accordance with the provisions of the Connecticut Department of Transportation's Procurement related document contained in the Bid Specification/ Request for Proposal "*Notice to Contractor - Diesel Vehicle Emission Controls*", or addendum notice. The commissioner may verify compliance with this subsection through periodic inspection or other required documentation. If the commissioner determines the owner or operator of the indirect source is in noncompliance with this subsection, such owner or operator shall be in violation of this section and deemed to have been constructing or operating an indirect source without an indirect source permit.

Statement of Purpose: To streamline and improve the indirect source permitting program by consolidating Stage I, II and III permits into a single permit and providing an alternative compliance mechanism whereby the owner or operator of a proposed indirect source shall be required to take positive steps to minimize air quality impacts associated with the construction and operation of such sources.

CERTIFICATION
R-39 REV. 1/77

Be it known that the foregoing:

☒ Regulations ☐ Emergency Regulations

Are:

☐ Adopted ☒ Amended as hereinabove stated ☐ Repealed

By the aforesaid agency pursuant to:

☒ Section 22a-6 of the General Statutes

☒ Section 22a-174 of the General Statutes as amended by Public Act No. _____ of the _____ Public Acts.

☐ Public Act No. _____ of the Public Acts.

After Publication in the Connecticut Law Journal on Dec. 6 20 05, of the notice of the proposal to:

☐ Adopt ☒ Amend ☐ Repeal such regulations

(If applicable): ☒ And the holding of an advertised public hearing on the 5th day of Jan. 20 06

WHEREFORE, the foregoing regulations are hereby:

☐ Adopted ☒ Amended as hereinabove stated ☐ Repealed

Effective:

☒ When filed with the Secretary of the State

(OR)

☐ The _____ day of _____ 20 ____

In Witness Whereof:	DATE 3/14/06	SIGNED *(Head of Board, Agency or Commission)*	OFFICIAL TITLE, DULY AUTHORIZED Commissioner
Approved by the Attorney General as to legal sufficiency in accordance with Sec. 4--169, as amended, C.G.S.:		SIGNED 4/3/06	OFFICIAL TITLE, DULY AUTHORIZED ASSOC. ATTY. GENERAL

☒ Approved

☐ Disapproved

☐ Disapproved in part, *(Indicate Section Numbers disapproved only)*

☐ Rejected without prejudice.

By the Legislative Regulation Review Committee in accordance with Sec. 4-170, as amended, of the General Statues	DATE 6/27/06	SIGNED *(Clerk of the Legislative Regulation Review Committee)*

Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications in accordance with Section 4-172, as amended, of the General Statutes.

DATE	SIGNED *(Secretary of the State.)*	BY

SECRETARY OF THE STATE
LEGISLATION & ELECTIONS
ADMINISTRATION DIVISION
2006 JUN 30 AM 11:49

INSTRUCTIONS

1. One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his determination of legal sufficiency. Section 4-169 of the General Statutes.

2. Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statues

3. Each Regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.

Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language in capital letters and deleted language in brackets. Section 4-179 of the General Statutes.

Office of Secretary of the State
State of Connecticut
P.O. Box 150470, Hartford, CT 06115-0470

Susan Bysiewicz
Secretary of the State

Lesley D. Mara
Deputy Secretary of the State

RECEIVED
JUL 12 2006
DEPT. OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER

July 7, 2006

Hon. Gina McCarthy, Commissioner
Department of Environmental Protection
79 Elm Street
Hartford, CT 06105

Re: Agency Regulation Concerning:
Abatement of Air Pollution. Amendment of Section 22a-174-100 - Permits for construction of indirect sources
Regulation Review Committee Docket Number: 2006-027
Secretary of the State File Number: 5700

Dear Commissioner McCarthy:

This is to acknowledge receipt of two certified copies of the above referenced regulation issued by the Department of Environmental Protection.

We request that you please forward the original or a copy of this acknowledgement letter to your agency's Legal Services Department for its files.

Said regulation was received and filed in this office on June 30, 2006. The effective date of this regulation is June 30, 2006.

One of the two copies has been forwarded to the Commission on Official Legal Publications as required by law.

Sincerely,

Barbara Sladek
RLS Assistant Coordinator
860-509-6147

RECEIVED
JUL 12 2006
DEPT. OF ENVIRONMENTAL PROTECTION
OFFICE OF DEPUTY COMMISSIONER

CC: Commission on Official Legal Publications (Letter and Copy of Regulation)

File