

*IN THE MATTER OF* : *APPLICATION NO. 1996-02422*  
:  
*TOWN OF CANTERBURY* : *MARCH 16, 2000*

**FINAL DECISION**

**SUMMARY**

This decision concerns an application filed by the Town of Canterbury with the Department of Environmental Protection (DEP) seeking permits to construct and operate a municipal solid waste and bulky waste transfer station (the proposed facility) on Packer Road in Canterbury, Connecticut. The parties to this proceeding are the Town of Canterbury (the Town), the DEP Bureau of Waste Management (staff), two groups of intervenors (the citizen intervenors and the Yaworski intervenors), and one individual intervenor.<sup>1</sup>

The Town does not own the property on which the proposed facility would be located. The Town would lease the site of the proposed facility from its various owners, described herein and collectively referred to as Yaworski, Inc.. James Yaworski, Sr. and Yaworski, Inc., hold permits to operate a solid waste landfill adjacent to the site of the proposed facility (the Yaworski landfill).

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<sup>1</sup> The citizen intervenors are Lori Dietz, Jennie Hatt, Janice Leitch, Richard Moffett and Sharlene Stamper. The Yaworski intervenors are Haul of Fame, Inc, Packer Ltd., Quinnebaug Valley Regional Resources, LLC, Denis Yaworski, James Yaworski, Jr., and Rose Yaworski. Christian Wellinghausen intervened as an individual. Christopher Deojay also intervened in these proceedings but subsequently withdrew.

In his *Proposed Final Decision*, the hearing officer found that the Town submitted an application containing sufficient information for the Commissioner to render a decision on its merits. He also found that the traffic impacts of the proposed facility are acceptable and that the citizen intervenors have failed to prove that the proposed facility is reasonably likely to unreasonably pollute the natural resources of the state in violation of §22a-19 of the Connecticut General Statutes.

The hearing officer concluded that if the Town adheres to the terms and conditions of the draft permits to construct and operate, the proposed facility would be constructed and operated in accordance with all legal requirements. The hearing officer recommended that the permits be granted, but with two conditions. First, because of conditions at the adjacent Yaworski landfill, the proposed transfer station should not be allowed to operate until that landfill is closed pursuant to an approved closure plan, including the installation of an approved landfill gas collection system. Second, certain named individuals and businesses associated with the Yaworski landfill, and responsible for conditions at that landfill, should be excluded from managing the proposed facility.

The Commissioner appointed me final decision-maker on September 23, 1999, following the recusal of Deputy Commissioner Jane K. Stahl, the first final decision-maker. General Statutes §22a-2(b). In charging me with the responsibility to render a final decision, the Commissioner directed me to have no contact regarding the decision with either Deputy Commissioner Stahl or with any staff who may have advised or worked with her on this matter.

I have followed the direction of the Commissioner and render my decision based only upon my analysis of the law and my assessment of the record before me.

A final decision may affirm, modify, or reverse a proposed final decision. Regs., Conn. State Agencies §22a-3a-6(y)(D). The scope of a final decision includes the findings of fact and conclusions of law necessary to the decision. The findings of fact are based exclusively on the evidence in the record. General Statutes §4-180(c). I have reviewed the entire record, including the docket file, transcripts of the hearings and oral argument, and the briefs, pleadings, rulings and other aspects of the evidentiary record.

I affirm in part and modify in part the *Proposed Final Decision*. As more fully explained herein, I grant, with permit conditions and other conditions related to the closure of the adjacent landfill and the management of the proposed facility, the permits to construct and operate the proposed facility.

## ***BACKGROUND***

### ***I. Procedural History***

On November 1, 1996, the Town of Canterbury submitted an application to the DEP Bureau of Waste Management (staff) for permits to construct and operate a municipal solid waste and bulky waste transfer station (the proposed facility) on Packer Road in Canterbury, Connecticut. This application was deemed sufficient on April 10, 1997. Staff prepared draft permits to construct and operate on August 13, 1997; the draft permit to operate was

subsequently revised by staff on April 21, 1998. (Hereinafter, the August draft permit to construct and the April revised draft permit to operate are referred to as the “draft permits”, attached hereto as *Appendices A and B*, respectively.) On May 22, 1997, the Commissioner published a notice of a tentative determination to recommend issuance of the permits as drafted. Due to public interest, the Commissioner issued a notice that a public hearing would be held on the application.

The hearing officer conducted hearings on this application on thirty-three days between August 18, 1997 and June 30, 1998. The *Proposed Final Decision* was issued on March 31, 1999; an *Errata Sheet* inserting a new recommendation was issued on April 7, 1999.<sup>2</sup> The parties filed requests for oral argument and exceptions to the *Proposed Final Decision*. Regs., Conn. State Agencies §22a-3a-6(y)(3)(A). Oral arguments were heard on May 25, 1999.

## ***II. Yaworski Application for Permits to Construct and Operate***

Yaworski, Inc. previously applied for similar permits to construct and operate a transfer station at the same site as the proposed facility. In a final decision issued on December 23, 1994, Commissioner Timothy R.E. Keeney denied the application because of the history of environmental noncompliance by Yaworski, Inc. *Final Decision re Yaworski, Inc., Application No. 92015*, December 23, 1994. (*Yaworski, Final Decision*.)

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<sup>2</sup> This recommendation is as follows: “Prior to the operation of the facility, the permittee shall assure that the adjoining Yaworski landfill is closed pursuant to a closure plan approved by the Commissioner..., including installation of an approved landfill gas collection system.”

Commissioner Keeney found that the conduct of Yaworski, Inc. “reflects a thoroughgoing disregard for legal requirements as well as for the welfare of the many individuals who live close to the [a]pplicant’s existing solid waste facilities.” *Yaworski, Final Decision*, p.3. He also found that granting the permits would subject those individuals to the risk of further adverse impacts if Yaworski, Inc. continued to violate the law and “would make a mockery of the Department’s solid waste regulatory program.” *Id.* Keeney also found that the residential neighborhood was an inappropriate location for the proposed transfer station then under consideration and the large volume of truck traffic it would involve.

Commissioner Keeney’s successor, Sidney J. Holbrook, denied a request for reconsideration filed by Yaworski, Inc.. *Decision on Reconsideration re Yaworski, Inc., Application No. 92015*, May 8, 1995. (*Yaworski, Reconsideration Decision.*) Both the decision of Commissioner Keeney and the denial of the request for reconsideration were affirmed on appeal to the Superior Court. *Yaworski, Inc. v. Department of Environmental Protection*, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. CV95-0550682 (June 21, 1996).

## ***DECISION***

### ***I. THE PROPOSED FINAL DECISION***

I affirm the findings of the hearing officer that the application contained sufficient information for the Commissioner to render a decision on its merits and that the traffic impacts of the proposed facility do not justify denial of the permits. I modify the officer’s findings that

the citizen intervenors have failed to meet their burden of proof that the proposed facility is reasonably likely to unreasonably pollute the natural resources of the state in violation of §22a-19 of the Connecticut General Statutes.

The hearing officer concluded that the proposed facility would be constructed and operated in accordance with all legal requirements if the Town adheres to the terms and conditions of the draft permits. However, as reflected in the two conditions placed on his recommendation to grant the permits, the hearing officer had significant concerns regarding certain conditions at the adjacent landfill and their impact on the operation of the proposed transfer station. The hearing officer specifically found sufficient evidence in the record to conclude that gases from the landfill have already adversely affected nearby residents and may pose a significant risk to persons using the proposed facility.

I find that certain conditions at the adjacent landfill have rendered the site for the proposed facility presently unsuitable for the construction and operation of the transfer station. No permit to construct shall be issued until the adjacent landfill is closed pursuant to a closure plan approved by the Commissioner. Regs., Conn. State Agencies §22a-209-13. This closure plan must include the installation of an approved landfill gas collection and flare system. The Commissioner must receive satisfactory evidence from the Town that the adjacent Yaworski landfill has been closed pursuant to this closure plan and an approved landfill gas collection and flare system has been installed and tested to ensure its proper installation and operation. The Commissioner may verify compliance through an inspection of the site for the proposed facility and/or the adjacent Yaworski landfill. The permit to operate will not be approved without the

prior issuance of a permit to construct. General Statutes §§22a-208a(b) and (c). See also *Draft Permit to Operate, Appendix B*.

The proposed facility cannot be legally constructed and operated unless and until the prerequisites to the issuance of the permit to construct are satisfied and the permits to construct and operate are issued. If these conditions are met and the permits are issued, and the Town adheres to the conditions of the permits as adopted herein, the proposed facility can be legally constructed and operated.

I affirm the recommendation of the hearing officer that certain individuals and entities named herein are barred from managing the proposed facility. I also affirm his recommendation that the Town obtain the written approval of the Commissioner regarding any certified operator the Town intends to employ at the proposed facility.

## ***II. FINDINGS OF FACT***

I have adopted the following findings of fact. Some of these findings have been accepted from the *Proposed Final Decision*; other findings have been adduced from evidence in the record.

1. The Town proposes to construct and operate the proposed facility on an approximately 20.7 acre parcel of land located on both sides of Packer Road in Canterbury, Connecticut. The Town proposes to lease the site from its various owners. Under the terms of a lease dated June 23, 1998, the Town of Canterbury would lease the site for the proposed facility from:

Packer Limited, LLC; Yaworski Realty, Inc.; Haul of Fame, Inc.; the Estate of James J. Yaworski, Jr. a/k/a/ James John Yaworski III, acting by conservator Lee Yaworski; and Quinebaug Valley Regional Resources, LLC. All of the business entities list their principal place of business as 133 Packer Road, Canterbury, CT.

2. The proposed facility would consist of a transfer station building and two 40 cubic yard roll-off containers on the west side of Packer Road, a weigh station on the east side of Packer road, and various entrance driveways and internal roadways. The transfer station building is an existing 11,700 square foot enclosed structure located on approximately 1.5 acres with four drop-off bays, a reinforced concrete slab tipping floor, and a 100 cubic yard trailer load-out bay with weight scale.
3. The purpose of the proposed facility is to transfer solid waste from a large number of smaller vehicles into a small number of larger vehicles for transportation to other sites for disposal or recycling. Solid waste would be brought to the proposed facility by commercial haulers and by private citizens of Canterbury, Plainfield, Griswold and Sterling, the four towns that presently use the recycling facility in the northwest corner of the site owned and operated by Packer Limited, LLC. Solid waste from the proposed facility would be transported to resource recovery facilities, recycling facilities and solid waste landfills for final disposal.
4. Commercial trucks bringing solid waste to the proposed facility would drive up to the bays on the north side of the transfer station building and deposit their solid waste onto the transfer station building floor. Payloaders would carry the solid waste to the south side of the transfer station building and deposit it into empty trucks that would then transport the waste to its final destination.



5. Since 1995, the Town has operated a transfer station for town residents at its garage on Kinne Road. The temporary permit for that facility, issued by the Commissioner on June 28, 1995, expired on August 27, 1995.
6. The draft permit to operate the proposed facility would require the Town to take a number of steps to improve traffic safety on Packer Road. These are: constructing a new entrance driveway and new roadways within the proposed facility; repairing Packer Road and its shoulders; requiring truck traffic to and from the proposed facility to enter or leave Packer Road via Butts Bridge Road; closing the north entrance; and restricting the use of the south entrance to in-coming empty trucks.
7. The hearing officer recommended additional permit conditions to improve the safety of Packer Road. These conditions would require the Town to do the following: remove the stop sign at the junction of Packer Road and the north driveway; install trip indicators to monitor truck traffic into and out of the proposed facility; install appropriate signage along Packer Road and inside the proposed facility; and make additional repairs to the shoulders of Packer Road.
8. If the proposed facility were operating, the overall traffic levels on Packer Road would be about two-thirds to three-quarters of the traffic volume during the peak operating years of the Yaworski landfill.
9. Private citizens would deposit their solid waste in one of the 40 cubic yard drop-offs placed beside the recycling facility. At least once a day (or more often, if full), the Town would transport these drop-offs to the transfer station building for processing with the solid waste that is hauled commercially.

10. The Town originally requested a permit to process 140,000 tons of solid waste per year at the proposed facility, an amount approximately equal to its design capacity. On April 15, 1998, the Town amended its application to reduce to 100,000 tons per year the amount of solid waste it proposed to process. The draft permit to operate would authorize the processing of only 65,000 tons of solid waste per year.
11. *The Connecticut Solid Waste Management Plan* (SWMP) establishes a hierarchy for solid waste management that encourages the use of recycling and resources recovery over land disposal of waste. General Statutes §22a-228. The SWMP also encourages the use of transfer stations as a means of consolidating the solid waste stream in Connecticut by avoiding transportation of solid waste in small trucks to end destinations, and encourages a regional approach to bulky waste management. The proposed facility would achieve all three of these goals, and is therefore consistent with the SWMP.
12. On February 21, 1974, the Commissioner issued a permit to James Yaworski, Sr. and Yaworski, Inc. to operate a solid waste landfill (the Yaworski landfill) on a parcel of land adjacent to the proposed facility. The Commissioner issued two additional permits authorizing a major expansion of the landfill on December 22, 1989 and June 6, 1990. The permittees stopped accepting solid waste in April of 1995, but never closed the landfill pursuant to a plan approved by the Commissioner as required by ' 22a-209-13 of the Regulations of Connecticut State Agencies.
13. In 1996, James Yaworski, Sr. and Rose Yaworski transferred the land on which the landfill is located to Quinnebaug Valley Regional Resources, LLC. The Commissioner never approved the transfer of solid waste permits issued to James Yaworski, Sr. and Yaworski, Inc. to any

other individuals or entities as required by General Statutes §22a-60 and §22a-209-4(g) of the Regulations of Connecticut. State Agencies.

14. A decision on a request for a temporary injunction, issued by a judge of the Superior Court on February 25, 1998, requires Yaworski, Inc. to submit a revised closure plan to the Commissioner for his approval and to close the landfill in accordance with the approved closure plan within specified time periods. *P.R.I.C.E., Inc. v. Keeney*, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. CV94-0542469-S (February 25, 1998). (*P.R.I.C.E. Injunction.*) The court specifically determined that conditions at the landfill were reasonably likely to unreasonably pollute the air, water and natural resources of the state, and have imperiled the living conditions of persons living nearby.
15. When the Yaworski landfill was operating, residents of Packer Road experienced odors from the fumes of trucks traveling to, from, or within the landfill. Refuse seepage from those trucks onto Packer Road also resulted in odors that impacted residents. These residents also observed dust and heard noise generated by those trucks and activity at the landfill, and saw litter coming from within the landfill and from uncovered trucks traveling to the landfill.
16. The decomposition of solid waste in a solid waste landfill produces gases that can have potential hazards ranging from foul odors to the risk of explosion. By collecting landfill gases and burning them at a controlled temperature and rate of combustion in a flare or series of flares, a gas collection and flare system would reduce or eliminate the threat to human health and safety posed by landfill gases. If landfill gases are not properly burned or otherwise collected, they disperse into the atmosphere potentially causing additional pollution problems. A gas collection and flare system would avoid dispersion of gases into the atmosphere.

17. In May of 1992, the Commissioner issued Yaworski, Inc. a permit to construct and a temporary permit to operate a flare system at the landfill. These permits required Yaworski, Inc. to conduct tests of that flare system to determine its compliance with the emission limits set forth in the permits. Yaworski, Inc. constructed seven gas collection wells and a flare system at the landfill pursuant to those permits, but failed to fully conduct the required tests.
18. On August 17, 1994, the Commissioner and Yaworski, Inc. entered into Consent Order #1379. Under this order, Yaworski, Inc. agreed to submit a report on its failure to complete the flare testing required by the previous permits and to propose remedial actions, including a schedule for applying for any additional permits required by the Commissioner. As of the date of the hearings below, Yaworski, Inc. had not completed testing its flare system at the landfill and had submitted an incomplete application for a permit to construct and operate a landfill gas collection system at the landfill.
19. Issued by the Commissioner on May 10, 1994, Consent Order No. 1318A (also referred to as Consent Order No. 1318) requires Yaworski, Inc.: to conduct tests to determine the extent of ambient air pollution at and near the landfill; to take remedial actions approved by the Commissioner to abate any unacceptable exposures to air pollution at and in the vicinity of the landfill; and to monitor air pollution levels at and in the vicinity of the landfill to determine the effectiveness of those remedial measures. On January 26, 1996, the Commissioner notified Yaworski, Inc. that the landfill gas sampling report it had submitted as required by this Consent Order was deficient. As of the date of the hearing, Yaworski, Inc. had not fully complied with this Consent Order.
20. On October 25, 1996, the DEP issued a Notice of Violation to Yaworski, Inc. based on a determination by DEP staff that odors were emanating from the landfill in violation of

General Statutes §22a-174 and §22a-174-23(a)(1) of the Regulations of Connecticut State Agencies. Odors detected by DEP staff at or near the landfill were very strong and objectionable and among the strongest detected at landfills. The citizen intervenors have also detected strong and noxious landfill gas odors near the landfill on several different occasions over the last decade. The potency of these odors awakened some of the citizen intervenors from sleep and caused nausea, burning of the throat and mouth, difficulty breathing and swallowing, loss of appetite, and dizziness.

21. Both Yaworski, Inc. and the DEP have conducted some testing of the air in, and in the vicinity of, the landfill. Full compliance by Yaworski, Inc. with Consent Orders #1318A and #1379 would assist the DEP in making a determination as to whether the air emissions from the landfill pose a risk to public health and safety.
22. The *P.R.I.C.E. Injunction* requires the following actions by Yaworski, Inc. within specified time frames: rehabilitation of those gas collection wells at the landfill that can be rehabilitated; replacement of those gas collection wells that cannot be rehabilitated; submittal of an application to the Commissioner for a permit to construct and operate a landfill gas collection and flare system at the landfill; completion of all steps necessary to obtain such permits; and installation of a gas collection and flare system once such a system is permitted by the Commissioner.
23. On June 28, 1990, the Commissioner issued a water discharge permit (the discharge permit) to Yaworski, Inc. authorizing the discharge of leachate<sup>3</sup> from the landfill to the groundwaters of the state. In December 1997, DEP staff observed discoloration in an unnamed stream that

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<sup>3</sup> Leachate is liquid that results from ground or surface water which has been in contact with solid waste and has extracted material, either dissolved or suspended, from the solid waste. (Regs., Conn. State Agencies ' 22a-209-1)

traverses the landfill indicating that leachate had entered that stream. On several occasions in 1997, DEP staff observed discoloration in wetlands at, or in close proximity to, the Yaworski landfill indicating that leachate from the landfill had entered those wetlands. One of the citizen intervenors observed leachate from the Yaworski landfill entering the Quinebaug River on several occasions after the issuance of the discharge permit. This discharge of untreated leachate from the landfill into the unnamed stream, nearby wetlands, and the Quinebaug River is a violation of the discharge permit and is inconsistent with the *Connecticut Water Quality Standards*. See General Statutes §22a-426.

24. A properly designed and operated solid waste landfill should not contain free-standing water because such free-standing water interferes with the efficient operation of landfill gas collection wells and can contribute to leachate seeps.<sup>4</sup> On several occasions in 1996 and 1997, DEP staff observed leachate seeps at various locations within the landfill. As of the date of the hearing below, those leachate seeps have not been remediated as required by the discharge permit.
25. On or about December 22, 1997, DEP staff detected elevated water levels in one of the gas monitoring wells at the landfill indicating that precipitation had infiltrated into that well. On or about March 8, 1998, DEP staff detected water in all eight of the gas monitoring wells at the landfill indicating that precipitation was entering the landfill faster than it was draining off.

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<sup>4</sup>A leachate seep is a location where leachate discharges to, and flows across, the ground surface.

26. The *P.R.I.C.E. Injunction* also requires Yaworski, Inc., within specified time frames, to assess the groundwater elevation within the landfill and to design and implement, with the approval of the Commissioner, a plan to manage identified leachate seeps on the slopes of the landfill and a plan for a temporary system to collect untreated leachate discharging to the unnamed stream and wetlands near the landfill.
27. From 1988 to his incapacitation sometime on or before October 9, 1996, James Yaworski Jr. participated in the management and control of the Yaworski landfill, including communicating with DEP staff regarding conditions at the landfill, being present at the landfill on a frequent basis, and conducting site inspections of the landfill with DEP staff.
28. From 1988 to the present, Denis Yaworski has participated in the management and control of the Yaworski landfill, including communicating with DEP staff regarding conditions at the landfill, arranging site inspections of the landfill by DEP staff, and filing permit applications with the DEP relating to the operation of the landfill.
29. From approximately 1990 to the present, Lee Yaworski has participated in the management and control of the Yaworski landfill, including communicating with DEP staff regarding conditions at the landfill and conducting site inspections of the landfill with DEP staff.
30. From at least 1996 to the present, Christopher Deojay has participated in the management and control of the Yaworski landfill as an independent contractor. In that role he has received reports regarding conditions at the landfill filed by other consultants, communicated with DEP staff regarding conditions at the landfill and permit applications pending with the DEP, and conducted site inspections of the landfill with DEP staff.

31. Packer Road is a winding rural road over rolling terrain<sup>5</sup> located in the southeast corner of Canterbury. It runs for approximately 6000 feet between Butts Bridge Road and the Plainfield town line and varies in width between 20 and 24 feet. There are approximately 20 man-made structures, including approximately 15 residences, located along its length.
32. After crossing the Plainfield town line, Packer Road becomes Packerville Road. Packerville Road then continues in a northeasterly direction until it connects with Canterbury Road (Route 14A). Both Canterbury Road and Butts Bridge Road intersect Norwich Road (Route 12). Exit 88 of Interstate U.S. Route 395 is located off of Norwich Road north of Canterbury Road. The proposed facility is approximately three miles from that exit.
33. Since 1987, the Town has failed to conduct any significant or regular maintenance of Packer Road with the exception of some minor clearing of brush along its shoulders. As a result, the driveable portion of the roadway has narrowed and the road requires resurfacing and other repairs. The narrowness of Packer Road has, in turn, resulted in a tendency of drivers to drive the center line of Packer Road instead of staying on their side of the road and has increased the risk to pedestrians by eliminating or reducing places for them to step off the roadway to avoid passing vehicles. Although the Town has now painted a centerline down the middle of Packer Road, drivers still tend to drive the centerline because of the poor condition of the roadway and its shoulders

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<sup>5</sup>Traffic safety engineers use three categories to describe the terrain of a road - level, rolling or mountainous. Although Packer Road is level in places and rolling in others, it is characterized as rolling.



34. Packer Road also has substandard sight lines<sup>6</sup> that increase the safety risks posed to pedestrians and vehicular traffic. Poor sight lines are particularly problematic with regard to the northerly entrance driveway into the landfill that also serves as both entrance and exit for the recycling facility. As a temporary ameliorative measure, the Town has installed a stop sign at this entrance. The stop sign has created its own safety problem, however, because of a lack of sufficient sighting distance for vehicles heading in a southerly direction to see, and stop for, vehicles stopped at the stop sign.
35. Residents of Packer Road have experienced difficulties pulling out of their private driveways onto Packer Road, have had problems walking safely along Packer Road, and have observed trucks and/or cars backed up on Packer Road waiting to get into the landfill or the recycling facility located in the northwest corner of the site owned and operated by Packer Limited, LLC. The overload of vehicles on Packer Road tended to be worst on Saturday mornings, when citizen traffic into the landfill and recycling facility was heaviest.
36. During the years the landfill was at its operating peak, it generated approximately 90 truck trips<sup>7</sup> per day. The volume of traffic on Packer Road is now less than half of what it was during the peak operating years of the landfill. If the proposed facility were operating, the volume of traffic on Packer Road would be approximately two-thirds to three-quarters of the traffic volume during the peak operating years of the landfill. Because the landfill is no longer accepting solid waste, the level of truck traffic on Packer Road if the proposed facility

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<sup>6</sup>The term "sight lines" refers to the distance a person seated in a vehicle can see unimpeded in a particular direction. The National Institute of Traffic Engineers has developed sight line guidelines that have been adopted by the Connecticut Department of Transportation. Those guidelines are expressed in terms of a range, based on the nature of the road in question, estimated travel speed, actual travel speed and turning direction.

<sup>7</sup>A "truck trip" is a single trip by a truck either into or out of the proposed facility.

were permitted would be less than a third of the level found unacceptable in connection with the prior application of Yaworski Inc.

37. In evaluating the traffic impacts to Packer Road of the proposed facility, the Town and the staff have focused primarily on trucks that are 25 cubic yards or larger because such trucks would carry the bulk of the waste brought to the proposed facility and all of the waste transferred out of it. The volume of smaller vehicles (cars and small trucks) entering and leaving the proposed facility would be roughly equivalent to the volume of such vehicles during the peak operating years of the landfill.
38. If the proposed facility is permitted at the annual tonnage set forth in the draft permit to operate, it would generate approximately 76 truck trips per day on weekdays and approximately 38 truck trips per day on Saturdays. The proposed Yaworski transfer station would have generated approximately 152 truck trips per day in addition to the 90 truck trips already being generated at the time by the landfill.
39. To address traffic safety on Packer Road, the draft permits would require the Town to do the following:
  - (a) construct a new entrance driveway into the proposed facility on the west side of Packer Road, approximately mid-way between the existing south and north entrances to the landfill;
  - (b) perform general maintenance and repair to Packer Road, including trimming back brush and overhanging tree limbs, edging the roadway to achieve at least a 20-foot width, patching and leveling the shoulder area with hot mix asphalt, and painting a single center line strip over its entire length;

- (c) provide access to the citizen drop-offs via the new entrance driveway and a new interior road to be constructed between the new entrance road and the recycling facility;
- (d) require all vehicles entering the proposed facility with solid waste to use the new driveway;
- (e) place a locked gate across the current entrance to the recycling facility (the north entrance) to prevent public access via that entrance;
- (f) restrict the use of the south entrance to empty trucks arriving to pick up solid waste for transfer to end destinations; and
- (g) require all commercial truck traffic to or from the facility to access or egress Packer Road via Butts Bridge Road.

40. To address potential queuing problems on Packer Road during operation of the proposed facility, the Town has agreed to widen the new access driveway to 32 feet to allow room for three lanes (one for egress, one for ingress and one for truck stopping).

41. To address potential dust generation from truck traffic inside the proposed facility, the draft permit to construct would require the Town to pave the new entrance driveway from Packer Road to the internal driveway to the recycling facility and the Town has agreed to install recycled bituminous asphalt on all unpaved roads within the proposed facility. The south entrance is already paved.

42. If the requested permits are granted and all of the conditions relating to traffic in the permits are met, Packer Road would be safe for both pedestrians and vehicular traffic. Maintaining or restoring the 20-foot roadway width of Packer Road is both achievable and consistent with AASHTO<sup>8</sup> standards and anticipated traffic flows. The new entrance driveway can meet Connecticut Department of Transportation site line guidelines if constructed with a 60-foot turning radius<sup>9</sup> and maximum feasible site lines. The site lines associated with the existing south entrance do not present a significant safety risk if the use of that entrance is restricted to ingress only. Packer Road can safely handle the peak hourly volumes of traffic that are reasonably likely to be associated with operation of the proposed facility. Repairing and improving the shoulders to Packer Road would improve the site lines, and thus the overall safety, of Packer Road.

43. Condition No. 24 of the original draft permit to operate (draft permit of August 13, 1997) would prohibit Yaworski, Inc., Packer Ltd., LLC, Quinebaug Valley Regional Resources, LLC,<sup>10</sup> Haul of Fame, Inc.,<sup>11</sup> Denis Yaworski, James Yaworski, Jr., Rose Yaworski and Christopher Deojay, or any of their affiliates, agents, employees, representatives or assignees,

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<sup>8</sup>In 1984, the American Association of State Highway and Transportation Officials (AASHTO) adopted a set of safety standards to address both vehicular and pedestrian traffic. These standards apply to the construction of new roads and major repairs to existing roads and thus do not specifically apply to the repairs the draft permit to construct requires to Packer Road. The standards are, however, a useful measure of the efficacy of those repairs.

<sup>9</sup>The Town has agreed to construct the new driveway with a 60-foot turning radius.

<sup>10</sup>On July 18, 1996, Packer Limited, LLC and Quinebaug Valley Regional Resources, LLC were formed as limited liability companies in Connecticut, with Denis Yaworski and James Yaworski, Jr. as their respective organizers. Denis Yaworski is also the general manager of both entities.

<sup>11</sup>On April 18, 1994, Haul of Fame, Inc. was incorporated in Connecticut. As of May 15, 1998, Denis Yaworski was its president and director and Lee Yaworski its secretary.

from participating in the management of the proposed facility. Condition No. 25 of that draft permit would require the Town to submit the names and qualifications of proposed operators<sup>12</sup> to the Commissioner for his approval prior to their employment by the Town.

44. Condition No. 24 of the current draft permit to operate (revised draft permit of April 21, 1998) would prohibit Yaworski, Inc. and Christopher Deojay, and any business entity they manage, own or organize, from managing the proposed facility. Denis Yaworski, James Yaworski, Jr. and Quinebaug Valley Regional Resources, LLC, and any business entity they manage, own or organize, would be prohibited from managing the proposed facility only until closure of the adjacent Yaworski landfill in accordance with a closure plan approved by the Commissioner, provided Denis Yaworski or James Yaworski, Jr. have not violated any environmental laws or regulations prior to the landfill closure. With slightly different language than the former version, Condition No. 25 of the current draft permit to operate would retain the requirement that the Town submit the names and qualifications of all proposed operators to the Commissioner for his approval prior to their employment by the Town.

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<sup>12</sup>As used in the solid waste statutes and regulations, the term *operator* refers to the person who is ultimately responsible for maintaining the solid waste facility in conformance with applicable statutes and regulations and the facility permits. Regs., Conn. State Agencies ' 22a-209-1. A *certified operator* is the solid waste facility operator or an employee of the *[sic]* such operator who is present on site and oversees or carries out the daily operation of the facility, and whose qualifications are approved in accordance with ... [' 22a-209-6]. §22a-209-1. It is clear from its context, that the term *operator* in Condition No. 25 of the draft permit to operate of August 13, 1997 actually refers to *certified operators* and not to *operators* as those terms are used in the solid waste statutes and regulations.

### ***III. CONCLUSIONS OF LAW***

#### ***(i) The Application is Complete***

“ ‘An application will not be deemed complete until all information required by statutes or regulations or otherwise requested by the Commissioner have been submitted in proper form.’ Regs., Conn. State Agencies §22a-209-4(b).” *Newtown v. Keeney*, 234 Conn. 312, 322 (1995). However, the decision as to what information must be included in a solid waste permit application is a matter within the Commissioner’s discretion. *Preston v. Department of Environmental Protection*, 218 Conn. 821 (1991). “[B]ecause the purpose of Section 22a-209-4(b) is to ensure that the commissioner has an adequate basis upon which to render a decision on a solid waste construction permit application and because both the legislature and the commissioner have determined that the commissioner is in the best position to decide what information is necessary under the circumstances of each case, the more reasonable interpretation of’ 22a-209-4(b) is that an application thereunder must include only those items set forth that the commissioner deems necessary”. *Id.* at 830-831.

I have reviewed the claims put forward by the citizen intervenors, including the specific instances they have cited in support of their contention that the application is incomplete. I have also considered the testimony of DEP staff as to their decision that the application was sufficient and that the DEP had sufficient information in the record for a decision to be reached on the merits of the application.

I decline to deny the application on the basis that it is incomplete. I affirm the decision of the hearing officer that the record contains sufficient information for a decision to be reached on the merits of the application.

(ii) **Traffic Impacts on Packer Road are Acceptable**

I have reviewed the record in response to the claim of the citizen intervenors that the truck traffic connected with the operation of the proposed facility would pose a risk to pedestrians and vehicles using Packer Road. The record shows that in support of their claim, the citizen intervenors presented evidence that included their own experiences living and driving on Packer Road. The citizen intervenors failed to offer substantial and credible contrary evidence to the fact that Packer Road can safely handle the volume of traffic likely to be generated by the proposed facility and that the facility would not pose an unreasonable risk to traffic or pedestrians on Packer Road if constructed and operated in accordance with the permit conditions.

The Commissioner has the authority to consider the traffic impacts of the proposed facility. In considering permit applications for solid waste facilities, General Statutes §22a-208a(a) provides that the Commissioner “shall consider the character of the neighborhood in which such facility is located and may impose requirements for hours and routes of truck traffic....” The permit conditions listed herein impose requirements to mitigate traffic impacts resulting from the construction and operation of the proposed facility. See *City Recycling, Inc. v. State of Connecticut*, 247 Conn. 751 (1999); *Yaworski, Final Decision*; *Yaworski, Reconsideration Decision*.

I conclude that the traffic impacts of the proposed facility do not justify denial of the requested permits. I incorporate into this decision the conditions in the draft permits and recommended conditions in the *Proposed Final Decision* that would impact traffic safety. I include herein additional permit conditions to further address traffic safety.

**(iii) General Statutes § 22a-19**

To support their claim under §22a-19 of the General Statutes, the citizen intervenors have identified dust, noise, litter, and air pollution from the exhaust of large trucks as potential pollutants in their effort to establish the reasonable likelihood of unreasonable pollution as a result of the operation of the proposed facility. As the moving party, the burden of proof on this issue is theirs. *Manchester Environmental Coalition v. Stockton*, 184 Conn. 51 (1981).

The intervenors have not provided sufficient evidence that any pollution that would result from the truck traffic associated with the planned facility would be unreasonable. The amount of solid waste to be accepted at the proposed facility has been reduced, resulting in fewer truck trips and less exhaust. Conditions of the permit address the potential pollutants due to truck traffic. These conditions include the paving of driveways to control potential dust generation. In addition, trucks entering the facility would be required to be covered and to contain full loads to the maximum extent practical to reduce truck volume and reduce levels of pollutants such as dust and litter caused by the trucks carrying waste to the proposed facility.



The intervenors have not presented enough evidence that the operation of the proposed facility will result in unreasonable levels of dust, noise, litter, and air pollution. The intervenors have not presented evidence to support their claim that if the proposed facility is operated, potentially unreasonable pollutants are reasonably likely to occur at levels in excess of the requirements of any current statute or regulation. They also do not address the impact certain permit conditions would have on the control of the levels of these alleged pollutants as a result of the operation of the proposed facility.

The intervenors have not met their burden of proof that the operation of the proposed transfer station, standing alone, will result in unreasonable pollution. However, the evidence presented by the intervenors and the evidence in the record regarding the levels of pollution at the Yaworski landfill, when considered in conjunction with the environmental impacts of the proposed facility, is sufficient to meet the threshold showing that triggers the prohibition in §22a-19 against issuance of a permit without proof of the unavailability of a prudent and feasible alternative. Thus, when considered in conjunction with the existing conditions of the Yaworski landfill, the operation of the proposed facility would present a reasonable likelihood of unreasonable pollution to satisfy a claim under the plain language of §22a-19. See *Manchester v. Environmental Coalition v. Stockton*, supra, 184 Conn. 57; *Yaworski, Final Decision*.

The intervenors have not met their burden of proof regarding the likelihood of unreasonable pollution solely due to the operation of the proposed facility. Therefore, if the Yaworski landfill is properly closed, the proposed facility will not result in the reasonable likelihood of unreasonable pollution. However, if the Yaworski landfill is not closed, the impact

of the transfer station in conjunction with the existing problems at the adjacent landfill will result in the reasonable likelihood of unreasonable pollution within the meaning of §22a-19.

The proposed facility would serve a beneficial public purpose and is consistent with the State's solid waste policies. See *Connecticut Solid Waste Management Plan*; see generally §22a-259. However, the requested permits to construct and operate the proposed facility shall be issued only if the landfill is closed and its environmental problems are controlled. If the landfill is closed and the conditions of any issued permits are met, the proposed facility would be managed in an environmentally sound manner to control pollutants such as dust, noise, and litter and would avoid problems arising from air and water pollution and negligent waste management. However, without the proper closure of the landfill, the operation of the proposed facility will result in the reasonable likelihood of unreasonable pollution within the meaning of §22a-19.

**(iv) *Closure of the Landfill***

**(a) Statutory Mandates**

Management of the State's air, land and water resources is the responsibility of the Department of Environmental Protection. General Statutes §22a-1. All matters relating to the preservation and protection of these natural resources are therefore within its jurisdiction. §22a-2. The statutes enacted for the management of solid waste, §22a-207 *et seq.*, are but a part of the comprehensive body of laws that enable the Department to fulfill its responsibilities.

The State has resolved to take responsibility for handling waste while protecting its natural resources. See generally §22a-259; *Final Decision re Wheelabrator Putnam, Inc.*, February 13, 1998. The State's solid waste policies were developed to address the significant and widespread impacts to the State's air, land, and water resources resulting from the many landfills throughout the State.

The Commissioner's authority to regulate solid waste facilities to protect health and safety and to minimize pollution and other nuisances arises from General Statutes §22a-208 which requires the Commissioner to "examine all ...proposed solid waste facilities and provide for their proper planning, design, construction [and] operation ...in a manner which insures against pollution of the waters of the state, prevents the harboring of vectors, prevents fire and explosion and minimizes the emission of objectionable odors, dust or other pollutants so that the health, safety, and welfare of the people of the state shall be safeguarded and enhanced and the natural resources and environment of the state may be conserved, improved and protected."

Through its enactment of §22a-208, the legislature has directed the Commissioner to administer and enforce the planning and implementation requirements of the solid waste management statutes. *Carothers v. Capozziello*, 215 Conn. 82 (1990). This statute grants and defines the scope of the authority of the Commissioner to approve permits for the construction and operation of solid waste facilities in this state. The Commissioner makes the final decision as to whether to grant or deny a permit for a solid waste facility. *Newtown v. Keeney*, 234 Conn. 312 (1995).

Section 208a(a) provides that “The Commissioner...*may* issue, deny, modify...revoke or transfer a permit, under such conditions as he *may* prescribe...” (Emphasis added.) See also §22a-6(a)(4). This discretionary authority is circumscribed, however, by additional language in the statute that provides: “In making a decision to grant or deny a permit to construct a [transfer station], the commissioner *shall* consider the character of the neighborhood in which such facility is located...”(Emphasis added.) §22a-208a(a).

Section 22a-209-4(d) of the Department’s Regulations sets standards for the issuance of permits to construct and operate solid waste facilities. This section of the Regulations provides that the Commissioner shall issue a permit to construct or operate if four conditions are met. The first of these conditions is that the facility will be constructed and operated in compliance with applicable statutes and regulations. §22a-209-(d)(1)(A). Therefore, even if an application complies with a regulation, compliance with the applicable statutes is essential to the issuance of any permits to construct and operate. See also §22a-209-7 (standards specific to transfer stations).

Because environmental statutes are remedial in nature, they should be construed liberally to accomplish their purpose. *McManus v. Commissioner of Environmental Protection*, 229 Conn. 654 (1994). When assessing the direction set forth in a statute, “[i]t is a basic tenet of statutory construction that ‘no part of a legislative enactment is to be treated as insignificant or unnecessary, and there is a presumption of purpose behind every sentence, clause or phrase...no word in a statute is to be treated as superfluous.’” *State v. Anderson*, 227 Conn. 518, 528 (1993),

citation omitted. Statutes are to be construed to carry out the intent of the legislature. *Aaron v. Conservation Commission*, 183 Conn. 532 (1981).

As the designee of the Commissioner, my decision must be, and is, based on the same considerations that would direct his decision. Therefore, I have carefully assessed the facts presented by the circumstances of this case according to these requirements of §§22a-208 and 208a(a). My decision to require the closure of the adjacent landfill prior to the construction of the proposed facility is based on my assessment of the circumstances presented in this case in view of the provisions of §§22a-208 and 208a(a).

**(b) *The Site of the Proposed Facility***

The proposed transfer station would be constructed and operated in a residential neighborhood on a parcel of land adjacent to a solid waste landfill. This landfill has documented environmental problems that have impacted residents of that neighborhood. The owner and operator of that landfill has been denied a permit to operate a transfer station at the same location by two Commissioners primarily because of its poor compliance history in connection with its operation of the landfill. *Yaworski, Final Decision; Yaworski, Decision on Reconsideration*. The Connecticut Superior Court affirmed these decisions. *Yaworski, Inc. v. DEP*, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. CV95-0550682 (June 21, 1996).

The Town and the Yaworski intervenors ask me to turn a blind eye to the fact that this landfill is adjacent to the site of the proposed facility and instead focus myopically only on the

land where the transfer station will be located. Such an analysis ignores the synergistic nature of the environment. Conditions in one part of our environment impact and affect the whole. This is clearly the case where a transfer station will be located on a site immediately adjacent to a landfill with environmental problems. The conditions at the landfill would unavoidably impact the construction and operation of the proposed transfer station. In a 1998 decision, the Superior Court found that the landfill “continues to despoil the environment in proximity to the landfill”. *P.R.I.C.E. Injunction.*

I also cannot ignore the fact that this is also a case where the owner and operator of the adjacent landfill was denied a permit to operate a transfer station at the same location by two Commissioners primarily because of its poor compliance history in connection with its operation of the landfill. A review of those decisions and the evidentiary record in this instant case reveal an abysmal record of noncompliance by Yaworski, Inc. in relation to the operation of the landfill. This history of noncompliance by Yaworski, Inc. presented in the evidentiary record and outlined above, reads like an environmental horror story. Inspections since the landfill stopped accepting waste in April 1995 have revealed continuing problems with leachate, soil erosion, and gas emissions at the closed portion of the landfill. This noncompliance has resulted in that landfill presenting risks to nearby property, including the adjacent land on which the proposed facility would be constructed and operated. These risks range in degree of severity from foul odors to a most dangerous risk of explosion from gases that have not yet been managed through a gas collection and flare system.

There is no evidence in the record that management of the landfill by Yaworski, Inc. has improved in any significant way since the denial of that company's transfer station application. Consent and court orders remain unfulfilled. The environmental dangers at the landfill remain unabated.

There is sufficient evidence in the record to conclude that gases from the landfill have already adversely affected nearby residents and may pose a significant risk to persons using the proposed facility. This condition alone supports my decision to require that the landfill be closed prior to the construction and operation of the proposed facility. Adding this condition to the list of environmental problems outlined herein only strengthens the conclusion that the Yaworski landfill should be finally and definitively closed and a landfill gas collection and flare system be installed prior to the start of the construction of the proposed transfer station.

Section 22a-208a (a) of the General Statutes allows the Commissioner to impose conditions on an application for a permit "in accordance with the provisions of this chapter and regulations adopted pursuant to this chapter." Section 22a-208 provides that the Commissioner "*shall* examine all...proposed solid waste facilities and provide for their proper planning ...in a manner which ensures against pollution of the waters of the state, prevents the harboring of vectors, prevents fire and explosion and minimizes the emission of objectionable odors, dust or other air pollutants so that the health, safety, and welfare of the people of the state shall be safeguarded and enhanced and the natural resources and environment of the state may be conserved, improved and protected." The Yaworski landfill presents the threat of all these potential pollutants and risks. Requiring its closure prior to the construction and operation of the

proposed facility is necessary to control and prevent these possible dangers from affecting persons living near or using the proposed facility.

Placing these conditions on the issuance of the permits is not unreasonable. Where a statute allows for the imposition of conditions, conditions may be imposed. See *Carpenter v. Planning and Zoning Commission of the Town of Stonington*, 176 Conn. 581 (1979). Only conditions that are impossible to satisfy would be patently unreasonable. See *Vaszauskas v. Zoning Board of Appeals*, 215 Conn. 58 (1990). The granting of a permit may be conditioned on the performance of acts by parties other than the applicant if the conditions are within the applicant's control to accomplish. See *Final Decision, Wheelabrator Putnam, Inc.*; see also *Blaker v. Planning & Zoning Commission*, 212 Conn. 471 (1989).

The conditions placed on the granting of these permits to construct and operate are not impossible to fulfill. The Town and Yaworski, Inc. have executed a lease dated June 23, 1998 that reflects their mutuality of interest in the construction and operation of the proposed facility. The terms of the lease, including lease payments, will commence on the date the Town begins solid waste transfer station activities at the proposed facility. The lease also provides that Yaworski, Inc., the landlord, will, where necessary, join the Town, the tenant, in applying for all permits or licenses.

The tenant, the Town, and the landlord, Yaworski, Inc., have a mutual financial interest in ensuring that the proposed facility receives its permits and begins operating. The Town



cannot begin to operate the facility and Yaworski, Inc. cannot begin to receive payments from the lease of the site on which the proposed facility will operate until the permits are issued.

It also cannot be overlooked that Yaworski, Inc., as owner of the property, has previously applied for and been denied permits to construct and operate a transfer station. It was only upon the denial of its permit application that Yaworski, Inc. entered into the lease with the Town, placing the onus on the Town to receive the necessary permits.

The mutuality of interest between the Town and Yaworski, Inc. is such that it is reasonable to conclude that the Town has sufficient control over the performance of the permit conditions to validate their inclusion in the permits. If, however, upon judicial review, the permit condition imposed herein that the Yaworski landfill be closed and a gas collection and flare system be installed prior to the issuance of the subject permits is determined to be invalid, the permits shall be denied. Without the closure of the landfill and the installation and operation of a gas collection and flare system, the proposed facility will endanger those using it and living near it and will cause unreasonable pollution. Thus, this permit condition must be deemed to be not severable from the permits as a whole.

In considering the question of severability, the test is whether the parts that are severed are so mutually connected and dependent as to indicate an intent that they should stand or fall together. See *Payne v. Fairfield Hills Hospital*, 215 Conn. 675 (1990); *Henry J. Mazzola et. al. v. Commissioner of Transportation of the State of Connecticut*, 175 Conn. 576 (1978). The required condition that the Yaworski landfill be closed and a gas collection and flare system be

installed before the permits to construct and operate the proposed facility are issued is an essential prerequisite to the issuance of the permits.

As final decision-maker, I believe that the evidence in the record, standing alone, is sufficient to deny outright the permit applications. However, I have concluded, as discussed at greater length herein, that the proposed facility would be legally constructed and operated if the Town adheres to the terms and conditions of the permits. The proposed facility cannot be constructed or operated if the Yaworski landfill is not closed and a gas collection and flare system installed. If the condition requiring this closure cannot stand, the Town shall not receive any permits to construct and operate the proposed facility.

**(v) *Facility Management***

The Town will lease the site for the proposed facility from individuals and entities that own and have operated an adjacent landfill that has been the subject of numerous environmental complaints, consent orders and lawsuits over the past years. The conditions of this landfill have rendered the site of the proposed facility presently unsuitable for the construction and operation of a transfer station. The record demonstrates that the individuals listed below have all been involved in the management of the landfill, and have therefore contributed to its long history of environmental noncompliance. These owners and proposed managers of the proposed facility-- who will benefit financially from the construction and operation of the proposed facility-- have for years failed to comply with legal mandates to remediate problems at that landfill and a legal order to close this landfill.

I affirm the recommendation of the hearing officer that the permits be issued on the condition that the following individuals and entities have no role in managing the proposed facility: Yaworski, Inc.; Packer, Ltd., LLC, Quinebaug Valley Regional Resources, LLC; Haul of Fame, Inc.; Denis Yaworski; James Yaworski, Jr.; Lee Yaworski; Christopher Deojay or any of their affiliates, corporate organizers, agents, directors, owners, officers, employees, representatives or assignees.

As more thoroughly detailed herein, the individuals listed above have all been involved in the management and control of the Yaworski landfill, either as principals of Yaworski, Inc. or, as in the case of Christopher Deojay, as an independent contractor for Yaworski, Inc.. James Jr., Denis and Lee Yaworski are either organizers and/or officers or general managers of Packer Ltd., LLC, Quinnebaug Valley Regional Resources, LLC, or Haul of Fame, Inc.. James Yaworski, Sr. and Rose Yaworski transferred the land on which the landfill is located to Quinnebaug Valley Regional Resources in 1996. As discussed, Yaworski, Inc. is the subject of court and consent orders based on its extensive history of environmental non-compliance. See, for example, *P.R.I.C.E. Injunction; Yaworski, Final Decision*.

All of these individuals and companies except Denis Yaworski and Christopher Deojay as individuals will be the landlords of the property on which the proposed facility will be constructed and operated. Denis Yaworski will benefit from the lease as he has the following affiliations: president and director of Yaworski, Inc.; general manager of Packer Limited, LLC and Quinnebaug Valley Regional Resources, LLC; and president of Haul of Fame, Inc.. As a

general contractor for Yaworski, Inc. and its related entities, Christopher Deojay will also benefit from the lease arrangement that will allow the proposed facility to be constructed and to operate.

These individuals and companies have a proven record of environmental noncompliance. It is therefore reasonable to conclude that their operation of the proposed facility would increase the likelihood of environmental noncompliance at that facility. See also General Statutes §22a-6m (compliance history of a corporation's principal players fairly within scope of the Commissioner's inquiry in a permit process.)

The record contains no proof that management of the landfill has improved in any significant manner since Yaworski, Inc. applied for and was denied permits to construct and operate a transfer station on the site now in question. Indeed, the record outlines failure after failure to comply with orders and permits issued by the Department of Environmental Protection and an order of the Superior Court. These individuals, acting either as corporate officers of Yaworski, Inc. or as officers or owners of the various entities listed above, are responsible for the non-management of the landfill that has led to the abhorrent conditions at that landfill and are culpable in their mutual disregard for the outstanding unfulfilled court and consent orders regarding the environmental problems at that landfill.

The Commissioner is required by General Statutes §22a-208 to protect the public health, safety and welfare and to assure that solid waste facilities are lawfully and soundly operated. It is fundamental that when a statute allows for the imposition of conditions, conditions may be imposed. See *Carpenter v. Planning and Zoning Commission of the Town of Stonington*, supra.

The Commissioner may issue a solid waste permit under such reasonable conditions as he may prescribe. General Statutes §22a-208(a); Regs, Conn. State Agencies §22a-209 - 4(c)(3).

I affirm the conclusion of the hearing officer that preventing these individuals with a long history of poor environmental compliance in connection with one solid waste facility from managing another solid waste facility is clearly a reasonable means of protecting the public health, safety and general welfare and deterring future non-compliance with environmental laws and regulations. See also *Final Decision re Quinnipiac Group, Inc.* Application No. 90-411, January 2, 1991.

A condition of the permit to operate requires the Town to obtain the written permission of the Commissioner prior to employing a certified operator at the facility. A certified solid waste facility operator is that operator or its employee who is present on the site overseeing and carrying out the daily operations of the facility.

The Commissioner may impose this condition under the authority of §22a-208a(a). See also §22a-6(a)(4). In addition, as licensees, these intervenors are always subject to the Department's Regulations regarding operators of such a facility. This condition is not unlike the regulatory requirement that operators of such facilities must be certified. See Regs., Conn. State Agencies §§22a-209-1 and 6.

This condition does not revoke the solid waste operator licenses of the individual Yaworski intervenors as it does not prevent them from working as operators at another facility. I

have clarified this condition to provide that the environmental compliance history of the proposed operator would be the basis for the Commissioner's approval or rejection. This approval of personnel is a logical extension of the bar on the participation in management of certain individuals and entities, and is consistent with the Department regulations.

#### ***IV. PERMIT CONDITIONS***

I adopt the following conditions of the permit to construct and the permit to operate the proposed facility.

##### ***A. Permit to Construct***

- (1) In condition no. 1, in the sentence describing the term "Processing", delete the word "and" in the phrase "characteristics *and* volume" and substitute the word "*or*".
- (2) In condition no. 2, section ~~As~~ delete ~~AMarch 19, 1997"~~ and substitute ~~AJune 23, 1998.~~ *@*
- (3) In condition no. 2, delete the last paragraph and substitute the following: *AThe permittee shall comply with all the terms and conditions of this permit. This permit consists of the conditions contained herein, and the plans and specifications described in this section. Violations of any provision of this permit is subject to enforcement action pursuant to Conn. Gen. Stat. ' ' 22a-6, 22a-208, 22a-225 and 22a-226, and any other applicable provisions of law. @*

- (4) In condition no. 3, add *For the requirements of this permit* after the word *law*.
- (5) In condition no. 7, delete *drop off area* and *center* and replace with *facility*.
- (6) In condition no. 8, add a new section *A* as follows: *Install appropriate signage within the facility and along Packer Road to advise both commercial and residential drivers of the traffic patterns and restrictions required by this permit and the permit to operate.*
- (7) In condition no. 8, add a new section *E* as follows: *Remove the stop sign located at the intersection of the north entrance driveway and Packer Road.*
- (8) In condition no. 8, add a new section "F" as follows: *"Install recycled bituminous asphalt on all unpaved roads in the facility."*
- (9) Delete condition no. 8a. and substitute the following: *Construct a new entrance driveway for citizen and commercial access to the facility. Said driveway shall be paved, 32 feet wide, with a turning radius of 60 feet and maximum achievable sight lines at its intersection with Packer Road, as otherwise shown on the plans submitted with the application referenced in condition no. 2 of this permit.*
- (10) In condition no. 8b, first sentence, delete *the existing roadway* and substitute *Packer Road*.
- (11) In condition no. 8b, second sentence, add the following after *surface* *A* and *placing MC800 oil or its equivalent, and a surface seal coat of chip stone surface (3/8" traprock), over the shoulder areas after they have been patched and leveled with hot mix asphalt.*
- (12) Condition no. 9 should be deleted and replaced with the following: *Access to the recycling facility drop-off area shall be provided via the new entrance driveway*

*referenced in condition no. 8 of this permit. Prior to issuance of the permit to operate, the permittee shall construct a paved driveway connecting the new entrance driveway and the recycling facility, as shown on Sheet 3 of 3 of the plans referenced in condition no. 2 of this permit, to provide such access. @*

- (13) In condition no. 10, delete *Ats* and insert *Ats* delete the word *Acenter* and insert *Afacility* and add the following at the end of the sentence after *Apermit* *And install recycled bituminous asphalt on all unpaved roads within the facility. @*
- (14) After condition no. 11, add a new condition as follows, and renumber the conditions that follow accordingly: *Athe permittee shall install trip indicators, of a type and at locations approved in writing by the Commissioner, along the new entrance driveway and south entrance driveway, to record the number of commercial trucks entering or leaving the facility, their weight, and the date and time of their arrival or departure. @*
- (15) In condition no. 16, delete *Aafter July 1, 1971, .@*
- (16) In condition no. 18, amend the reference to “Section 53a-157 of the CGS” to read “*Section 53a-157b of the CGS*”.



**B. Permit to Operate**

- (1) In condition no. 2, delete the last paragraph and substitute the following: *The permittee shall comply with all the terms and conditions of this permit. This permit consists of the conditions contained herein, and the plans and specifications described in this section. Violations of any provision of this permit is subject to enforcement action pursuant to Conn. Gen. Stat. ' ' 22a-6, 22a-208, 22a-225, 22a-226, and any other applicable provisions of law.*
- (2) In condition no. 2h, delete *March 19, 1997* and substitute *June 23, 1998.*
- (3) In condition no. 3, add *or the requirements of this permit.* after the word *law.*
- (4) In condition no. 5, add the phrase “*under the conditions specified in conditions nos. 24 and 25 below.*” after the word “*Permittee.*”
- (5) In condition no. 6, delete *drop-off area* and *center* and substitute *facility.*
- (6) Delete condition no. 7 and substitute the following: *The permittee shall accept no more than 65,000 tons per year and no more than 228 tons per operating day, computed on a monthly basis, of solid waste as defined in the facility O&MP. The permittee shall assure that solid waste is deposited in the transfer station building only by commercial vehicles and that private individuals deposit their waste only in the containers described in condition no. 6. Any unacceptable waste left at the facility shall be transferred within 24 hours to a solid waste facility permitted to accept such waste. Waste received on Saturday or a day*

*followed by a legal holiday shall be transferred within 48 hours to a solid waste facility permitted to accept such waste.”*

- (7) Delete condition no. 10 and substitute the following: *Solid waste shall be stored at the facility on an emergency or temporary basis only. Such waste shall be stored inside the transfer station building in accordance with '22a-209-9 of the RCSA, and only in an amount not to exceed 228 tons for a time period not to exceed 24 hours or 48 hours for waste received on a Saturday or a day followed by a legal holiday. The permittee shall not store, or allow any other person to store, waste outside the transfer station building at any time.@*
- (8) In condition no. 11, first sentence delete *Recyclables drop-off area@* and substitute *citizen recycling facility.@*
- (9) Delete condition no. 12 and substitute the following: *The permittee shall assure that the central entrance driveway, referenced as ~~optional~~ on sheet 3 of 3 of the plans referenced in Condition No. 2 of this permit, is used by commercial vehicles to service both this facility and the recycling facility and is the sole route used by citizens to access the recycling facility and the municipal solid waste and bulky waste drop-off area.@*
- (10) Delete condition no. 13 and substitute the following: *Prior to operation of the facility, the permittee shall ensure that the existing main entrance driveway to the recycling facility is closed to public access and is used only to service the recycling facility and landfill as set forth in the facility's O&MP referenced in condition no. 2 of this permit.@*

- (11) After condition no. 14 and before condition no. 15, insert a new condition as follows and renumber the conditions that follow accordingly: *At the extent practicable, the permittee shall require that commercial trucks bringing solid waste to, or removing solid waste from, the facility carry full loads so that truck trips are minimized.* @
- (12) ~~A~~After condition no. 14 and before condition no. 15, insert a new condition as follows and renumber the conditions that follow accordingly: *Prior to operation of the facility, the permittee shall close the transfer station it operates at its Kinne Road garage.* @
- (13) After condition no. 14 and before condition no. 15, insert a new condition as follows and renumber the conditions that follow accordingly: *“Use of the south entrance shall be restricted to empty trucks arriving at the facility to solid waste for transfer to end destinations.”*
- (14) In condition no. 15 add the following: *“The following, specified in the permit to construct, shall be maintained by the Permittee for the term of this permit: the new entrance driveway; the signage within the facility and along Packer Road; the locked gate at the intersection of the existing main entrance driveway; and the trip indicators along the new entrance driveway and south entrance driveway.”*
- (15) In condition no. 16, second sentence, delete ~~A~~be solely responsible for operating@ and insert *A*perate. @
- (16) In condition no. 19, delete the third sentence and substitute the following: *A*The permittee shall remove all litter on a daily basis from the site, surrounding properties, and along Packer Road from the south to north entrance driveways.

*The permittee shall require that all commercial trucks entering or leaving the facility be either covered or enclosed. @*

- (17) In condition no. 22, delete ~~A~~fter July 1, 1971. @
- (18) In condition no. 23, add a new Section ~~A~~c@as follows: ~~A~~*The daily readings from the trip indicators installed pursuant to the requirements of the permit to construct indicating the number of commercial vehicles entering or leaving the facility, their weight, and the date and time of their arrival or departure. @*
- (19) Delete condition no. 24 and substitute the following: ~~A~~*The permittee shall not allow Yaworski, Inc., Packer, Ltd. LLC, Quinebaug Valley Regional Resources, LLC, Haul of Fame, Inc., Denis Yaworski, James Yaworski, Jr., Lee Yaworski, Christopher Deojay or any of their affiliates, corporate organizers, agents, directors, owners, officers, employees, representatives or assignees to participate in the management of this facility. Management =includes the positions identified by the permittee in Attachments G&H to its permit application as: facility supervisor (contractor); supervisor or operator certified by the department; and facility emergency response coordinator. Management =also includes the direction and supervision of the day-to-day operations of the facility regardless of the job title of the individual who so directs or supervises. Nothing in this paragraph shall preclude any of the aforementioned persons or entities from responding to any emergency that may occur at the facility or the site at which it is located, or from complying with any other requirement of law or department permit requirement. @*

- (20) Delete condition no. 25 and substitute the following: *Prior to employing or retaining any operator, the permittee shall submit to the Commissioner for his review and written approval the name and qualifications of such proposed operator(s), whose qualifications have been certified pursuant to Section 22a-209-6 of the RCSA. The Commissioner shall consider the compliance history of the proposed operator(s) in deciding whether to approve or deny the submission. The permittee shall assure that each individual under the supervision of such certified operators is given sufficient training to identify waste received at the facility that is not acceptable at the facility and to take proper action in handling such waste. @*
- (21) Delete condition no. 26 and substitute the following: *This permit does not relieve the permittee of the responsibility to maintain and operate the facility in continuous compliance with all applicable provisions of federal, state, and municipal law, including the federal Occupational Safety and Health Act. @*
- (22) In condition no. 29, amend the reference to “Section 53a-157 of the CGS” to read “Section 53a-157b of the CGS.”

**V. CONCLUSION**

Based upon the record before me, I find that the proposed facility will serve the waste management needs of this State and that it is in the best interests of the State that this facility be constructed and operated. I also find that if the Town adheres to the terms and conditions of the permits to construct and operate, specified herein, the proposed facility would be constructed and operated in accordance with all legal requirements in a manner that ensures against the pollution of our air, water and other natural resources.

I therefore grant the permits to construct and operate the proposed facility. However, no permits shall issue unless and until there is full and complete compliance with the following conditions. First, the permit to construct the proposed transfer station shall not be issued until the Yaworski landfill is closed pursuant to a plan approved by the Commissioner. This plan must include the installation of an operational gas collection and flare systems. Second, as listed herein, certain individuals and businesses associated with the Yaworski landfill are to be excluded from managing the proposed facility.

March 16, 2000  
Date

/s/ Janice B. Deshais  
Janice B. Deshais, Director  
Office of Adjudications

