

# The Connecticut General Assembly

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## Memorandum

**To:** Legislative Regulation Review Committee  
**From:** Legislative Commissioners' Office  
**Committee Meeting Date:** July 24, 2012

<b>Regulation No:</b>	2012-24
<b>Agency:</b>	Department of Energy and Environmental Protection
<b>Subject Matter:</b>	Air Quality Amendments to Reduce Emissions from Certain Coating Operations
<b>Statutory Authority:</b> (copy attached)	22a-174

	Yes or No
<b>Mandatory</b>	Y
<b>Federal Requirement</b>	Y
<b>Permissive</b>	N

### For the Committee's Information:

#### Substantive Concerns:

1. On page 10, in subparagraph (TTT), the phrase "that contains relatively large quantities of metallic pigmentation" is unclear because a standard or comparative norm is not provided within the definition to enable an owner or operator to know whether such coating contains a relatively large quantity of metallic pigmentation.

2. On page 13, in subparagraph (QQQQQ), the phrase "that fulfills extremely specific engineering requirements" is unclear because the definition does not give an example of what constitutes extremely specific engineering requirements.
3. On page 15, in subdivision (2)(A)(i), the proposed regulation states, in part, that the provisions of the subsection apply to any owner or operator of any miscellaneous metal and plastic parts coating unit "that is subject to this subsection prior to January 1, 2013." This language does not clearly define who was or was not subject to the subsection prior to January 1, 2013 and therefore it is unclear which owners and operators are actually subject to the provisions of the subsection. Similarly, on page 15, in subdivision (2)(B)(i), the proposed regulation states, in part, that "an owner or operator subject to the subsection shall, for an existing miscellaneous metal and plastic parts coating unit, comply with the requirements of the subsection no later than January 1, 2013." This language is unclear as to what is meant by an existing miscellaneous metal and plastic parts coating unit. By this, it is not clear if the intent is to regulate such units that exist as of the effective date of the regulation or to regulate all such units that are in operation prior to January 1, 2013.
4. On page 18, in subparagraph (D)(viii) and (F)(iii), the term "powder coating" is used but not defined. Accordingly, it is not known what is intended by the use of this term.
5. On page 19, in subparagraph (J), there appears to be missing text after the words "shall not apply". It seems that the provisions in subparagraph (J) are intended to allow an owner or operator to apply to the commissioner to have a coating not be subject to the emissions control requirements of subdivision (3), but that intent is not clear or explicit from subparagraph (J), as currently written.
6. On page 21, in Table 20(s)-1, on page 22, in Table 20(s)-2, and on page 25 in Tables 20(s)-7 and 20(s)-8, the terms "General one-component" and "General multi-component" are used but not defined. Accordingly, it is not known what is intended by the use of these terms.
7. On page 22 in Table 20(s)-3 and on page 26, in Table 20(s)-9, the term "Base coat" is used but not defined. Accordingly, it is not known what is intended by the use of this term.
8. On page 22, in Table 20(s)-4, page 24, in Table 20(s)-6b and page 26 in Table 20(s)-10, the term "Topcoat" is used but not defined. Accordingly, it is not known what is intended by the use of this term.
9. On page 23, in Table 20(s)-6a, the term "Rocket motor bonding adhesive" is used but not defined. Accordingly, it is not known what is intended by the use of this term.
10. On page 34, in Tables 20(kk)-1 and 20(kk)-2, the term "Aluminum substrate antifouling coating" is used but not defined. Accordingly, it is not known what is intended by the use of this term.

## Technical Corrections:

1. In section 1 of the proposed regulation, the 135 definitions that are applicable to subsection (s) of section 22a-174-20 of the Regulations of Connecticut State Agencies should be numbered rather than lettered, for proper form. As proposed, the lettering of the definitions is unwieldy and may lead to confusion when citing to a defined term. The numbering of the definitions will necessitate the use of different subparagraph, clause and subclause indicators throughout section 1 of the proposed regulation.
2. On page 4 in subdivision (1), "For the purposes of this section" should be "For the purpose of this subsection", for accuracy.
3. On page 4, in subdivision (1) (A), "aerodynamic heating. The ablative char surface serves as an insulative barrier, protecting" should be "aerodynamic heating, to protect", for proper form.
4. On page 5, in subparagraph (J), 'at least 30 years ago. An "antique aerospace vehicle" would not' should be "at least 30 years ago and that is not", for proper form.
5. On page 5, in subparagraph (O), "A material shall not be classified as a "bearing coating" if it can also be" should be '"Bearing coating" does not include a material that can also be', for proper form.
6. On page 5, in subparagraph (T), "A material shall not be classified as a "caulking and smoothing compound" if it can" should be '"Caulking and smoothing compound" does not include a material that can', for proper form.
7. On page 6, in subparagraph (X), "that" should be inserted after "and", for clarity.
8. On page 6, in subparagraph (Y), "functional purposes. Coatings include but are not limited to, paints, primers, inks and maskants, but exclude protective oils, acids and bases;" should be "functional purposes, including but not limited to, paints, primers, inks and maskants. "Coating" does not include protective oils, acids and bases;", for proper form.
9. On page 6, in subparagraph (CC) (iii), "A primer that is applied to surfaces that can be expected to come into contact with fuel, with the exception of coating applied to fuel tanks;" should be "A primer that is applied to surfaces, excluding fuel tanks, that can be expected to come into contact with fuel;", for proper form.
10. On page 6, in subparagraph (EE), "A coating containing oils or waxes is excluded from this category;" should be '"Corrosion prevention compound" does not include a coating containing oils or waxes;', for proper form.
11. On page 7, in subparagraph (FF), "complex shapes. Materials" should be "complex shapes, and includes materials", for proper form.

12. On page 7, in subparagraph (PP), "microwave regions. Uses include but are not limited to," should be "microwave regions and which may be used for", for clarity.
13. On pages 7 and 8, in subparagraph (TT), "must withstand" should be "withstands", in accordance with the committee's directive concerning mandates.
14. On page 8, in subparagraph (XX), a comma should be inserted after 'volatile organic compound' , for proper form.
15. On page 9, in subparagraph (PPP), "chemical reaction. "Lacquers" are resoluble in their original solvent;" should be "chemical reactions and that is resoluble in its original solvent;", for proper form.
16. On page 11, in subparagraph (PPPP), "used to make identifying markings on materials, components or assemblies. These markings may be either permanent or temporary;" should be "used to make permanent or temporary identifying markings on materials, components or assemblies;", for proper form.
17. On page 11, in subparagraph (QQQQ), '"Plastic parts" do not include' should be "Plastic part" does not include', for accuracy.
18. On page 13, in subparagraph (IIII), '"Self-priming topcoat" means a topcoat that is applied directly to an uncoated aerospace vehicle or component for corrosion prevention, environmental protection or functional fluid resistance. More than one layer of identical coating formulation may be applied to the vehicle or component;' should be '" Self-priming topcoat" means one or more layers of identical coating formulation of a topcoat that is applied directly to an uncoated aerospace vehicle or component for corrosion prevention, environmental protection or functional fluid resistance;', for proper form.
19. On page 13, in subparagraph (JJJJ), "electric shock. The coating provides" should be "electric shock and that provides", for proper form.
20. On page 13, in subparagraph (KKKKK), '"Silicone insulation material" means an insulating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust. "Silicone insulation materials" differ from ablative coatings in that "silicone insulation materials" are not sacrificial;' should be '"Silicone insulation material" means an insulating material that is not sacrificial and that is applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust;', for proper form.
21. On page 13, in subparagraph (OOOOO), "earth's atmosphere. This definition includes" should be "earth's atmosphere, including, but not limited to," and "test coupons. "Space vehicle" includes" should be "test coupons," , for proper form.
22. On page 13, in subparagraph (PPPPP), "These performance criteria" should be "Such performance criteria", for clarity.

23. On page 13, in subparagraph (QQQQQ), 'requirements. A "specialized function coating" ' should be "requirements and that", for proper form.
24. On page 14, in subparagraph (UUUUU), '"Temporary protective coatings" do not include coatings that protect against strong acid or alkaline solutions;' should be '"Temporary protective coating" does not include any coating that protects against strong acid or alkaline solutions;', for proper form.
25. On page 15, in subdivision (3)(C), "and" should be "or", for accuracy.
26. On page 15, in subdivision (3)(D), "An alternative means, achieving a level of control equivalent to subparagraph (A), (B) or (C) of this subdivision, requested from and approved by the commissioner in accordance with subsection (cc) of this section." should be "Achieve a level of control that is equivalent to subparagraph (A), (B) or (C) of this subdivision, as requested from and approved by the commissioner, in accordance with subsection (cc) of this section.", for clarity.
27. On page 16, in subdivision (7)(A), "subdivision (2) or (7)(G) of this subsection:" should be "subdivisions (2) and (7)(G) of this subsection:", for accuracy.
28. On page 17, in subparagraph (A)(xi), "or" should be deleted, for proper form.
29. On page 17, in subparagraph (A)(xii), "or" should be inserted after "weight", for proper form.
30. On page 17, in subparagraph (C)(v), "millimeter" should be "millimeters", for proper form.
31. On page 18, in subparagraph (D)(iv), "Adhesion primer" should be "Adhesion bonding primer" for consistency with the defined term.
32. On page 19, in subparagraph (G), "such a permit or an order" should be "such permit or order", for clarity.
33. On page 19, in subparagraph (H), "use in aggregate" should be "use, in the aggregate", for proper form.
34. On page 19, the provisions contained in subparagraphs (I) and (J) should be moved to page 15 and inserted as a paragraph that follows the text of subparagraph (D) of subdivision (3), for clarity and proper form.
35. On page 19, in subdivision (8)(A), "Except as provided in subparagraphs (B) and (C), an owner" should be "An owner", for clarity, accuracy and proper form.
36. On page 20, the provisions of subdivision (8)(B) should be moved to page 15 and inserted as a paragraph following clause (ii) of subparagraph (A) of subdivision (2), for clarity and proper form.

37. On page 20, the provisions of subdivision (8)(C) should be moved to page 19 and made subparagraph (I) of subdivision (7), for clarity and proper form.

38. On page 27, in subdivision (2) of section 3, "[inclusive and] (ee) or (ff) through (kk) of this section must be expressly approved" should be "inclusive, [and] (ee) or (ff) to (kk), inclusive, of this section [must] shall be expressly approved", for proper form.

39. On page 27, in subdivision (3) of section 3, "[inclusive and] (ee) or (ff) through (kk) of this section" should be "inclusive, [and] (ee) or (ff) to (kk), inclusive,", for proper form and "subsections (m) through (v), (ee) or (ff) through (kk) of this section" should be "subsections (m) to (v), inclusive, (ee) or (ff) to (kk) inclusive, of this section", for proper form.

40. On page 31, in subdivision (3)(A), "Except as provided in subdivision (7) of this subsection, the" should be "The", for accuracy and proper form.

41. On page 31, the provisions of subparagraph (B) of subdivision (3) should be moved to page 32 and inserted as a new paragraph following subdivision (5)(F), for clarity and proper form.

42. On page 31, in subdivision (4)(D), ", requested from and approved by the commissioner in accordance with subsection (cc) of this section; and" should be ", as requested from and approved by the commissioner, in accordance with subsection (cc) of this section; or", for proper form.

43. On page 33, the provisions contained in subdivision (7)(B) should be moved to page 30 and made subparagraph (D) of subdivision (2), for clarity and proper form.

44. On page 33, the provisions contained in subdivision (7)(C) should be moved to page 31 and made subparagraph (B) of subdivision (3), for clarity and proper form and subdivision (7)(D) should be designated as subdivision (7)(B), for proper form.

45. On page 34, in Tables 20(kk)-1 and 20(kk)-2, "Extreme high gloss topcoat" should be "Extreme high-gloss coating", for consistency with the defined term.

46. On page 34, in Tables 20(kk)-1 and 20(kk)-2, "High gloss topcoat" should be "High gloss coating", for consistency with the defined term.

**Recommendation:**

<p><b>Approval in whole with technical corrections with deletions with substitute pages Disapproval in whole or in part X Rejection without prejudice</b></p>
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**Reviewed by:** Bradford M. Towson / Angela Rehm

**Date:** July 11, 2012

**Sec. 22a-174. (Formerly Sec. 19-508). Powers of the commissioner. Regulations. Fees. Exemptions. General permits. Appeal of commissioner's action re permit applications.** (a) The commissioner, in the manner provided in subdivision (1) of section 22a-6, shall have the power to formulate, adopt, amend and repeal regulations to control and prohibit air pollution throughout the state or in such areas of the state as are affected thereby, which regulations shall be consistent with the federal Air Pollution Control Act and which qualify the state and its municipalities for available federal grants. Any person heard at the public hearing on any such regulation shall be given written notice of the determination of the commissioner.

(b) The commissioner shall have the power to (1) enter into contracts with technical consultants, including, but not limited to, nonprofit corporations created for the purpose of facilitating the state's implementation of multistate air pollution control programs, for special studies, advice and assistance; to consult with and advise and exchange information with other departments or agencies of the state; and (2) serve on the board of directors of a nonprofit corporation, including, but not limited to, a nonprofit corporation created for the purpose of facilitating the state's implementation of multistate air pollution control programs.

(c) The commissioner shall have the power, in accordance with regulations adopted by him, (1) to require that a person, before undertaking the construction, installation, enlargement or establishment of a new air contaminant source specified in the regulations adopted under subsection (a) of this section, submit to him plans, specifications and such information as he deems reasonably necessary relating to the construction, installation, enlargement, or establishment of such new air contaminant source; (2) to issue a permit approving such plans and specifications and permitting the construction, installation, enlargement or establishment of the new air contaminant source in accordance with such plans, or to issue an order requiring that such plans and specifications be modified as a condition to his approving them and issuing a permit allowing such construction, installation, enlargement or establishment in accordance therewith, or to issue an order rejecting such plans and specifications and prohibiting construction, installation, enlargement or establishment of a new air contaminant source in accordance with the plans and specifications submitted; (3) to require periodic inspection and maintenance of combustion equipment and other sources of air pollution; (4) to require any person to maintain such records relating to air pollution or to the operation of facilities designed to abate air pollution as he deems necessary to carry out the provisions of this chapter and section 14-164c; (5) to require that a person in control of an air contaminant source specified in the regulations adopted under subsection (a), obtain a permit to operate such source if the source (A) is subject to any regulations adopted by the commissioner concerning high risk hazardous air pollutants, (B) burns waste oil, (C) is allowed by the

commissioner, pursuant to regulations adopted under subsection (a), to exceed emission limits for sulfur compounds, (D) is issued an order pursuant to section 22a-178, or (E) violates any provision of this chapter, or any regulation, order or permit adopted or issued thereunder; (6) to require that a person in control of an air contaminant source who is not required to obtain a permit pursuant to this subsection register with him and provide such information as he deems necessary to maintain his inventory of air pollution sources and the commissioner may require renewal of such registration at intervals he deems necessary to maintain such inventory; (7) to require a permit for any source regulated under the federal Clean Air Act Amendments of 1990, P.L. 101-549; (8) to refuse to issue a permit if the Environmental Protection Agency objects to its issuance in a timely manner under Title V of the federal Clean Air Act Amendments of 1990; and (9) notwithstanding any regulation adopted under this chapter, to require that any source permitted under Title V of the federal Clean Air Act Amendments of 1990 shall comply with all applicable standards set forth in the Code of Federal Regulations, Title 40, Parts 51, 52, 59, 60, 61, 63, 68, 70, 72 to 78, inclusive, and 82, as amended from time to time.

(d) The commissioner shall have all incidental powers necessary to carry out the purposes of this chapter and section 14-164c.

(e) As used in this subsection, "contiguous" means abutting or adjoining without consideration of the actual or projected existence of roadways, walkways, plazas, parks or other minor intervening features; "indirect source" means any building, structure, facility, installation or combination thereof, that has or leads to associated activity as a result of which any air pollutant is or may be emitted. The commissioner shall not require the submission of plans and specifications under indirect source regulations adopted pursuant to subdivisions (1) and (2) of subsection (c) of this section for proposed construction to be undertaken within a redevelopment area or urban renewal project, as defined in chapter 130, provided (1) the proposed construction is pursuant to a plan for such redevelopment area or urban renewal project adopted pursuant to section 8-127 prior to October 1, 1974, or to a modification of such plan, (2) the proposed construction is part of a contiguous, single purpose or multipurpose development or developments and (3) site clearance or construction had commenced on a portion of the site of such development or developments prior to October 1, 1974, nor shall the commissioner issue any order pursuant to subdivision (1) of subsection (c) of this section pertaining to the enforcement of indirect source regulations with respect to such proposed construction within such redevelopment areas and urban renewal projects. In the event that the modification of any such plan after October 1, 1974, would result in the proposed construction generating substantially more motor vehicle traffic than would have been generated prior to such modification, the submission of plans and specifications shall be required for such proposed modification. The commissioner shall not require the renewal of an indirect source operating permit

issued in accordance with subsection (c) of this section unless such indirect source no longer conforms with plans, specifications or other information submitted to said commissioner in accordance with said subsection (c).

(f) The commissioner shall allow the open burning of brush on residential property, provided the burning is conducted by the resident of the property or the agent of the resident and a permit for such burning is obtained from the local open burning official of the municipality in which the property is located, and the open burning of brush in municipal landfills, transfer stations and municipal recycling centers, provided a permit for such burning is obtained from the fire marshal of the municipality where the facility is located, except that no open burning of brush shall occur (1) when national or state ambient air quality standards may be exceeded; (2) where a hazardous health condition might be created; (3) when the forest fire danger in the area is identified by the commissioner as extreme and where woodland or grass land is within one hundred feet of the proposed burn; (4) where there is an advisory from the commissioner of any air pollution episode; (5) where prohibited by an ordinance of the municipality; and (6) in the case of a municipal landfill, when such landfill is within an area designated as a hot spot on the open burning map prepared by the commissioner. A permit for the burning of brush at any municipal landfill, municipal transfer station or municipal recycling center shall be issued no more than six times in any calendar year. The proposed permit to burn brush at any municipal landfill, municipal transfer station or municipal recycling center shall be submitted to the commissioner by the fire marshal, with the approval of the chief elected official of the municipality in which the municipal landfill, municipal transfer station or municipal recycling center is located. The commissioner shall approve or disapprove the fire marshal's proposed permitting of burning of brush at a municipal landfill, municipal transfer station or municipal recycling center within a reasonable time of the filing of such application. The burning of leaves, demolition waste or other solid waste deposited in such landfill shall be prohibited. The burning of nonprocessed wood for campfires and bonfires is not prohibited if the burning is conducted so as not to create a nuisance and in accordance with any restrictions imposed on such burning. Nothing in this subsection or in any regulation adopted pursuant to this subsection shall affect the power of any municipality to regulate or ban the open burning of brush within its boundaries for any purpose. Notwithstanding any other provision of this section, fire breaks for the purpose of controlling forest fires and controlled fires in salt water marshes to forestall uncontrolled fires are not prohibited. Open burning may be engaged in for any of the following purposes if the open burning official with jurisdiction over the area where the burning will occur issues an open burning permit: Fire-training exercises; eradication or control of insect infestations or disease; agricultural purposes; clearing vegetative debris following a natural disaster; and vegetative management or enhancement of wildlife habitat or ecological sustainability on municipal property or on any privately owned property permanently

dedicated as open space. Open burning for such purposes on state property may be engaged in with the written approval of the commissioner. Local burning officials nominated for the purposes of this subsection shall be nominated only by the chief executive officer of the municipality in which the official will serve and shall be certified by the commissioner. The chief executive officer may revoke the nomination. The commissioner may adopt regulations, in accordance with the provisions of chapter 54, governing open burning and may authorize or prohibit open burning consistent with this section. The regulations may require the payment of an application fee and inspection fee and may establish a certification procedure for local burning officials.

(g) The commissioner shall require, by regulations adopted in accordance with the provisions of chapter 54, the payment of a permit application fee sufficient to cover the reasonable costs of reviewing and acting upon an application for, and monitoring compliance with the terms and conditions of, any state or federal permit, license, order, certificate or approval required pursuant to this section. Any person obtaining a permit, pursuant to said regulations, for the construction or operation of a source of air pollution or for modification to an existing source of air pollution shall submit a permit fee of twice the amount of the fee established by regulations in effect on July 1, 1990. The commissioner shall require the payment of a permit application fee of two hundred dollars.

(h) The commissioner may require, by regulations adopted in accordance with the provisions of chapter 54, payment of a fee by the owner or operator of a source of air pollution, sufficient to cover the reasonable cost of a visual test of an air pollution control device through the use of a dust compound in the detection of leaks in such device, or the monitoring of such test, provided such fee may not exceed the average cost to the department for the conduct or monitoring of such tests plus ten per cent of such average cost. Except as specified in section 22a-27u, all payments received by the commissioner pursuant to this subsection shall be deposited in the General Fund and credited to the appropriations of the Department of Energy and Environmental Protection in accordance with the provisions of section 4-86.

(i) Notwithstanding the provisions of subsections (g) and (h) of this section, no municipality shall be required to pay more than fifty per cent of any fee established by the commissioner pursuant to said subsections.

(j) Fees or increased fees prescribed by this section shall not be applicable to residential property.

(k) (1) The commissioner may issue a general permit with respect to a category of new or existing stationary air pollution sources, except with respect to a source which is already covered by an individual permit, provided the general permit is not inconsistent with the

federal Clean Air Act, as amended in 1990, 42 USC, Sections 7401 et seq., and as it may be further amended from time to time. Any person conducting an activity for which a general permit has been issued shall not be required to obtain an individual permit under this section, except as provided in subdivision (5) of this subsection. The general permit may regulate a category of sources which, whether or not requiring a permit under the federal Clean Air Act, (A) involve the same or substantially similar types of operations or substances, (B) require the same types of pollution control equipment or other operating conditions, standards or limitations, and (C) require the same or similar monitoring, and which, in the opinion of the commissioner, are more appropriately controlled under a general permit than under an individual permit. The general permit may require that any person proposing to conduct any activity under the general permit register such activity, including obtaining approval from the commissioner, before the general permit becomes effective as to such activity, and may include such other conditions as the commissioner deems appropriate, including, but not limited to, management practices and verification and reporting requirements. Any such reports shall be made available to the public by the commissioner. The commissioner shall grant an application for approval under a general permit without repeating the notice and comment procedures provided under subdivision (2) of this subsection, and such a grant shall not be subject to judicial review under subdivision (4) of this subsection. Registrations and applications for approval under the general permit shall be submitted on forms prescribed by the commissioner; application forms concerning activities regulated under the federal Clean Air Act shall require that the applicant provide such information as may be required by that act. The commissioner shall prepare, and annually amend, a list of holders of general permits under this section, which list shall be made available to the public.

(2) Notwithstanding any other procedures in this chapter, any regulations adopted thereunder, and chapter 54, the commissioner may issue a general permit in accordance with the following procedures: (A) The commissioner shall publish in a newspaper, having a substantial circulation in the affected area or areas, notice of (i) intent to issue a general permit, (ii) the right to inspect the proposed general permit, (iii) the opportunity to submit written comments thereon, and (iv) the right to a public hearing if, within the comment period, the commissioner receives a petition signed by at least twenty-five persons provided the notice shall state that the right to a public hearing may be exercised upon request of any person if the permit regulates an activity which is subject to provisions of the federal Clean Air Act; (B) the administrator of the United States Environmental Protection Agency and any states affected by the general permit shall be given notice as may be required by the federal Clean Air Act; (C) the commissioner shall allow a comment period of thirty days following publication of notice under subparagraph (A) of this subdivision during which interested persons may submit written comments concerning the permit to the commissioner; (D) the commissioner shall not issue the general permit until

after the comment period and the public hearing, if one is held; (E) the commissioner shall publish notice of any general permit issued in a newspaper having a substantial circulation in the affected area or areas; and (F) summary suspension may be ordered in accordance with subsection (c) of section 4-182. Any person may request that the commissioner issue, modify, revoke or suspend a general permit in accordance with this subsection.

(3) Any general permit under this subsection shall be issued for a fixed term. A general permit covering an activity regulated under the federal Clean Air Act shall be issued for a term of no more than five years. A general permit covering an activity regulated under the federal Clean Air Act shall contain such additional conditions as may be required by that act.

(4) Notwithstanding any other provision of this chapter and chapter 54, with respect to a general permit concerning activities regulated under the federal Clean Air Act, any person who submitted timely comments thereon may appeal the issuance of such permit to the superior court in accordance with the provisions of section 4-183. Such appeal shall have precedence in the order of trial as provided in section 52-192.

(5) Subsequent to the issuance of a general permit, the commissioner may require a person whose activity is or may be covered by the general permit to apply for and obtain an individual permit pursuant to this chapter if he determines that an individual permit would better protect the land, air and waters of the state from pollution. The commissioner may require an individual permit under this subdivision in cases including, but not limited to, the following: (A) The permittee is not in compliance with the conditions of the general permit; (B) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollution applicable to the permitted activity; (C) circumstances have changed since the time the general permit was issued so that the permitted activity is no longer appropriately controlled under the general permit, or a temporary or permanent reduction or elimination of the permitted activity is necessary; or (D) a relevant change has occurred in the applicability of the federal Clean Air Act. In making the determination to require an individual permit, the commissioner may consider the location, character and size of the source and any other relevant factors. The commissioner may require an individual permit under this subdivision only if the person whose activity is covered by the general permit has been notified in writing that an individual permit is required. The notice shall include a brief statement of the reasons for requiring an individual permit, an application form, a statement setting a time for the person to file the application and a statement that the general permit as it applies to such person shall automatically terminate on the effective date of the individual permit. Such person shall forthwith apply for, and use best efforts to obtain, the individual permit. Any person may petition the commissioner to take action under this subdivision.

(6) The commissioner may adopt regulations, in accordance with the provisions of chapter 54, to carry out the purposes of this subsection.

(l) In any proceeding on an application for a permit which is required under 42 USC 7661a, the applicant, and any other person entitled under said section to obtain judicial review of the commissioner's final action on such application may appeal such action in accordance with the provisions of section 4-183.

(m) The commissioner shall not issue a permit for an asphalt batch plant or continuous mix facility under the provisions of this section until July 1, 2004, unless the commissioner determines that the issuance of the permit will result in an improvement of environmental performance of an existing asphalt batch plant or continuous mix plant. The provisions of this section shall apply to any application pending on May 5, 1998. Nothing in this section shall apply to applications for upgrading, replacing, consolidating or otherwise altering the physical plant of an existing facility provided such upgrade, replacement, consolidation or alteration results in an improvement of environmental performance or in reduced total emissions of air pollutants.