

**Response to Formal Comments Received pursuant to the
Notice of Intent to Issue published July 23, 2015
General Permit to Construct and Operate a Commercial Facility for the
Management of Recyclable Materials and Certain Solid Wastes
(Commercial GP)**

Comments received by the Department provided by CBIA:

- 1. CBIA recommends that DEEP suspend moving forward with this general permit, renew the existing Commercial General Permit, and join us in working with the legislature, environmental groups and other stakeholders in modifying the existing statute which has the unintended consequence of subjecting thousands of Connecticut businesses, including small retail operations, to unnecessary regulatory burdens that are a waste of resources for both DEEP and the regulated community. (8/24/2015),*

And

CBIA appreciates the opportunity to continue to work with DEEP to ensure its environmental goals associated with the management of recyclable and certain solid wastes is achieved in an economically sensitive manner that does not hurt small businesses, Connecticut's economic competitiveness, or conflict with the state's recycling goals. (9/1/2015)

Response:

The Commercial General Permit (Commercial GP) is consistent with Public Act 14-94 (PA 14-94) and the state-wide Solid Waste Management Plan (SWMP). There are no new regulatory requirements being proposed in the Commercial GP. The Commercial GP requirements do not deviate from the requirements contained in the Connecticut General Statutes (CGS), in particular the statutes pertaining to recycling. Therefore, no additional burdens are being placed on Connecticut businesses. The Regulations of Connecticut State Agencies (RCSA), regarding recycling, originally adopted on February 28, 1989 and revised effective May 1, 2012, apply to all persons in the state. The Commercial GP includes designated recyclables and other solid waste, and it will play an important role in achieving many of the goals set forth in the state-wide SWMP including achieving 60% diversion of solid waste by 2024 required pursuant to PA14-94. The Department will continue to welcome opportunities to work with CBIA, the Legislature, environmental groups and other stakeholders.

- 2. As you are aware from earlier discussions, many Connecticut businesses initially assumed that the activities contemplated to be regulated under this general permit were limited to commercial businesses solely or principally intended to operate as collection and processing centers for recyclable wastes. This impression was based on the title of the general permit, the description of the general permit contained in the Notice of Intent (including, "The*

Commercial General Permit once issued will replace the General Permit to Construct and Operate Certain Recycling Facilities"), as well as the text of the General Permit itself). Thus, many potentially affected businesses did not attend the informational meeting on the General Permit – held just 7 days after the publication of the Notice of Intent. (8/24/2015)

Response:

The Department created the Commercial GP for the reasons stated above. The recycling laws apply to every business and individual in the State of Connecticut. Therefore, whether an entity is in the business of solid waste management or a business that generates solid waste at one location, then transports and off-loads it at another location for consolidation, it is subject to the existing solid waste laws and will need to, depending on the facility status, either register under the Commercial GP and comply with the requirements therein or notify and report to the Department, recyclable types and volumes sent out of state.

3. *However, our membership continues to be very concerned about the scope of the general permit and that thousands of small and large businesses – including many small retail operations, will be exposed to liability and enforcement if they do not pay the \$1,250 fee and conduct all the monitoring, record-keeping and other requirements contained within the general permit. (8/24/2015)*

Response:

As a result of the discussions between the representatives and members of CBIA and the Department, a refinement of the levels of responsibility has been put in place. Those who are in the business of managing recyclables and solid waste and those in the business of providing services are required to register under and comply with the terms and conditions of the Commercial GP and the applicable Appendices. If those activities require registration for the Commercial GP a fee may be required. For many of the facility categories the fee is \$500 or less (i.e. no fee) for registrants. It should be noted that there is a one-time registration fee and no annual fees associated with the Commercial GP.

For those on the retail side of commerce, utilities, industry, manufacturing and institutions, such entities are required to comply with the General Statutes and the Regulations of Connecticut State Agencies and the Commercial GP is to be considered as best management practices (BMPs) for those sites where recyclables and other solid waste are being aggregated for efficient management. Such entities are required to notify the Department and to report annually the types and volumes of recyclables and solid waste transported to out of state facilities authorized to receive such materials. Moreover, for such entities no fees are required.

Conducting a regulated activity without proper authorization(s) may subject an entity to enforcement.

4. *While the statute may be interpreted to define a very broad universe of recycling activities that may be subject to regulation, they don't, to our knowledge, prescribe specific fees or other compliance requirements contained in this general permit. The Department has statutory authority to develop*

GPs and charge a fee. Solid waste facilities are subject to the requirements of Chapter 446d of the General Statutes. (8/24/2015)

Response:

The Department has statutory authority to develop general permits and charge fees. Solid waste facilities are subject to the requirements of Chapter 446d of the General Statutes. CGS Sections 22a-208a(i) and 22a-454(e) contain the statutory authority to develop general permits. CGS Section 22a-6f(e) allows the Department to collect fees for general permits.

5. *The specific compliance measures contained in the general permit have been crafted by DEEP staff and are not subject to any public hearing nor any review or oversight by any other administrative or legislative entity. (8/24/2015)*

Response:

In accordance with CGS Sec. 22a-208a(i), the Commercial GP language has been developed, within the Commissioner's authority, in accordance with state statutes, regulations and standards that are protective of public health, safety and the environment. It should be noted that during the development of the Commercial GP the Department conducted outreach through the Solid Waste Advisory Committee, public information meetings, presented at the CBIA meeting on August 21, 2015 and has accepted written comments during the comment period. The Department also conducted interagency coordination associated with the development and proposed issuance of the Commercial GP.

As a result of the public comment period the Department received formal comments from (addressed herein) and conducted meetings with CBIA and its constituents to refine the language of the Commercial GP. Those meetings resulted in the designation of certain business sectors as "Notifiers" resulting in the identification of some of the terms and conditions of the Commercial GP as BMPs, reduced reporting requirements and no fees.

6. *Because the legislation may be interpreted as applying to a huge universe of commonly used and environmentally neutral (if not beneficial) recycling management activities, does not mean DEEP is compelled to draft a general permit that encompasses all such activities. As expressed at our E2 meeting last Friday, CBIA would be pleased to work with DEEP and the legislature to modify the statute in a manner that insures that the limited resources of both small businesses and the DEEP itself are focused on regulating activities that promote both the environmental and economic health of Connecticut. (8/24/2015)*

Response:

As previously stated the Department welcomes the opportunity to work with CBIA and the Legislature on appropriate legislation. The Commercial GP, once issued, will play an important role in achieving many of the goals outlined in the state-wide SWMP and P.A. 14-94. GPs are an integral component of the Department's on-going strategy to transform the agency and streamline permitting processes for the Department and the regulated community. There are no new regulatory requirements being proposed with the Commercial GP.

7. *Co nsistent with our view for the adoption of all regulations, including those adopted in the form of a general permit, we ask that DEEP explain how the scope and requirements of this general permit compare with requirements concerning management of recycled materials adopted by the federal government and other states. This is critical for understanding the potential economic impact of regulations and general permits on Connecticut businesses and the state’s overall competitiveness. (8/24/2015)*

Response:

The Commercial GP has been developed in accordance with the current statutes and regulations specific to the state of Connecticut. States, rather than the federal government, oversee most solid waste and recycling management programs and compliance is assured through state permits. A general permit is a more efficient and streamlined permitting process that applies uniform or similar conditions to activities of a similar type within a similar geographic area covered by the general permit. It is the Department’s position that the Commercial GP will facilitate recycling in and business growth for Connecticut, as supported by formal comment received by the Department. Additionally, over the course of the Department’s discussions with CBIA and its constituents a Notifier category has been established for certain business sectors. The requirements for a Notifier and the associated implementation costs of such measures as record keeping and reporting to the Department is expected to be nominal based on such discussions.

8. *In the normal course of business our waste management efforts include properly storing materials that are generated in the field by our operations, prior to sending them off-site for final disposition. This includes sending off site for investment recovery, recycling or proper disposal. Are such activities, which benefit the efficient and cost-effective recycling of waste materials and which have never been the subject of any regulatory scrutiny now going to trigger a regulatory burden that includes paying the fees, training and record-keeping and other expenses associated with compliance with this new general permit? (8/24/2015)*

And

Does any company that returns from off-site locations with materials regulated under this GP need to obtain this General Permit? (8/24/2015)

And

Does a facility need to “receive” recyclable materials and certain solid wastes to fall under this general permit? (8/24/2015)

And

Is any company that returns from off-site locations with materials regulated under this GP required to obtain this General Permit – and if so, is it regardless of quantity? (8/24/2015)

And

GP as being required for facilities managing their own wastes from “off site” remote locations? (8/24/2015)

And

If I am a small appliance store and I deliver a refrigerator to a customer and bring the cardboard packing back to my store, do I need to register for this general permit? (8/24/2015)

Response:

If recyclables or solid wastes, identified and authorized for management under the Commercial GP, are generated at one location then transported to and off-loaded at another location(s), and the total volume of waste is in excess of ten (10) cubic yards (cy), than such activity constitutes a regulated activity and may trigger the need to register under or adhere to the Commercial GP. If the above regulated activities are conducted either by those in the business of managing recyclables or solid waste, or in the course of providing a service, such as landscaping or construction, such regulated activities will trigger the need to submit a Registration under and abide by the conditions of the Commercial GP.

A Notifier category has been established for certain business sectors. The Department has identified commercial retail and industry/utility/manufacturers/institutions who conduct the above regulated activities as Notifiers. Notifiers shall use the Commercial GP as BMPs, and are to adhere to basic reporting criteria and schedules.

9. *Does the solid waste disposal area definition of more than 10 cubic yards on-site for more than 45 days apply to each individual waste stream listed on the "List of Recyclables and Wastes Included in the GP, or to the total amount stored at each facility? (8/24/2015)*

Response:

The 10 cy applies to combined waste streams, not to individual waste types on site and is a criterion in the definition of "Transfer Station."

10. *The definition of solid waste in CGS Section 22a-207 does not include this language added in the permit: "Solid waste" also includes Recyclables and the Universal wastes authorized for acceptance by this General Permit". Was it CTDEEP's intent to change the regulatory definition in the general permit in order to expand the scope? (8/24/2015)*

Additionally, we believe it is utmost importance that DEEP refrain from creating definitions which, conflict with, obfuscate regulatory and statutory definitions. An example is the definition of Solid waste, which states "Solid Waste" also includes Recyclables and the Universal wastes authorized for acceptance for acceptance by this General Permit, a more cautious approach would be to distinguish between "solid waste" and "Universal Waste", consistent with RCRA definition and regulations. I disagree with DEEP's statement that "All recyclables and universal waste are solid waste" and I am unable to construct an interpretation of CGS 22a-207 which supports this position. (10/6/2015)

Response:

The General Permit provides the definition of "Universal waste" based on the definition in Section 22a-449(c)-113 of the RCSA incorporating 40 CFR 273 and includes the following hazardous wastes:

- a. Spent mixed batteries, including but not limited to, nickel-cadmium and small sealed lead-acid batteries;
- b. Mercury-containing equipment;

- c. Mercury-containing lamps that contain mercury in any amount; and
- d. Used electronics.

For any material to be identified as a Universal waste or a recyclable, such materials must first be a solid waste. Therefore, all recyclables and universal wastes are first solid waste and subsequently such materials can be sub-categorized. The reference to Recyclables and Universal Waste after the definition of Solid waste in the Commercial GP is provided as a clarification of that definition, and is consistent with the definition found in CGS Sec. 22a-207(3).

11. *The language in the GP presents a conundrum as to what activities are regulated. For example the Authorization section 3 reads "Construct and operate a Solid Waste Facility that may receive and process Solid waste and Recyclables..." but the term "process" is not defined but "processing" includes storage but is not specific as to whether or not automated or manual segregation occurs. (8/24/2015)*

Response:

Each facility category provides material-specific management activities and lists the specific processes that are authorized for such materials. Automated vs. manual processing is dependent on the facility category and material type; both are authorized through the Commercial GP.

12. *Would a Church which places containers for used textiles, bottles and cans in a parking lot would be required to obtain a permit? (8/24/2015)*

Response:

In most cases the "Drop boxes" do not exceed the 10 cy threshold. Typically, churches and not-for-profit organizations that place one or two boxes are not subject to regulation. More boxes may trigger regulation. It should be noted that the Department of Consumer Protection regulates labeling of such collection containers.

13. *How is DEEP defining "facility" and would it include an area within a manufacturing plant where collection and storage of recyclable materials and solid waste occurs? (8/24/2015)*

And

Are facilities that generate regulated waste materials but do not accept such wastes from the outside, including other facilities they own or managed, required to register under the GP? (8/24/2015)

Response:

"Facility" is defined in Section 2 of the Commercial GP, and only pertains to Registrants. If recyclables and other solid waste, are generated at the same site as they are being stored and not received from off-site, then no registration is required under the Commercial GP. Also, the management of recyclables and other solid wastes generated at separate locations, that are under the control of the same person or entity who is a Notifier or Tier I for either Clean wood or C&D waste Appendices, but managed at one centralized location does not trigger

the need for a registration. However, the management of such solid waste must be in accordance with state laws. Please note pursuant to CGS 22a-207(6) (“solid waste disposal area”) greater than 10 cubic yards of solid waste cannot be stored for longer than 45 days.

14. The Definition of “Commercial Facility” as given within the GP does not limit itself to those facilities whose primary business activity is the management of recyclable materials. As given, it is not clear whether the general permit’s provisions extend to those manufacturing or other entities for whom the recycling of general permit regulated materials is but an ancillary (and worthy) aspect of conducting an environmentally sustainable business. These latter such entities ought not to be constrained from their primary business, and from doing the right thing by recycling, by the burdens of such a general permit. (8/24/2015)

Response:

The definition of “Commercial facility” in the Commercial GP does not limit itself to facilities whose primary business is the management of recyclables or solid waste.

If the “recyclable materials” referenced are generated from the business location and not received from off-site, then the business is not required to apply for the Commercial GP. However, a business or entity that generates or collects solid waste from one location, transports, and off-loads it at another location for consolidation, is subject to the solid waste and recycling laws and must comply with the terms and conditions of the Commercial GP. If the entity is in the business of solid waste management or a service provider who generates waste at remote locations and then transports such waste to an aggregation site, the entity shall be required to register under and comply with the terms and conditions of the Commercial GP. If the entity is a retail commercial entity or one of the following: an industry; a utility; a manufacturer or an institution, that entity shall be required to notify and report to the Department.

The Commercial GP will not constrain these businesses from recycling materials and complying with the recycling laws.

*15. Is the GP limited to transfer stations and transfer activities, essentially those businesses that take in regulated waste materials from other sites/sources for consolidation, processing, etc.?
(8/24/2015)*

Response:

The Commercial GP is not limited to those persons operating transfer stations and conducting transfer activities as their business. As previously stated, the Commercial GP is intended for certain commercial entities or individuals that manage greater than 10 cy of recyclables or other solid wastes generated elsewhere. The Commercial GP also authorizes processing (volume reduction) for certain Facility categories. Such authorized processing methods are detailed in the waste-specific conditions in each of the appendices.

16. *What about companies that clean out vaults or manholes and bring the materials back to a facility for consolidation? (8/24/2015)*

Response:

If the waste generated is soil or sediment, the management of those materials is regulated under the GP authorizing Contaminated Soil and/or Sediment Management (Staging and Transfer), as applicable. Please note that such materials may also be regulated pursuant to additional statutory and regulatory requirements including, but not limited to, CGS Section 22a-430 et seq.

17. *How do the meanings of “commercial” and “service or goods for a fee” impact the answer? (8/24/2015)*

Response:

The Department interprets the question as referring to the applicability of the requirement to submit a registration under the Commercial GP.

The distinction has been made within the commercial sector between service providers and retail or goods providers. Service providers who transfer recyclables and solid waste generated elsewhere to an aggregation location are required to register under the Commercial GP and retailers who deliver goods and generate recyclables and other solid waste elsewhere and transport such waste to their aggregation location must identify themselves to the Department as Notifiers and comply with basic reporting requirements.

Comments received by the Department provided by DPH on August 11, 2015:

1. *The DPH’s perception is that Appendix A was originally intended to address transfer of waste by DPH licensed asbestos abatement contractors, but the language of the permit indicates that it could be any “person” which is much more broadly defined. (8/11/2015)*

Response:

The permit is intended to serve those commercial businesses, including contractors of various types, that typically transport recyclables and other solid waste generated at remote work sites to their yards thereby establishing a transfer station. Any person who generates or collects solid waste from one location, transports, and off-loads it at another location for consolidation is subject to the existing solid waste laws and may need to apply for the commercial GP.

2. *Terms – a. contractor, b. Facility Lead, and c. supervisor not defined. Qualifications of facility lead, supervisor not clear. (8/11/2015)*

Response:

The use of the terms Facility lead, contractor and supervisor will not be defined, since they are used as “terms of art” and may represent somewhat different responsibilities depending

on different entities. Part I.B paragraph 2 has been revised in Appendix A and in the remainder of the appendices to further clarify the term 'Facility Lead'.

3. *There is also a reference to a Certified Operator. The duties of the Certified Operator are not clear.*

Response:

The term 'Certified Operator' is defined in the Commercial GP as a person who meets the requirements and qualifications provided in Section 22a-209-6 of the RCSA.

4. *Consideration should be given to requiring anyone who is inspecting the incoming waste and to prevent the drop-off of unauthorized materials to have competent person training, or alternately training that is required for an asbestos inspector (licensed asbestos consultant). (8/11/2015)*

Response:

Certified operators receive training on what can and cannot be received. In the event of a spill, the registrant shall be required to engage a licensed abatement contractor to address the release, determine the extent and the degree of the release, and recommend a course of action.

For the C&D facility category, a new condition was developed that requires the registrant to retain a licensed asbestos inspector to identify if the contents of any suspicious loads include Asbestos Containing Material. The ACM definition pursuant to RCSA Section 19a-332a-10, contains the 1% threshold for materials that are considered ACM. The definition of C&D waste, pursuant to CGS section 22a-208x, specifically excludes asbestos.

5. *It appears that waste received by this facility could come from just about anywhere/from anyone. That raises concern about waste being brought to the site that is improperly packaged and/or labeled (as well as the concern about other regulated waste that may be mixed in with the ACM). (8/11/2015) and Whether the waste at these facilities is generated by a DPH licensed asbestos contractor, an unlicensed entity, or a residential property owner, it can be anticipated that waste will need to be repacked from time to time. (7/02/2015)*

Response:

The Commercial GP allows for the receipt, consolidation and transfer of ACM waste that is properly packaged and labeled. No unconsolidated or unpackaged ACM waste is authorized for receipt at a facility registered under the ACM facility category. The Department determined that in the event of a release the facility operator shall be required to obtain the services of a licensed abatement contractor to evaluate the extent and nature of the release and to develop a plan for the response and abatement of the ACM.

6. *Does the DEEP want to consider limiting the permitting process to contractors (licensed asbestos contractors) who will essentially bring prepackaged and labeled material back to their own facility?*

Response:

Doing this would restrict the authorization under the Commercial GP to the contractors and exclude those in the business of managing ACM. It would also not address utilities that may generate ACM waste at their job sites.

7. *Do you really want to open up this permitting process to a number of facilities that will be accepting waste from multiple sources with limited control over the manner in which the waste was generated and then brought to the site? If so, then it seems like there will need to be further delineation of how/where that waste will be processed at the site (e.g. a negative pressure enclosure equipped with HEPA filtration). (8/11/2015)*

Response:

The Department's intent in issuing the Commercial GP is to address the regulated activities already being conducted without the benefit of appropriate authorization. No active processing of ACM waste is authorized through the Commercial GP, only receipt, aggregation and transfer from the facility is authorized.

8. *The Appendix references promoting recycling/recyclables. There shouldn't be any recyclables associated with the asbestos waste. The separation of recyclables would take place at the point of generation, where appropriate. In the absence of a means of cleaning the recyclables, the mixed waste (ACM and any other waste including recyclable materials) should go out as ACM. Again, it does not seem that the facility is equipped to process waste in a manner that would separate recyclables from ACM. (8/11/2015)*

Response:

The Department agrees that there should be no recyclables in this waste stream. The Department modified the standard language of Part I of Appendix A to identify only ACM waste.

9. *Page 6 7xi. Question the appropriateness of bringing cleanup materials to an authorized recycling facility. If it is AC waste, the waste should go to an authorized asbestos waste disposal facility. (8/11/2015)*

Response:

The requirement for the transfer of waste to appropriate recycling or solid waste facilities is standard language for certain wastes including ACM, however, used clean-up materials must be disposed of in the same manner as ACM waste. Condition Part I, E.7.a. x language has been modified to "...a facility authorized to dispose of such ACM waste;" Any ACM waste and ACM clean-up waste shall be required to be transferred to an authorized receiving facility for appropriate management, not a recycling facility. Also the language of Part II. B.4 a. "Records/Tracking of ACM" was modified to include that the Manifest documenting disposal and identifying the disposal facility shall be returned to the generator within thirty five (35) days.

10. *Recordkeeping: The records doesn't appear to include a "manifest" provision that confirms receipt of the waste that was shipped to the destination facility (lists only what was received and where it was sent only). (8/11/2015) and The permit appears to allow waste to be stored at the site for a period of up to twelve months. Please note the following provisions of the asbestos National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61, Subpart M), which requires that the asbestos waste manifests be returned to the generator within 35 days of the date that the waste was accepted by the initial transporter. (7/02/2015)*

Response:

The Department modified the requirements contained in Part I.E.2.d. so as to reference RCSA Section 19-332a-1 through 16 of the Public Health Code, for ACM abatement. Also the Department modified the requirements contained in Condition Part II. B.4.a. of Appendix A *Records/Tracking of ACM* to include the thirty five (35) day requirement to return manifest document(s) to the generator of ACM.

11. *A quick comment relative to Appendix D (C&D Waste). You may wish to give further consideration to address asbestos in the C&D permit. Waste from renovation or demolition projects could regularly contain asbestos-containing building materials, unless the waste was appropriately characterized at the point of generation. I only looked at Appendix D briefly, but it does not appear that the document sufficiently addresses this issue. (8/11/2015)*

Response:

The Department modified Appendix D Condition No. I.E.9.f. to require suspected ACM loads to be segregated, inspected by a licensed asbestos inspector within forty eight (48) hours of receipt and that an appropriate management plan be implemented.

Comment received by the Department provided by HQ Dumpsters & Recycling on August 14, 2015:

The one category that we would like to see added to the permit would be the ability to handle MSW. There are very limited options for disposal of MSW in Connecticut. We would like the ability to consolidate loads and transport MSW to the most convenient disposal facility to alleviate long wait times at facilities that add significant amounts of costs to our business. It would also reduce the amount of truck traffic on the roadways and reduce fuel consumption.

Response:

The Department chose not to incorporate the management of MSW (other than oversized MSW) in the Commercial GP. The Department's goal in developing the Commercial GP was to establish a streamlined process for establishing small scale facilities in order to maximize recycling in the state. There is limited opportunity to engage the public prior to

the submission of a registration under a GP and the management of MSW at any solid waste facility has the potential to create nuisance issues and concerns on the part of the public. The Department determined that the inclusion of MSW in the Commercial GP was not appropriate.

Comment received by the Department provided by CT DOT on July 27, 2015:

Under the definitions, it states that "DOT" means the Connecticut Department of Transportation. The only reference to the DOT elsewhere in the GP is also under the Definitions section. Under "Ash Residue in Properly Labeled and Sealed Containers" (page 3)...it references DOT approved containers. The United States DOT regulates containers under 49 CFR Subchapter C, not the Connecticut DOT.

Response:

The Department modified the language of Section 2 of the Commercial GP to add a definition for "USDOT" and added the "CT" to DOT to identify the Connecticut agency. Also, the Department revised all Sections and Appendices of the Commercial GP to reflect the identification of CTDOT and the additional definition of USDOT as appropriate.