STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Statement of Reasons Pursuant to
Connecticut General Statutes Section 4-168(d)

HEARING REPORT

November 14, 2001

Amendment of the Regulations of Connecticut State Agencies Concerning the Adoption of Section 22a-174-2a — Procedural Requirements for New Source Review and Title V Permitting; Section 22a-174-3a — Permit to Construct and Operate Stationary Sources; Section 22a-174-3b — Exemptions from Permitting for Construction and Operation of External Combustion Units, Automotive Refinishing Operations, Nonmetallic Mineral Processing Equipment and Surface Coating Operations; and Section 22a-174-3c — Limitations on Potential to Emit for External Combustion Units, Automotive Refinishing Operations, Emergency Engines, Nonmetallic Mineral Processing Equipment and Surface Coating Operations
and
the Revision of Section 22a-174-1 — Definitions; and Section 22a-174-33 — Title V Sources
and
the Deletion of Section 22a-174-2 — Registration Requirements for Existing Stationary Sources of Air Pollutants; and Section 22a-174-3 — Permits to Construct and Permits to Operate Stationary Sources or Modifications

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Hearing Date: September 5, 2001

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I. Introduction

On July 17, 2001, the Commissioner of the Department of Environmental Protection (Department) published a notice of intent to adopt, revise and repeal State air quality regulations, revise the State Implementation Plan (SIP) for Air Quality and revise the State Title V operating permit program.

The public hearing concerned eight sections of the Regulations of Connecticut State Agencies (R.C.S.A.), described further below. These regulations implement two federal programs as required by the federal Clean Air Act (CAA). These programs are the new source review (NSR) pre-construction review program and the Title V operating permits program (Title V). The United States Environmental Protection Agency (EPA) granted interim approval to the Department of Environmental Protection (DEP) to implement the Title V program in "Clean Air Act Interim Approval of Operating Permits Program; Delegation of Section 111 and 112 Standards; State of Connecticut," Proposed Rule, 61 Fed. Reg. 64651 (December 6, 1996) finalized by EPA at 62 Fed. Reg. 13830 (March 24, 1997) (hereafter, EPA's Title V Interim Approval). The EPA's Title V Interim Approval identified approximately thirty issues that DEP must address before EPA will convert the interim approval to a full approval. DEP now, pursuant to EPA's Title V Interim Approval, proposes to revise the state Title V operating permit program regulations consistent with the EPA's Title V Interim Approval in order to obtain final approval of the operating permits program as mandated by the CAA.

Pursuant to such notice, a public hearing was held on September 5, 2001 in the Phoenix Auditorium at 79 Elm Street Hartford, Connecticut. The public comment period for these proposed regulations closed on September 7, 2001 at 5 p.m. This report addresses only comments received by the close of the public comment period. The Department received a number of comments after the close of the public comment period; this report does not individually address them. However, this report addresses such comments to the extent such comments are similar to comments received before the close of the public comment period. Some of the commentors are actually representing multiple organizations and should be recognized as such.

II. Administrative Requirements

A. Hearing Report Content

As required by Connecticut General Statutes (C.G.S.) § 4-168(d), this report describes the amendments to the R.C.S.A. as proposed for hearing; the final wording of the proposed amendments to the R.C.S.A.; a statement of the principal reasons in support of the Department's proposed action; a statement of the principal reasons in opposition of the Department's proposed action and the reasons for rejecting such comments; and a summary of all comments and responses thereto on the proposed action. Those who provided comments are identified in Attachment 1.

B. Adoption of Regulations Pertaining to Activities for which the Federal Government has Adopted Standards or Procedures

In response to C.G.S. § 22a-6(h), the Department has entered a statement into the public record identifying all provisions of the proposed regulations that differ from applicable federal standards and procedures. In addition, the Department has entered a supplemental document into the regulation-making record required under Title 4, Chapter 54 of the C.G.S. that explains where the proposed state standards or procedures differ from applicable federal standards or procedures. While the Department received numerous comments on its interpretation of C.G.S. § 22a-6(h), such comments were beyond the scope of the proposed regulations and are not addressed in this report.

III. Background, Summary and Text of the Proposed Regulations

A. Background

The Department is vested with the statutory authority necessary to formulate, adopt and amend regulations to control and prohibit air pollution within Connecticut. (See C.G.S. §§ 22a-6 and 22a-174). In addition to the existing State statutory authority, Title V of the CAA, as amended (42 USC 7661 *et seq.*), requires Connecticut to develop an operating permit program and submit it to EPA for approval. EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs. See 57 Fed. Reg. 32250 (July 24, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Furthermore, the State is required to adopt a SIP to require permits for the construction and operation of new or modified major stationary sources under sections 172 and 173 of the CAA. EPA has also promulgated rules that define the minimum elements of an approvable new source review program. These rules are codified at 40 CFR 51.165 and 51.166.

B. Development of the Proposed Regulations

The informal public outreach for the regulatory package was extensive. In 1997 the package consisted of draft sections 22a-174-2a and 22a-174-3a and amendments to sections 22a-174-1 and 22a-174-33 of the R.C.S.A. Draft sections 22a-174-3b and 22a-174-3c of the R.C.S.A were introduced in 2001 but many of the concepts were already familiar as they were embodied in existing general permits.

The Department took steps to involve stakeholders in the development of the proposed regulations. The Department established a subcommittee of the State Implementation Plan Revision Advisory Committee (SIPRAC) to focus on the development of regulations to revise the NSR and Title V programs within Connecticut. The SIPRAC subcommittee was open to all interested persons and open meetings were held by the SIPRAC subcommittee through 1997 and 1998 on the regulatory package described above. Due to other regulatory priorities within the Department such as the development of regulations in response to EPA's NOx SIP call and Governor John G. Rowland's Executive Order No. 19, this regulatory package was not actively pursued again until the fall of 2000. Additional resource constraints due to state budgetary directives also prolonged the development of these proposed regulations.

Most recently the SIPRAC subcommittee met on the following dates: February 23, 2001, April 2, 2001, March 8, 2001, May 10, 2001, and May 18, 2001. At these meetings many issues were discussed including, the Department's proposed regulatory approach, the timeframe for adoption of regulations, and various technical issues.

C. Summary of the Regulations as Proposed for Public Hearing

1. **R.C.S.A. section 22a-174-1 – Definitions.** This amendment consolidates into one section the definitions of terms that are used in multiple sections of the regulations for the abatement of air pollution. This amendment also clarifies and streamlines existing definitions pertaining to federal programs and requirements implemented by the DEP.

2. **R.C.S.A. section 22a-174-2 – Registration requirements for existing stationary sources of air pollutants.** The provisions of this section are obsolete and proposed for repeal.

3. **R.C.S.A. section 22a-174-2a - Procedural requirements for new source review and Title V permitting.** Like the proposed amendment to section 22a-174-1 of the R.C.S.A., this amendment addresses a number of issues raised in EPA's Title V Interim Approval. This amendment establishes a minor permit revision procedure for holders of Title V operating permits. Such procedures meet the requirements set forth in 40 Code of Federal Regulations (CFR) 70.7(e)(2) by providing adequate, streamlined and reasonable procedures for expeditiously processing Title V permit modifications. This amendment also consolidates many procedural requirements that must be met prior to the issuance of new source review permits under proposed new section 22a-174-3a of the R.C.S.A. and the amended Title V operating permits under section 22a-174-33 of the R.C.S.A.

4. **R.C.S.A. section 22a-174-3 – Permits to construct and permits to operate stationary sources or modifications.** The provisions of this section are proposed for repeal and replacement by section 22a-174-3a of the R.C.S.A.

5. **R.C.S.A. section 22a-174-3a – Permit to Construct and Operate Stationary Sources.** This new section addresses a significant issue raised in EPA's Title V Interim Approval regarding the requirement that the state adopt a federal program, pursuant to section 112(g) of the CAA and 40 CFR 63, Subpart B, for the pre-construction review of new or reconstructed sources of federally listed hazardous air pollutants (HAPs). As part of such pre-construction review, the DEP will be authorized to establish maximum achievable control technology requirements to limit HAP emissions from sources for which the EPA has not issued any control requirements.

In addition to establishment of a program pursuant to section 112(g) of the CAA, this amendment reconciles certain applicability provisions under which some sources are required to apply for, but not obtain, an air pollution control permit. This amendment provides the requirements for permit applications, standards for granting permits and permit modifications, and establishes the threshold for which a state specific air pollution control permit is required at a level of 15 tons per year of potential emissions. Because the state permit threshold is more stringent than the federal program, this amendment also provides for an exemption from the requirement to obtain a new source review permit when a source operates in a manner that restricts actual emissions below the applicability thresholds.

6. **R.C.S.A. section 22a-174-3b – Exemption from permitting for construction and operation of external combustion units, automotive refinishing operations, emergency engines, non-metallic mineral processing equipment and surface coating operations.** This new section establishes practicably enforceable emission limitations and operational restrictions for several source categories. Compliance with the emission limitations and operational restrictions will limit the actual emissions of these small stationary sources to levels for which an individual permit under R.C.S.A. section 22a-174-3a will not be required in most cases. This section also establishes record keeping requirements appropriate for these small stationary sources to demonstrate compliance with the applicable standards. Several provisions of this proposed regulation will be submitted to EPA to address a portion of the EPA-identified emission reduction shortfall of 4.9 tons per day of volatile organic compounds and 0.4 tons per day of nitrogen oxides within the Southwest Connecticut severe ozone nonattainment area.

7. **R.C.S.A. section 22a-174-3c – Limitations on potential to emit for external combustion units, automotive refinishing operations, emergency engines, non-metallic mineral processing equipment and surface coating operations.** This new section establishes limitations on potential emissions for a subset of the sources that may be operated under R.C.S.A. section 22a-174-3b. Owners and operators of equipment at facilities with premises-wide fuel, coating and solvent purchase levels, as applicable, below the limits specified in the section would not be required to obtain a permit under R.C.S.A. section 22a-174-3a or to operate under R.C.S.A. section 22a-174-3b.

8. **R.C.S.A. section 22a-174-33 – Title V Sources.** This amendment addresses the remainder of issues raised in EPA's Title V Interim Approval. This amendment deletes several definitions that are added to the general definition section of the regulations for the abatement of air pollution (see discussion of section 22a-174-1 of the R.C.S.A., above). This amendment also deletes several procedural requirements that are incorporated in new section 22a-174-2a of the R.C.S.A. concerning procedural requirements for new source review and Title V permitting. (See discussion of section 22a-174-2a of the R.C.S.A. above.) These deletions are located in the following subsections: (a) definitions, (b) signatory responsibilities, (*l*) notices, (m) public hearings, (r) modifications (except for operational flexibility and off permit changes), (s) transfers, and (t) revocations.

D. Text of Proposed R.C.S.A. section 22a-174-1:

Section 1. Section 22a-174-1 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-174-1. Definitions.

[For the purposes of sections 22a-174-1 through 22a-174-200 the following definitions shall be used:] EXCEPT AS MAY OTHERWISE BE PROVIDED, AS USED IN SECTIONS 22a-174-1 TO 22a-174-200, INCLUSIVE, OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES:

[(1) "Actual emissions" means the rate of emissions from a source, including fugitive emissions quantified by permit, order or by registration information, after application of air

pollution control equipment, of a particular air pollutant where the rate of emissions is calculated using:

(A) Real or expected production rates, hours of operation, and types of materials processed, stored or combusted for the period specified; and

(B) Information from the "Compilation of Air Pollutant Emission Factors" (AP-42) published by the U. S. Environmental Protection Agency, relevant source test data or other information deemed more representative by the Commissioner.

For the purposes of determining actual emissions in subsections (k) and (l) of section 22a-174-3 and in the definitions of excessive concentration, commence or commencement and potential emissions, the Commissioner shall determine the actual emissions of a stationary source over the two (2) year period prior to the date of an application under subsection 22a-174-3(a). The Commissioner may allow or require the use of another period which is deemed more representative, but in no event can it be before the design year of an applicable attainment plan.]

(1) "ACT" MEANS THE FEDERAL CLEAN AIR ACT, 42 USC SECTIONS 7401 TO 7671q AND PUBLIC LAW 101-549.

(2) "ACTUAL EMISSIONS" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xii)(A) THROUGH (D), INCLUSIVE, PROVIDED THAT ACTUAL EMISSIONS SHALL INCLUDE FUGITIVE EMISSIONS TO THE EXTENT QUANTIFIABLE.

[(2)] (3) "Administrator" means the [administrator] ADMINISTRATOR of the United States Environmental Protection Agency.

(4) "AFFECTED STATE OR STATES" MEANS THE COMMONWEALTH OF MASSACHUSETTS, THE STATES OF NEW YORK, RHODE ISLAND AND ANY OTHER STATE LOCATED WITHIN FIFTY (50) MILES OF A CONNECTICUT TITLE V SOURCE.

[(3)] (5) "Air pollutant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, aerosol, odorous substances, or any combination thereof, but does not include carbon dioxide, uncombined water vapor or water droplets, or molecular oxygen EXPRESSED AS O_2 or nitrogen.

[(4)](6) "Air pollution" means the presence in the [outdoor atmosphere] AMBIENT AIR of one or more air pollutants or any combination thereof in such quantities and of such characteristics and duration as to be, or [be] likely to be,

injurious to public welfare OR THE ENVIRONMENT, to the health of human, plant or animal life, or to property, or as unreasonably to interfere with the enjoyment of life and property.

(7) "AIR POLLUTION CONTROL EQUIPMENT" MEANS ANY EQUIPMENT WHICH IS DESIGNED TO REDUCE EMISSIONS OF AIR POLLUTANTS FROM A STATIONARY SOURCE.

[(5)](8) "Allowable emissions" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xi). [means the rate of emissions from a stationary source of a particular air pollutant where the emission rate is calculated using the maximum rated capacity of the source, unless the source is subject to permit conditions or other order of the Commissioner which limit the maximum rated capacity by restricting the operating rate or hours of operation of the source, and the most stringent of the following:

(A) Applicable standards as set forth in Title 40 of the Code of Federal Regulations Part 60 and Part 61, as from time to time may be amended;

(B) The applicable emission limitation under these regulations including those with a future compliance date;

(C) The emission rate specified as a condition of a permit or order issued by the Commissioner, including any such condition with a future compliance date; or

(D) The applicable emission limitation under the State Implementation Plan, including any such limitation with a future compliance date.

For the purpose of calculating allowable emissions in subparagraph 22a-174-3(c)(1)(B), subdivisions (k)(5), (k)(6), (l)(1) or (l)(5) in section 22a-174-3 or in the definitions of dispersion technique and excessive concentration, the emission limitation in (B) above, emission rate in (C) above and the permit conditions or other order of the Commissioner which limit the maximum rated capacity by restricting the operating rate or hours of operation of the source must be federally enforceable.]

[(6)](9) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

[(7)](10) "AAQS" OR "Ambient air quality standard" [or "AAQS"] means any standard which establishes the largest allowable concentration of a specific pollutant in the ambient air [or] OF a region or subregion as established by the United States

Environmental Protection Agency or by the [Commissioner] COMMISSIONER and which is listed in section 22a-174-24[.] OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(8)](11) "Architectural coating" means a coating used for residential or commercial buildings and their appurtenances, or industrial buildings, or other outdoor structures.

[(9)](12) "Attainment" means that the quality of the ambient air, as determined by the [Commissioner] ADMINISTRATOR, meets [National] THE Ambient Air Quality Standards for a given air pollutant. [for which such standards have been established by the United States Environmental Protection Agency.]

[(10)](13)"Attainment area" means a geographic area which has been designated BY THE ADMINISTRATOR as attainment under [Title] 40 [Code of Federal Regulations] CFR [Part] 81 in accordance with the provisions of 42 [U.S.C.] USC [Section] 7407 [(section 107 of the Clean Air Act)].

(14) "BASELINE CONCENTRATION" HAS THE SAME MEANING AS IN 40 CFR 51.166(b)(13)(i) THROUGH (ii)(b), INCLUSIVE.

[(11)](15) "Best Available Control Technology" or "BACT" means an emission limitation, including a [visible emission standard,] LIMITATION ON VISIBLE EMISSIONS, based upon the maximum degree of reduction for each applicable air pollutant emitted from any proposed stationary source or modification which the [Commissioner] COMMISSIONER, on a case-by-case basis, determines is achievable. [for a similar or representative type of source or modification through] BACT MAY INCLUDE, WITHOUT LIMITATION, THE application of production processes, WORK PRACTICE STANDARDS or available methods, systems, and techniques, including fuel cleaning or treatment, THE USE OF clean fuels, or innovative [fuel combustion] techniques for THE control of such air pollutant[. In determining BACT the Commissioner may take into account any emission limitation, including any visible emission standard, which has been achieved in practice under any permit limitation or demonstrated by any stack test acceptable to the Commissioner. For the purposes of this definition, the Commissioner may exclude any stack test on a pilot plant or prototype equipment which does not have reasonable operating experience or which may not be generally available for industry use. In determining BACT the Commissioner shall take into account energy, environmental and economic impacts and other costs. In no event shall the application of BACT result in emissions of any pollutant which would exceed the emission allowed by an applicable standard under Title 40 of the Code of Federal Regulations Part 60 and Part 61, as from time to time may

be amended. In determining BACT for a reconstructed source, the Commissioner shall take into account the provisions of Title 40 of the Code of Federal Regulations Part 60.15(f)(4), as from time to time may be amended, in assessing whether a standard of performance under Part 60 is applicable to such source. If the Commissioner determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, the Commissioner may prescribe a design, equipment, work practice or operational standard, or combination thereof, to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results].

[(12)](16) "Begin actual construction" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xv). [means initiation of physical on-site construction activities of an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in the method of operation this term refers to those on-site activities which mark the initiation of the change.]

[(13)](17) ["BTU"] "BTU" means British thermal unit, which is the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit.

[(14)](18) "CAS Number" means the number given to a compound by the American Chemical Society's Chemical Abstract Service.

[(15)](19) "CFR" means the Code of Federal Regulations.

[(16)](20) "Combustion efficiency" means the percentage [number] calculated in accordance with the following formula:

$$CE = \frac{[\ CO_2\ ]\ X\ (100)}{[\ CO\ ] + [\ CO_2\ ]}$$

where: CE = Combustion efficiency in percent;
CO_2 = Amount of carbon dioxide;
CO = Amount of carbon monoxide; and
CO and CO_2 are both measured in volume units.

(21) "COMMENCE OPERATION" MEANS THE OWNER OR OPERATOR OF THE STATIONARY SOURCE HAS BEGUN, OR CAUSED TO BEGIN, ANY ACTIVITY WHICH HAS THE POTENTIAL TO EMIT ANY AIR POLLUTANT.

[(17)](22) "Commence[" or "Commencement" as applied to construction of a stationary source or modification] CONSTRUCTION" means that the owner or operator OF THE PROPOSED STATIONARY SOURCE OR PROPOSED MODIFICATION TO A STATIONARY SOURCE has all necessary permits or approvals required under federal air quality control laws and [these regulations,] SECTION 22a-174-1, ET SEQ. OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, and has either:

(A) Begun, or caused to begin, a CONTINUOUS program of physical on-site construction of the source[:],SUBJECT TO A SCHEDULE APPROVED BY THE COMMISSIONER, WITHOUT ANY BREAKS IN SUCH CONSTRUCTION OF MORE THAN EIGHTEEN MONTHS; OR

[(i) subject to a schedule which will lead to completion in a reasonable time; and

(ii) without any breaks in such construction of more than 18 months; or]

(B) Entered into [site specific] binding agreements or contractual obligations TO UNDERTAKE ACTUAL CONSTRUCTION OF THE SOURCE WITHIN A REASONABLE TIME, which cannot be [cancelled] CANCELED or modified without substantial ECONOMIC loss to the owner or operator[, to undertake a program of construction of the source to be completed within a reasonable time].

[For the purposes of this definition construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification) which would result in a change in either potential or actual emissions.]

[(18)](23) "Commissioner" means the Commissioner of Environmental Protection, or any member of the Department or any local air pollution control official or agency authorized by the [Commissioner] COMMISSIONER, acting singly or jointly, to whom the [Commissioner] COMMISSIONER assigns any function arising under the provisions of these regulations.

(24) "CONSTRUCTION" HAS THE SAME MEANING AS IN 40 CFR 51.165 (a)(1)(xviii).

(25) "CEM" OR "CONTINUOUS EMISSION MONITORING" MEANS A SYSTEM FOR CONTINUOUSLY MEASURING THE EMISSIONS OF ANY POLLUTANT FROM A STATIONARY SOURCE.

(26) "CERC" OR "CONTINUOUS EMISSION REDUCTION CREDIT" MEANS A REAL, QUANTIFIABLE, SURPLUS, PERMANENT AND ENFORCEABLE REDUCTION OF AN AIR POLLUTANT AT A SOURCE WHICH IS:

(A) CERTIFIED BY THE COMMISSIONER THROUGH A SIP APPROVED PLAN; AND

(B) GENERATED OVER AN UNINTERRUPTED PERIOD OF TIME IN INCREMENTS OF ONE TON OF A SPECIFIED AIR POLLUTANT.

[(19)](27) "Criteria [Air Pollutant"] AIR POLLUTANT" means any air pollutant for which an ambient air quality standard has been established by the [administrator] ADMINISTRATOR in accordance with Section 107 of the [Clean Air] Act.

[(20)](28) "Department" means the Department of Environmental Protection.

[(21) "Deterioration in air quality" means that a pollutant concentration in a region or subregion for any pollutant specified in these regulations will exceed the maximum pollutant concentration for the specified time period for that region or subregion.]

[(22)] (29) "Dioxin emissions" means [tetrachlorodibenzodioxin (TCDD) and tetrachlorodibenzofuran (TCDF) emissions or emissions of any other isomers of comparable toxicity] THE TOTAL EMISSIONS OF POLYCHLORODIBENZODIOXINS (PCDDs) AND POLYCHLORODIBENZOFURANS (PCDFs) CONVERTED TO THE TOXIC EQUIVALENCE AMOUNT OF 2,3,7,8-TETRACHLOROTEDIBENZODIOXIN (2,3,7,8-TCDD). For the purposes of this definition, the [Commissioner] COMMISSIONER shall determine the [equivalent] TOXIC EQUIVALENCE amount of 2,3,7,8-TCDD BY MULTIPLYING THE CONCENTRATION OF EACH ISOMER IN THE SAMPLE BY THE APPROPRIATE TOXIC EQUIVALENCY FACTOR (TEF) SET FORTH IN TABLE 1-1 AND THEN ADDING THE PRODUCTS TO OBTAIN THE TOTAL DIOXIN EMISSIONS IN THE SAMPLE. [using the following toxic equivalency factors (TEF)]

Table 1-1 FORM OF DIOXIN EMISSIONS	TEF
monochlorodibenzodioxin	0
dichlorodibenzodioxin	0

Table 1-1 FORM OF DIOXIN EMISSIONS	TEF
trichlorodibenzodioxin	0
2,3,7,8 tetrachlorodibenzodioxin	1.0
other tetrachlorodibenzodioxins	0.01
[2,3,7,8 pentachlorodibenzodioxin	0.5]
1,2,3,7,8 PENTACHLORODIBENZODIOXIN	0.5
other pentachlorodibenzodioxins	0.005
[2,3,7,8 hexachlorodibenzodioxin	0.04]
1,2,3,4,7,8 HEXACHLORODIBENZODIOXIN	0.04
1,2,3,6,7,8 HEXACHLORODIBENZODIOXIN	0.04
1,2,3,7,8,9 HEXACHLORODIBENZODIOXIN	0.04
other hexachlorodibenzodioxins	0.0004
[2,3,7,8 heptachlorodibenzodioxin	0.001]
1,2,3,4,6,7,8 HEPTACHLORODIBENZODIOXIN	0.001
other heptachlorodibenzodioxins	0.00001
octachlorodibenzodioxin	0
monochlorodibenzofuran	0
dichlorodibenzofuran	0
trichlorodibenzofuran	0
2,3,7,8 tetrachlorodibenzofuran	0.1

Table 1-1 FORM OF DIOXIN EMISSIONS	TEF
other tetrachlorodibenzofurans	0.001
[2,3,6,7 pentachlorodibenzofuran	0.1]
1,2,3,7,8 PENTACHLORODIBENZOFURAN	0.1
2,3,4,7,8 PENTACHLORODIBENZOFURAN	0.1
other pentachlorodibenzofurans	0.001
[2,3,7,8 hexachlorodibenzofuran	0.01]
1,2,3,4,7,8 HEXACHLORODIBENZOFURAN	0.01
1,2,3,6,7,8 HEXACHLORODIBENZOFURAN	0.01
2,3,4,6,7,8 HEXACHLORODIBENZOFURAN	0.01
1,2,3,7,8,9 HEXACHLORODIBENZOFURAN	0.01
other hexachlorodibenzofurans	0.0001
[2,3,7,8 heptachlorodibenzofuran	0.001]
1,2,3,4,6,7,8 HEPTACHLORODIBENZOFURAN	0.001
1,2,3,4,7,8,9 HEPTACHLORODIBENZOFURAN	0.001
other heptachlorodibenzofurans	0.00001
octachlorodibenzofuran	0

[To determine total dioxin emissions, multiply the isomer concentration in the sample by the appropriate toxic equivalency factor and then add the products to obtain the total 2,3,7,8-TCDD equivalents in the sample.]

[(23)](30) "Discharge point" means any stack [and shall also include any] OR area from which [a hazardous] AN air pollutant IS RELEASED INTO THE AMBIENT AIR [emanates by evaporation, diffusion, or wind entrainment into the ambient air].

[(24)](31) "Dispersion technique" [means any method which attempts to affect the concentration of a pollutant in the ambient air by:] HAS THE SAME MEANING AS IN 40 CFR 51.100(hh).

[(A) Using that portion of a stack which exceeds the good engineering practice stack height;

(B) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(C) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack or other selective handling of exhaust gas so as to increase the exhaust gas plume rise.

The preceding sentence does not include:

(i) the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) the merging of exhaust gas streams where:

(aa) the owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams; or

(bb) after July 8, 1985 such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of dispersion technique applies only to the emission limitation for the pollutant affected by such change in operation; or

(cc) before July 8, 1985 such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Commissioner shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that the merging was not significantly motivated by such intent, the Commissioner shall deny credit for the effect of such merging in calculating the allowable emissions of the source.

(iii) smoke management in agricultural or silvacultural prescribed burning programs;

(iv) episodic restrictions on residential woodburning and open burning; or

(v) techniques under part C of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide do not exceed five thousand (5,000) tons per year.]

(32) "DERC" OR "DISCRETE EMISSION REDUCTION CREDIT" MEANS THE REAL, QUANTIFIABLE, SURPLUS, PERMANENT, AND ENFORCEABLE REDUCTION OF AN AIR POLLUTANT AT A SOURCE, WHICH IS:

(A) CERTIFIED BY THE COMMISSIONER THROUGH A SIP APPROVED PLAN; AND

(B) GENERATED DURING A SPECIFIED PERIOD OF TIME.

[(25)](33) "Emission" means the [act of releasing] RELEASE or [discharging] DISCHARGE OF AN air [pollutants] POLLUTANT into the ambient air from any source.

[(26)](34) "Emission limitation" and "Emission standard" HAVE THE SAME MEANING AS IN 40 CFR 51.100(z). [mean a requirement established by the Commissioner or the Administrator which limits the quantity, rate, or concentration of emissions of air

pollutants on a continuous basis, including any requirement which limits the level of opacity, prescribes equipment or fuel specifications, or relates to the operation or maintenance of a source to assure continuous emission reduction.]

(35) "EMISSION UNIT" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(vii).

(36) "ERC" OR "EMISSION REDUCTION CREDIT" MEANS REAL, QUANTIFIABLE, SURPLUS, PERMANENT, AND ENFORCEABLE REDUCTIONS OF AIR POLLUTANT EMISSIONS FROM A SOURCE, WHEN SUCH REDUCTIONS ARE CERTIFIED BY THE COMMISSIONER THROUGH A SIP APPROVED PLAN AND RECORDED AS CERCS OR DERCS.

[(27)] (37) "Excessive concentration" has the same meaning as [ascribed to that term] in [Title] 40 [Code of Federal Regulations Part] CFR 51.100(kk).

[(28)] (38) "Federally enforceable" [means all limitations and conditions which are: approved by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61; requirements within any applicable State Implementation Plan (SIP); any permit requirements established pursuant to 40 CFR Parts 52.10, 52.21, 70 or 71, under regulations approved pursuant to 40 CFR Part 51, subpart I; and any permit to construct requirements established pursuant to section 22a-174-3.] HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xiv).

[(29)] (39) "Flare" means an apparatus, [or contrivance] DEVICE, PROCESS, OR PROCEDURE for the burning of flammable gases or vapors at or near the exit of a stack, flue or vent.

[(30)] (40) "Fuel-burning equipment" means any furnace, boiler, apparatus, stack, and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power.

[(31)] (41) "Fugitive dust" means solid airborne particulate matter emitted from any source other than through a stack.

[(32)] (42) "Fugitive emissions" means fugitive dust or those emissions [which could not] THAT CANNOT reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

[(33)] (43) "Good engineering practice (GEP) stack height" or ["(GEP)"] has the same meaning as [ascribed to that term] in [Title] 40 [Code of Federal Regulations Part] CFR 51.100(ii).

[(34)](44) "Hazardous air pollutant," EXCEPT AS OTHERWISE PROVIDED IN SECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, means a substance listed in [either Table 29-1, 29-2, or 29-3 of] section 22a-174-29 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(35)"Hazardous air pollutant advisory panel" or "Panel" means the panel created by Public Act 85-590.]

[(36)](45) "Hazard limiting value" or "HLV"[,] means the highest [acceptable] ALLOWABLE concentration [in the ambient air] of a hazardous air pollutant IN THE AMBIENT AIR, [as shown in Table 29-1, 29-2, or 29-3 of] PURSUANT TO section 22a-174-29 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. [as determined by the Commissioner. The primary use of this term is in the derivation of the maximum allowable stack concentration for a source.]

[(37)](46) "Heat input" means the total gross calorific value of all fuels burned, measured in [BTU] BTU by ASTM Method D2015-66, D240-64, or D1826-64, using the [higher] HIGHEST heating value of each fuel.

[(38)](47) "Incinerator" means any device, apparatus, equipment, SLAB, or structure used for destroying, reducing, or salvaging, by fire OR HEAT, any WASTE [material or substance including, but not limited to, refuse, rubbish, garbage, trade waste, debris or scrap; or facilities for cremating] OR human or animal remains[. For further definitions related to incineration, see subdivision 22a-174-18(c)(1).] PROVIDED THAT, FOR THE PURPOSES OF THIS DEFINITION, WASTE DOES NOT INCLUDE:

(A) USED OIL MEETING THE SPECIFICATIONS OF 40 CFR 279.11; OR

(B) USED OIL BURNED IN SPACE HEATERS MEETING THE REQUIREMENTS OF 40 CFR 279.23.

[(39)](48) "Indian Governing Body" HAS THE SAME MEANING AS IN 40 CFR 51.166(b)(28). [means the governing body of any tribe, band or group of Indians which tribe, band or group of Indians is subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.]

[(40)](49) "Indian reservation" HAS THE SAME MEANING AS IN 40 CFR 51.166(b)(27). [means any federally recognized reservation established by Treaty, Agreement, Executive Order or Act of Congress.]

[(41)](50) "Indirect source" means any building, structure, facility installation, or combination thereof, that has or leads to associated activity as a result of which an air pollutant is or may be emitted. Indirect sources include, but are not limited to: shopping centers, sports complexes[;], drive-in theaters or restaurants[;], parking lots or garages[;], residential, commercial, industrial or institutional buildings or developments[;], amusement parks and other recreational areas[;], highways[;], AND airports [and combinations thereof].

[(42)](51) "Indirect source construction permit" means a permit [for] ISSUED BY THE COMMISSIONER AUTHORIZING the construction of an indirect source [which is required to ensure that the proposed indirect source will neither prevent nor interfere, either directly or indirectly, with the attainment or maintenance of any applicable ambient air quality standard].

(52) "INNOVATIVE CONTROL TECHNOLOGY" HAS THE SAME MEANING AS IN 40 CFR 51.166 (b)(19).

[(43)](53) "Internal offset" means any federally enforceable reduction of actual emissions from one or more stationary sources on [a premise] THE SAME PREMISES which [can be] ARE used to offset [allowable] POTENTIAL emissions increases from a proposed [new] stationary source or [modification] PROPOSED CHANGE TO A STATIONARY SOURCE on such [premise] PREMISES.

[(44)](54) "LAER" or "Lowest Achievable Emission Rate" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xiii). [means the rate of emissions, which reflects the more stringent of:

(A) The most stringent emission limitation which is contained in any state implementation plan for such class or category of stationary source, unless the owner or operator demonstrates to the Commissioner's satisfaction that such limitations are not achievable; or

(B) The most stringent emission limitation which is achieved in practice by such stationary source or category of stationary source.

In determining LAER the Commissioner may take into account any emission limitation, including a visible emission standard, which has been established as a permit limitation or demonstrated by a stack test acceptable to the Commissioner. For the purposes of this definition, the Commissioner may exclude any stack test on a pilot plant or prototype equipment which does not have reasonable operating experience or which may not be generally

available for industry use. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable standards in Title 40 of the Code of Federal Regulations Part 60 and Part 61, as from time to time may be amended.]

[(45)](55) "Major modification" HAS THE SAME MEANING AS IN 40 CFR 51.165 (a)(1)(v). [means a physical change or change in the method of operation of a major stationary source which would result in an increase in potential emissions of any individual air pollutant equal to or greater than the amount listed in Table 3(k)-1 in section 22a-174-3 1(m)-1 . For the purposes of this definition:

(A) A major stationary source of volatile organic compounds or nitrogen oxides shall be considered a major stationary source for ozone;

(B) In calculating potential emissions any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, or restrictions on production rates, hours of operation, and types of materials processed, stored or combusted which limit the maximum rated capacity shall be treated as part of its design if the limitation or the effect the limitation would have on emissions is federally enforceable;

(C) in calculating a potential emissions increase of volatile organic compounds or nitrogen oxides, all previous increases in potential emissions from the subject premise shall be aggregated over the most recent five (5) consecutive calendar years. Such five (5) year period shall not precede January 1, 1991 and shall include the calendar year in which the proposed increase will occur. Such aggregation shall exclude emission increases previously permitted under subsection 22a-174-3*(l)*. If such aggregated emissions are greater than twenty-five (25) tons over the five (5) year period, then the annual average of such aggregated emissions shall be added to the increase in potential emissions in determining if such emissions increase is equal to or greater than the amount listed in Table 3(k)-1 in section 22a-174-3.]

(56) "MAJOR SOURCE BASELINE DATE" MEANS JANUARY 6, 1975 FOR PARTICULATE MATTER AND SULFUR DIOXIDE AND FEBRUARY 8, 1988 FOR NITROGEN DIOXIDE.

[(46)](57) "Major stationary source" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(iv). [means:

(A) A premise with potential emissions equal to or greater than one hundred (100) tons per year of any individual air pollutant prior to the application for a modification to that stationary source or addition to the premise; or the more stringent of the following applicable thresholds shall apply:

(i) fifty (50) tons per year of volatile organic compounds or nitrogen oxides in any serious non-attainment area for ozone; or

(ii) twenty-five (25) tons per year of volatile organic compounds or nitrogen oxides in any severe non-attainment area for ozone;

(B) A premise with potential emissions equal to or greater than the thresholds in subparagraph (A) above after taking into consideration:

(i) any increase in potential emissions of fifteen (15) tons per year or more from a proposed modification or the addition of a proposed stationary source; and

(ii) any other increases and decreases in potential emissions which the Commissioner determines will occur before the date that the increase from the proposed modification occurs; or

(C) a physical change or change in the method of operation of a premise which in and of itself has potential emissions greater than or equal to the thresholds in subparagraph (A) above;

(D) for the purposes of this definition,

(i) a major stationary source of volatile organic compounds or nitrogen oxides shall be considered a major stationary source for ozone; and

(ii) in calculating potential emissions any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, or restrictions on production rates, hours of operation, and types of materials processed, stored or combusted which

limit the maximum rated capacity shall be treated as part of its design if the limitation or the effect the limitation would have on emissions is federally enforceable.]

(58) "MALFUNCTION" MEANS ANY SUDDEN, UNEXPECTED, INFREQUENT AND NOT REASONABLY PREVENTABLE FAILURE OF AIR POLLUTION CONTROL EQUIPMENT, PROCESS EQUIPMENT OR A PROCESS, TO OPERATE IN A NORMAL OR USUAL MANNER. A FAILURE THAT IS CAUSED IN WHOLE OR IN PART BY POOR MAINTENANCE OR NEGLIGENT OR CARELESS OPERATION SHALL NOT BE CONSIDERED A MALFUNCTION.

(59) "MACT" OR "MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY" MEANS A METHOD OF ACHIEVING AN EMISSION LIMITATION OR REDUCING THE EMISSION OF HAZARDOUS AIR POLLUTANTS AS DETERMINED BY THE COMMISSIONER PURSUANT TO SECTION 22a-174-33(e) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES OR BY THE ADMINISTRATOR PURSUANT TO 40 CFR 63.

[(47)](60)"Maximum allowable stack concentration" or "MASC" is the maximum allowable concentration of a hazardous air pollutant in the exhaust gas stream AT THE DISCHARGE POINT of a STATIONARY source under actual operating conditions [at the discharge point].

[(48) "Maximum pollutant concentration" means the largest concentration of a specific pollutant in a region or subregion either as a measured or calculated value, as determined by the Commissioner, for the twelve months ending on June 30, 1972. The time periods to be averaged for the purpose of establishing maximum pollutant concentrations shall be as follows: for sulfur oxides, particulate matter, and nitrogen dioxide, one year; for carbon monoxide, eight hours; for photochemical oxidants, one hour; for hydrocarbons, three hours.]

[(49)](61) "Maximum [rated] capacity" means the design maximum hourly capacity OF A STATIONARY SOURCE or highest demonstrated hourly capacity OF A STATIONARY SOURCE, whichever is greater, multiplied by 365 days per year and 24 hours per day[.], OR SOME OTHER TIME PERIOD AS MAY BE ACCEPTED BY THE COMMISSIONER.

[(50)](62) "Maximum uncontrolled emissions" means the rate of emissions for a source, determined [before] WITHOUT the application of air pollution control equipment unless the source is incapable of being operated without the air pollution control equipment, of a particular air pollutant where [the] SUCH rate [of emissions] is calculated using:

(A) The maximum [rated] capacity of the source unless the [Commissioner] COMMISSIONER determines that the source is physically unable to operate at that capacity or unless the maximum [rated] capacity is limited by restrictions on production rates, hours of operation, [and] OR types of materials processed, stored or combusted either through permit conditions or other order of the [Commissioner] COMMISSIONER; and

(B) Information from the Compilation of Air Pollutant Emission Factors (AP-42) published by the U. S. Environmental Protection Agency, relevant source test data or other information deemed more representative by the [Commissioner.] COMMISSIONER.

(63) "MINOR PERMIT MODIFICATION" MEANS A CHANGE TO A PERMIT THAT IS REQUIRED FOR THE PERMITTEE TO LAWFULLY ENGAGE IN ANY OF THE ACTIVITIES OR PROPOSED ACTIVITIES AT A STATIONARY SOURCE IDENTIFIED IN:

(A) SECTION 22a-174-2a(e)(1) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES,FOR ANY NEW SOURCE REVIEW PERMIT; AND

(B) SECTION 22a-174-2a(e)(2) THE REGULATIONS OF CONNECTICUT STATE AGENCIES, FOR ANY TITLE V PERMIT.

(64) "MINOR SOURCE" MEANS ANY STATIONARY SOURCE WHICH EMITS, AND HAS THE POTENTIAL TO EMIT, POLLUTANTS AT RATES OR IN AMOUNTS LOWER THAN THOSE SPECIFIED IN SUBDIVISION (57) OF THIS SUBSECTION.

(65) "MINOR SOURCE BASELINE DATE" MEANS JUNE 7, 1988 FOR PARTICULATE MATTER, DECEMBER 17, 1984 FOR SULFUR DIOXIDE AND JUNE 7, 1988 FOR NITROGEN DIOXIDE.

[(51)](66) "Mobile source" means a source designed or constructed to move from one location to another during normal operation except portable equipment and includes, but is not limited to, automobiles, buses, trucks, tractors, earth moving equipment, hoists, cranes, aircraft, locomotives operating on rails, vessels for transportation on water, lawnmowers, and other small home appliances.

[(52)] (67) ["Modify" or] "Modification" OR "MODIFIED SOURCE" means ANY PHYSICAL CHANGE OR CHANGE IN THE METHOD OF OPERATION OF, A STATIONARY SOURCE WHICH INCREASES THE EMISSION RATE OF ANY INDIVIDUAL AIR POLLUTANT OR WHICH RESULTS IN THE EMISSION OF ANY INDIVIDUAL AIR POLLUTANT NOT PREVIOUSLY EMITTED, EXCEPT THAT:

(A) ROUTINE MAINTENANCE, REPAIR OR REPLACEMENT AT A STATIONARY SOURCE SHALL NOT BE CONSIDERED A PHYSICAL CHANGE; AND

[(A) making any physical change in, change in the method of operation of, or addition to a stationary source which:

(i) increases the potential emissions of any individual air pollutant from a stationary source by five (5) tons per year or more; or

(ii) increases the maximum rated capacity of the stationary source unless the owner or operator of the stationary source demonstrates to the Commissioner's satisfaction that such increase is less than fifteen percent (15%) and the change or addition does not cause an increase in the actual emissions or the potential emissions ; or

(iii) increases the potential emissions above the levels listed in Table 3(k)-1 of subsection 22a-174-3(k); or

(iv) increases maximum uncontrolled emissions from a stationary source by one hundred (100) tons per year or more.

In addition a change in the type fuel used in accordance with a permit or order, or the type of fuel for which the source has provided registration under section 22a-174-2 to the Commissioner shall be considered a modification unless such change is allowed under a permit or other order of the Commissioner either of which is federally enforceable.]

(B) [Notwithstanding the above, the] THE following [are not modifications] SHALL NOT BE CONSIDERED A CHANGE IN THE METHOD OF OPERATION unless the stationary source was previously limited by permit [conditions] or [other] order of the [Commissioner] COMMISSIONER:

[(i) any routine maintenance, repair or replacement unless such replacement results in reconstruction as defined in this section; or

(ii) a change in the method of operation; or]

[(iii)]

(i) any increase in the production rate, if such increase does not exceed the operating design capacity of the affected facility[;], or

[(iv)]
(ii) any increase in hours of operation[; or].

[(v) any change, the sole purpose of which is to bring an existing source into compliance with regulations applicable to such source, unless such change is a major modification or a major stationary source; or

(vi) relocation of a portable rock crusher with potential emissions of less than fifteen (15) tons per year which has a permit or exemption letter issued by the Commissioner under section 22a-174-3 provided the owner or operator provides written notice to the Commissioner prior to the relocation; or

(vii) relocation of a portable stripping facility which has a general permit issued by the Commissioner pursuant to section 22a-174(l) of the Connecticut General Statutes, provided the owner or operator of such facility provides written notice to the Commissioner prior to the relocation.]

(68) "MONITORING" MEANS ANY ACTION OR PROCEDURE THAT IS USED TO DETERMINE ACTUAL EMISSIONS FROM A STATIONARY SOURCE OR COMPLIANCE WITH THE REQUIREMENTS OF ANY PERMIT, ORDER, STATUTE OR REGULATION.

[(53)](69) "Multiple-chamber incinerator" means any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning[,] AND which consists of two or more refractory lined combustion furnaces in A series, physically separated by refractory walls[,] AND interconnected by gas passage ports or ducts [and employing] THAT EMPLOYS adequate design parameters necessary for maximum combustion of the material to be burned.

[(54) "Nearby" has the same meaning as ascribed to that term in Title 40 Code of Federal Regulations Part 51.100(jj).]

(70) "NET EMISSIONS INCREASE" HAS THE SAME MEANING AS IN 40 CFR 51.165 (a)(1)(vi), PROVIDED THAT ANY INCREASES OR DECREASES IN ACTUAL EMISSIONS AT A STATIONARY SOURCE ARE CREDITABLE ONLY IF

SUCH INCREASES OR DECREASES OCCUR WITHIN FIVE (5) YEARS OF THE PRESENT MODIFICATION.

[(55) "Netting" means determining the net emissions increase the determination of the increase or decrease, of potential emissions only, from stationary sources on any individual premise which the Commissioner determines will occur before the date that the increase from the proposed modification to the stationary source occurs].

[(56)](71) "Nitrogen oxides" or "NOx" means the sum of all oxides of nitrogen, expressed as nitrogen dioxide.

[(57)](72) "Non-attainment" [shall mean] MEANS that the quality of the ambient air, as [determined] MEASURED by the [Commissioner] COMMISSIONER, fails to meet any [National] Ambient Air Quality Standard for a given pollutant for which such standards have been established by the United States Environmental Protection Agency.

[(58)](73) "Non-attainment air pollutant" means the particular air pollutant for which an area is designated AS A non-attainment AREA, except that volatile organic compounds and nitrogen oxides are non-attainment air pollutants[,] for ozone non-attainment areas.

[(59)](74) "Non-attainment area" means a geographic area which has been designated as non-attainment under [Title] 40 [Code of Federal Regulations Part] CFR 81 in accordance with the provisions of 42 [U.S.C section] USC 7407 (section 107 of the [Clean Air] Act).

[(60)"Non-degradation" means that air quality in any region or designated sub-region shall not deteriorate, as defined in this section.]

(75) "NON-MINOR PERMIT MODIFICATION" MEANS A CHANGE TO A PERMIT THAT IS REQUIRED FOR THE PERMITTEE TO LAWFULLY ENGAGE IN ANY OF THE ACTIVITIES OR PROPOSED ACTIVITIES AT A STATIONARY SOURCE IDENTIFIED IN:

(A) SECTION 22a-174-2a(d)(3) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES,FOR ANY NEW SOURCE REVIEW PERMIT; AND

(B) SECTION 22a-174-2a(d)(4) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES,FOR ANY TITLE V PERMIT.

[(61)] (76) "Offset fill pipe" means a fill pipe that has bends or angles such that a straight sleeve cannot be installed.

[(62)](77) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

[(63)](78) "Open-burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through [an adequate] A stack or flue.

[(64)](79) "Operator" means the person or persons [who are legally] responsible for the operation of a source of air pollution.

[(65)](80) "Organic compounds" means any chemical compounds of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

[(66)](81) "Particulate matter" OR "PM" means any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid [at standard conditions.] IN THE AMBIENT AIR.

(82) "PM 2.5" MEANS PARTICULATE MATTER WITH AN AERODYNAMIC DIAMETER LESS THAN OR EQUAL TO A NOMINAL 2.5 MICROMETERS AS MEASURED BY A REFERENCE METHOD SET FORTH IN 40 CFR 50, APPENDIX L, AND DESIGNATED AS A REFERENCE METHOD IN ACCORDANCE WITH 40 CFR 53 OR BY AN EQUIVALENT METHOD APPROVED BY THE ADMINISTRATOR IN ACCORDANCE WITH 40 CFR 53.

[(67)](83) "PM 10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method [based on appendix J of Title 40 Code of Federal Regulations Part 50 and designated in accordance with Title 40 Code of Federal Regulations Part 53 as published in the July 1, 1987 Federal Register or by an equivalent method approved by the Administrator in accordance with Title 40 Code of Federal Regulations Part 53.] SET FORTH IN 40 CFR 50, APPENDIX M, AND DESIGNATED AS A REFERENCE METHOD IN ACCORDANCE WITH 40 CFR 53 OR BY AN EQUIVALENT METHOD APPROVED BY THE ADMINISTRATOR IN ACCORDANCE WITH 40 CFR 53.

[(68)](84) "Permit" [to construct"] means [a permit] ANY LICENSE ISSUED UNDER CHAPTER 446c OF THE CONNECTICUT GENERAL STATUTES.[for the construction of a stationary source, which is required to ensure:

(A) That the proposed stationary source will not be in violation of any applicable emissions rate standards imposed by these regulations; and

(B) That the proposed stationary source will neither prevent nor interfere with the attainment or maintenance of any applicable ambient air quality standards as described in subparagraph 22a-174-3(c)(1)(B).]

[(69)"Permit to operate" means a permit which is required to ensure:

(A) That the operations of a stationary source will be in compliance with any applicable emissions rate standards or other applicable requirements imposed by these regulations; and

(B) That the operations of a stationary source will neither prevent nor interfere with the attainment or maintenance of any applicable ambient air quality standards as described in subparagraph 22a-174-3(c)(1)(B); and

(C) That all the terms of the permit to construct were fulfilled.]

[(70)](85) "Person" HAS THE SAME MEANING AS IN SECTION 22a-170 OF THE CONNECTICUT GENERAL STATUTES. [means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state, the United States, or political subdivision or agency thereof or any legal successor, representative, agent, or any agency of the foregoing.]

[(71) "Potential emissions" OR "potential to emit" means the rate of emissions from a stationary source, including fugitive emissions to the extent quantified by permit, order or by registration information, after application of air pollution control equipment, of a particular air pollutant such that the rate is equal to or greater than the actual emissions and where the rate is calculated using:

(A) The maximum rated capacity of the stationary source, unless the maximum rated capacity is limited by restrictions on production rates, hours of operation, and types of materials processed, stored or combusted either through permit conditions or other order of the Commissioner; and

(B) Information from the "Compilation of Air Pollutant Emission Factors" (AP-42) published by the U. S. Environmental Protection Agency, relevant source test data or other information deemed more representative by the Commissioner.

For the purposes of this definition, in calculating potential emissions in subsections (k) and (l) of section 22a-174-3, subsections 22a-174-8(c) and 22a-174-20(ee) or in the definitions of major modification, major stationary source, netting and commence or commencement, any physical or operational limitation or condition restricting the capacity of the source to emit a pollutant, including air pollution control equipment or restrictions on production rates hours of operation and types of materials processed, stored or combusted which limit the maximum rated capacity shall be treated as part of its design if the limitation or condition, or the effect the limitation or condition would have on emissions is federally enforceable.]

(86) "POTENTIAL EMISSIONS" OR "POTENTIAL TO EMIT" MEANS THE MAXIMUM CAPACITY OF A STATIONARY SOURCE, INCLUDING ALL PHYSICAL AND OPERATIONAL LIMITATIONS, TO EMIT ANY AIR POLLUTANT, INCLUDING FUGITIVE EMISSIONS TO THE EXTENT QUANTIFIABLE, PROVIDED THAT:

(A) ANY PHYSICAL LIMITATION ON SUCH CAPACITY, NOT INCLUDING AIR POLLUTION CONTROL EQUIPMENT, SHALL BE TREATED AS PART OF THE STATIONARY SOURCE AS DETERMINED BY THE COMMISSIONER OR ADMINISTRATOR; AND

(B) ANY OPERATIONAL LIMITATION ON SUCH CAPACITY, INCLUDING AIR POLLUTION CONTROL EQUIPMENT, OR A RESTRICTION ON THE HOURS OF OPERATION OR ON THE TYPE OR AMOUNT OF MATERIAL PROCESSED, STORED OR COMBUSTED, SHALL BE TREATED AS PART OF THE STATIONARY SOURCE IF THE LIMITATION OR RESTRICTION:

(i) IS PRACTICABLY ENFORCEABLE, OR

(ii) IS FEDERALLY ENFORCEABLE.

(87) "PRACTICABLY ENFORCEABLE" MEANS:

(A) ANY FEDERALLY ENFORCEABLE EMISSION LIMITATION OR RESTRICTION ON POTENTIAL EMISSIONS; OR

(B) ANY EMISSION LIMITATION OR RESTRICTION ON THE POTENTIAL EMISSIONS SET FORTH IN A PERMIT, ORDER, REGULATION OR

STATUTE ISSUED OR ADMINISTERED BY THE COMMISSIONER, PROVIDED SUCH EMISSION LIMITATION OR RESTRICTION:

(i) IDENTIFIES THE SUBJECT STATIONARY SOURCE OR CATEGORY OF STATIONARY SOURCE,

(ii) SPECIFIES AN EMISSION LIMITATION OR RESTRICTION USING A SHORT TERM EMISSIONS RATE FOR SUCH STATIONARY SOURCE EXPRESSED IN POUNDS PER HOUR, POUNDS PER UNIT OF PRODUCTION OR CONCENTRATION LEVELS SUFFICIENT TO CALCULATE THE ACTUAL EMISSIONS FROM SUCH STATIONARY SOURCE,

(iii) SPECIFIES APPROPRIATE MONITORING TO DETERMINE COMPLIANCE WITH THE EMISSION LIMITATION OR RESTRICTION SPECIFIED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF THIS SUBDIVISION, AND

(iv) IF AN EMISSION LIMITATION OR RESTRICTION IS REQUIRED TO DEMONSTRATE THAT A STATE OR FEDERAL STANDARD DOES NOT APPLY, SUCH EMISSION LIMITATION OR RESTRICTION SHALL BE CALCULATED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF THIS SUBDIVISION AND EXPRESSED USING THE SHORTEST TECHNICALLY AND ECONOMICALLY FEASIBLE AVERAGING PERIOD, IN NO CASE LONGER THAN A TWELVE MONTH ROLLING AVERAGE. IF A TWELVE MONTH ROLLING AVERAGE IS SELECTED, THE MONITORING SHALL BE CEM OR EQUIVALENT.

[(72)](88) ["Premise"] "PREMISES" means the grouping of all stationary sources at any one location and owned or under the control of the same person or persons.

[(73)](89) "Process source" means any operation, process, or activity except:

(A) The burning of fuel for indirect heating in which the products of combustion do not come in contact with process material;

(B) The burning of refuse; and

(C) The processing of salvageable material by burning.

[(74)](90) "Reasonably Available Control Technology" OR "RACT" means the lowest emission limitation that a particular [facility] STATIONARY SOURCE is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility[.] [It may require

technology that has been applied to similar, but not necessarily identical, source categories].

[(75)](91) "Reconstruct" or "reconstruction" means the renovation or re-building of a STATIONARY source in accordance with the provisions of [Title 40 of the Code of Federal Regulations Part 60.15] 40 CFR 60.15. A reconstructed STATIONARY source shall be considered a new STATIONARY source [for the purposes of these regulations]. [Use] THE USE of an alternative fuel or raw material by reason of an order in effect under sections 2(a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974, or superseding legislation, or by reason of a Natural Gas Curtailment Plan pursuant to the Federal Power Act, or by reason of an order or rule under section 125 of the Clean Air Act, shall not be considered reconstruction.

[(76)] (92) "Region" means a Connecticut intrastate Air Quality Control Region[,] or the Connecticut portion of an interstate Air Quality Control Region as defined by the [United States Environmental Protection Agency in Title 40 Code of Federal Regulations Part 81.] EPA IN 40 CFR 81[;].

[(77) "Remote fill pipe" means an offset fill pipe.]

[(78)] (93) "Residual oil" means any fuel oil of No. 4, No. 5, or No. 6 grades, as defined by Commercial Standard C.S. 12-48.

[(79)](94) "Resources recovery facility" [means a facility utilizing processes aimed at reclaiming the material or energy values from municipal solid waste.] HAS THE SAME MEANING AS IN SECTION 22a-207(9) OF THE CONNECTICUT GENERAL STATUTES.

[(80)](95) "Ringelmann chart" means the chart published and described in the U.S. Bureau of Mines Information Circular 8333.

(96) "SECONDARY EMISSIONS" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(viii).

[(81)](97) "Serious non-attainment area for ozone" means all towns within the State of Connecticut, except those towns located in the severe non-attainment area for ozone.

[(82)](98) "Severe non-attainment area for ozone" means the towns of [Beth*l] BETHEL, Bridgeport, Bridgewater, Brookfield, Danbury, Darien, Easton, Fairfield, Greenwich, Monroe, New Canaan, New Fairfield, New Milford, Newtown, Norwalk, Redding, Ridgefield, Sherman, Stamford, Stratford, Trumbull, Weston, Westport and Wilton.

[(83)"Soiling index" means a measure of the soiling properties of suspended particles in air determined by drawing a measured volume of air through a known area of Whatman No. 4 filter paper for a measured period of time, expressed as COHs/1,000 linear feet, or equivalent.]

[(84)](99) "Solid waste" means unwanted or discarded materials, including solid, liquid, semisolid, or contained gaseous material.

[(85)](100) "Source" means any property, real or personal, which emits or may emit any air pollutant.

[(86)](101) "Stack" HAS THE SAME MEANING AS IN 40 CFR 51.100 (ff) PROVIDED THAT STACK SHALL ALSO INCLUDE A FLARE [means any point of release from a source, which emits solids, liquids, or gases into the ambient air including a pipe, duct, or flare].

[(87)](102) "Standard conditions" means a dry gas temperature of 68 degrees Fahrenheit and a gas pressure of 14.7 pounds per square inch absolute (20 degrees C, 760 mm[.]Hg[.]).

[(88)](103) "State" as used in the phrase "any other state" means state, region, territory, commonwealth, military reservation, or Indian reservation.

[(89)](104) "State implementation plan" or "SIP" means a plan required by section 110 of the [Clean Air] Act which has been approved by the Administrator.

[(90)](105) "Stationary source" HAS THE SAME MEANING AS IN 40 CFR 51.165 (a)(1)(i) AND (ii), PROVIDED [means any building, structure, facility, equipment, operation, or installation, which is located on one or more contiguous or adjacent properties and which is owned by or operated by the same person, or by persons under common control which emits or may emit any air pollutant, and which does not move from location to location during normal operation except that portable rock crushers and portable stripping facilities] THAT ANY PORTABLE EMISSIONS UNIT which [are] IS moved from site to site but REMAINS [remain] stationary during operation IS A STATIONARY SOURCE [and asphalt plants which combine aggregate and asphalt while in motion are stationary sources].

[(91)](106) "Stripping facility" means any stationary source, except air pollution control equipment, the primary purpose of which is to remove organic compounds from water, soil or any other material.

[(92)](107) "Submerged fill pipe" means any fill pipe the discharge opening of which REMAINS [is still] entirely submerged when the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

[(93)](108) "Subregion" means a subdivision of a Region, as determined by the [Commissioner] COMMISSIONER.

[(94)](109) "Tank" means any vessel for containing liquids or gases.

(110) "TITLE V SOURCE" HAS THE SAME MEANING AS IN SECTION 22a-174-33 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

(111) "THROUGHPUT" MEANS THE RATE, BY VOLUME OR MASS, OF PRODUCTION IN A MANUFACTURING PROCESS, WHERE THE COMBINED QUANTITIES OF ALL MATERIALS INTRODUCED INTO THE PROCESS, EXCLUDING AIR AND WATER, ARE USED TO DETERMINE SUCH RATE.

[(95)](112) "Total suspended particulate" means particulate matter as measured by the method described in [Appendix B of Title 40 Code of Federal Regulations Part 50.] 40 CFR 50, APPENDIX B.

[(96)](113) "Unclassifiable area" means a geographic area which has not been designated either as AN attainment AREA or A non-attainment AREA under [Title 40 Code of Federal Regulations Part 81] 40 CFR 81 in accordance with the provisions of section 107 of the Clean Air Act.

[(97)](114) "Volatile organic compound" or "VOC" means any PHOTOCHEMICALLY REACTIVE compound of carbon [which participates in atmospheric photochemical reactions] excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate and the organic compounds listed [on] IN Table [1(a)-1] 1-2 below which the Administrator has designated as having negligible photochemical reactivity.

Table [1(a)-1] 1-2
Exempt Volatile Organic Compounds

acetone	ethane
methane	cyclic, branched, or linear completely methylated siloxanes
1,1,1-trichoroethane (methyl chloroform)	dichloromethane (methylene chloride)
trichlorofluoromethane	dichlorodifluoromethane

Table [1(a)-1] 1-2 Exempt Volatile Organic Compounds	
(CFC-11)	(CFC-12)
chlorodifluoromethane (HCFC-22)	trifluoromethane (HFC-23)
1,1,-dichloro-1-fluoroethane (HCFC-141b)	pentafluoroethane (HFC-125)
1,1,2-trichloro-1,2,2-trifluoro-ethane (CFC-113)	1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)	1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)	1,1,1-trifluoroethane (HFC-143a)
1-chloro-1,1-difluoroethane (HCFC-142b)	1,1-difluoroethane (HFC-152a)
1,1,1-trifluoro-2,2-dichloroethane (HCFC-123)	2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
tetrachloroethylene (perchloroethylene)	1,1,1,2,3,4,4,5,5,5-decafluoro-pentane (HFC 43-10mee)
3,3-dichloro-1,1,1,2,2-penta-fluoropropane (HCFC-225ca)	1,3-dichloro-1,1,2,2,3-penta-fluoropropane (HCFC-225cb)
difluoromethane (HFC-32)	Fluoroethane or ethylfluoride (HFC-161)
1,1,1,3,3,3-hexafluoropropane (HFC-236fa)	1,1,2,2,3-pentafluoropropane (HFC-245ca)
1,1,2,3,3-pentafluoropropane (HFC-245ea)	1,1,1,2,3-pentafluoropropane (HFC-245eb)
1,1,1,3,3-pentafluoropropane (HFC-245fa)	1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
1,1,1,3,3-pentafluorobutane (HFC-365mfc)	chlorofluoromethane (HCFC-31)
1,2-dichloro-1,1,2-trifluoro-ethane (HCFC-123a)	1-chloro-1-fluoroethane (HCFC-151a)
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$)	2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$)

Table [1(a)-1] 1-2 Exempt Volatile Organic Compounds	
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$)	2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$).
perfluorocarbon compounds which fall into these classes: (1)cyclic, branched, or linear, completely fluorinated alkanes; (2)cyclic, branched, or linear, completely fluorinated ethers with no unsaturations; (3)cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and (4)sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.	parachlorobenzotrifluoride (4-chlorobenzotrifluoride)
METHYL ACETATE	t-butyl acetate AND PERFLUOROCARBON COMPOUNDS WHICH FALL INTO THESE CLASSES

[(98)](115) "Waste water separator" means any tank, box, sump, or other container in which any volatile organic compound floating on or entrained or contained in water entering such tank, box, sump, or another container is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

[(99)](116) "Watercourse" MEANS "WATERCOURSES" AS DEFINED IN SECTION 22a-38(16) OF THE CONNECTICUT GENERAL STATUTES [means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, which are contained within, flow through or border upon this state or any portion thereof].

Statement of Purpose: To consolidate in one location, to the extent practicable, the definitions of terms which are used in multiple sections of the regulations for the abatement of air pollution. This amendment also clarifies and streamlines existing definitions to allow for the implementation of federal requirements.

E. Text of Proposed R.C.S.A. section 22a-174-2 and 22a-174-2a:

Sec. 2 The Regulations of Connecticut State Agencies are amended by deleting section 22a-174-2.

Sec. 3 The Regulations of Connecticut State Agencies are amended by adding a new Section 22a-174-2a as follows:

(NEW)

Section 22a-174-2a. Procedural requirements for new source review and Title V permitting

(a) Signatory Responsibilities

(1) Any document, such as a permit application, report or certification, submitted to the commissioner shall be signed by any of the following individuals:

(A) For an individual or sole proprietorship: by the individual or proprietor, respectively;

(B) For a corporation: any officer or employee of a corporation;

(C) For a partnership: by a general partner;

(D) For a municipality: by the person authorized by charter or resolution of the board of selectmen or town council or other governing body;

(E) For a federal entity: by the statutorily authorized official or by a federal employee or any other representative who has received legal delegation of authority. For the purpose of this subsection, a principal executive officer of a federal agency or department includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency or department; or

(F) For a state entity: by the statutorily authorized official or by a state employee or any other representative who has received legal delegation of authority.

(2) A representative of a corporation, partnership, municipality, state or federal entity, or any other government or quasi-public entity shall be authorized as follows:

(A) For a corporation:

(i) authorization is made in writing by the president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function,

(ii) the authorization specifies an individual having responsibility for the overall operation of the regulated stationary source or premises, such as the plant manager, operator, superintendent, or an individual having overall responsibility for environmental matters for the company, and

(iii) the written authorization is submitted to the commissioner prior to submitting, or together with, any documents or other information to be signed by the authorized representative;

(B) For a municipality: a certified copy of a governing body resolution and an encumbancy statement is submitted to the commissioner prior to submitting or together with any documents or other information to be signed by the authorized representative;

(C) For a state or federal entity: if the authorized representative is not statutorily authorized to submit the documents, then a certified copy of the delegation of authority is submitted to the commissioner prior to submitting or together with any documents or other information to be signed by the authorized representative; or

(D) For any other governmental or quasi-public entity: a copy of the documentation sufficient to satisfy the commissioner that the signatory is legally authorized to sign any document submitted to the commissioner is submitted to the commissioner prior to submitting or together with any documents or other information to be signed by the authorized representative;

(3) An application shall be considered insufficient by the commissioner unless the applicant provides all required signatures and supporting documentation.

(4) If a different individual is assigned or has assumed the signatory responsibilities, a new authorization satisfying the requirements of this subsection shall be submitted to the commissioner prior to or together with the submission of any documents or other information signed by the authorized representative.

(5) Notwithstanding the requirements of section 22a-3a-5(a)(2) of the Regulations of Connecticut State Agencies, where a permit application, permit or other documentation requires a certification, the appropriate individual as specified in this subsection, and the individual or individuals responsible for actually preparing any document to which the certification applies, shall examine and be familiar with the information submitted in the document and all attachments thereto, and shall make inquiry of those individuals responsible for obtaining the information to determine that the information is true, accurate, and complete, and each shall certify in writing as follows:

> "I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information may be punishable as a criminal offense under section 22a-175 of the Connecticut General Statutes, under section 53a-157b of the Connecticut General Statutes, and in accordance with any applicable statute."

(6) Notwithstanding subdivision (2)(A)(ii) of this subsection an individual having overall responsibility for environmental matters for a Title V source shall not sign Title V permit applications or Title V associated certifications unless such individual has responsibility for the overall operation of the Title V source or such source

(b) Public Notice

(1) When proposing to issue a general permit, the commissioner shall comply with the requirements for notice and opportunity for public comment pursuant to section 22a-174(l)(2) of the Connecticut General Statutes.

(2) With respect to public notice of any application for a permit, other than a general permit, the applicant shall comply with the requirements of section 22a-6g of the Connecticut General Statutes and the following:

(A) The commissioner may require the applicant to publish notice of the application in media that serves the needs of communities and representatives not served by traditional media in addition to a newspaper with substantial circulation in the area in which the source intends to operate, and the commissioner may require the notice to be published in languages other than English; and

(B) In the event the commissioner requires compliance with subparagraph (A) of this subdivision, the applicant shall submit to the commissioner a certified copy of such notice as it appeared in such other media no later than twenty (20) days after the date such notice was published.

(3) With respect to notice of tentative determination for any application for a permit, other than a general permit, the applicant shall comply with the requirements of section 22a-6h of the Connecticut General Statutes. In addition to the requirements of section 22a-6h of the Connecticut General Statutes, such notice shall include the following statement, unless such notice is for a minor permit modification pursuant to subsection (e) of this section, that:

"Interested persons have thirty (30) days from publication of such notice to submit comments in writing to the Department of Environmental Protection, Bureau or Air Management or request a public adjudicatory hearing concerning the commissioner's tentative determination to approve or deny the permit application, in accordance with the section 22a-3a-5(b) of the Regulations of Connecticut State Agencies and section 22a-174-2a(c)(3) of the Regulations of Connecticut State Agencies."

(4) For any application for a permit or modification thereto, the commissioner may require the applicant to comply with section 22a-61 of the Connecticut General Statutes.

(5) For any permit application under section 22a-174-33 of the Regulations of Connecticut State Agencies, the commissioner shall forward a copy of the notice of tentative determination, published in accordance with subdivision (3) of this subsection, to:

(A) The individuals who request such notice;

(B) The chief elected official of the municipality where the stationary source is or is proposed to be located;

(C) The chief executive officer of the municipality where the source is or is proposed to be located;

(D) The appropriate Connecticut regional planning agency;

(E) Any federally recognized Indian governing body whose lands may be affected by emissions from the subject stationary source. In addition to the notice, a copy of the proposed Title V permit shall be submitted to such federally recognized Indian governing body;

(F) The director of the air pollution control program in any affected state. In addition to the notice, a copy of the proposed Title V permit shall be submitted to such director; and

(G) The regional Administrator of the United States Environmental Protection Agency. In addition to the notice, a copy of the proposed Title V permit shall be submitted to the regional Administrator.

(6) For any permit application under section 22a-174-3a of the Regulations of Connecticut State Agencies for a new major stationary source or a major modification at a major stationary source, the commissioner shall forward a copy of the notice of tentative determination, published in accordance with subdivision (3) of this subsection, to those individuals or entities identified in subparagraphs (A), (B), (C), and (G), of subdivision (5) of this subsection.

(7) For any permit application under section 22a-174-3a of the Regulations of Connecticut State Agencies other than an application for a new major stationary source or a major modification at a major stationary source, the commissioner shall forward a copy of the notice of tentative determination, published in accordance with 40 CFR 51.161, to those individuals or entities identified in subparagraphs (A), (B), (C), and (G) of subdivision (5) of this subsection.

(8) For any permit application under section 22a-174-3a(l) of the Regulations of Connecticut State Agencies, the commissioner shall comply with the public notice requirements set forth in section 22a-174-3a(l)(7) of the Regulations of Connecticut State Agencies.

(9) For any permit application under section 22a-174-33 of the Regulations of Connecticut State Agencies, the commissioner shall comply with the requirements set forth in section 22a-174-33(n) of the Regulations of Connecticut State Agencies.

(c) Public Comments, Hearings and Meetings

(1) Written comments may be filed by any person within thirty (30) days following the publication of a notice of a tentative determination under subsection (b)(3) of this section. The commissioner shall maintain a record of all comments made on the subject application. Any comments concerning the issuance of a Title V permit may be accompanied by a request for a public informational meeting or hearing, an adjudicatory hearing, or all three. Any comments concerning the issuance of a permit under section 22a-174-3a of the Regulations of Connecticut State Agencies may be accompanied by a request for a public informational meeting or an adjudicatory hearing, or both.

(2) If the commissioner does not accept the recommendations of any director of the air pollution control program in any affected state or federally recognized Indian governing body with respect to any Title V permit issued pursuant to section 22a-174-33 of the Regulations of Connecticut State Agencies, the commissioner shall inform such director or federally recognized Indian governing body and the Administrator of the reasons therefore in accordance with the provisions of 40 CFR 70.8(b).

(3) **Public adjudicative hearings**, in accordance with section 22a-3a-6 of the Regulations of Connecticut State Agencies and section 22a-174(*l*)(2) of the Connecticut General Statutes:

(A) Prior to the issuance of the subject permit, may be held on the commissioner's own initiative or shall be held if requested, in writing, by:

(i) any person when the proposed activity is subject to the provisions of the Act, or

(ii) a petition signed by at least twenty-five (25) persons, and such petition is submitted to the commissioner during the comment period;

(B) Prior to the issuance of the subject permit, may be held on the commissioner's own initiative or shall be held following the commissioner's receipt of a written request for a public hearing if the permit application is for a new major stationary source or a major modification at a major stationary source, or for any stationary source where the stack height exceeds good engineering practice, and provided such request is submitted during the comment period set forth in subdivision (1) of this subsection; and

(C) May be held prior to the issuance of the subject permit on the commissioner's own initiative on any minor source permit or modification thereto.

(4) If a public adjudicative hearing is held, the commissioner shall publish a notice of such hearing in a newspaper of general circulation in the affected area at least thirty (30) days prior to such hearing.

(5) Following the close of the public adjudicative hearing, the final decision maker shall make a decision. Such decision shall be based on the record of such hearing to approve, deny or conditionally approve the issuance of the permit sought.

(6) **Non-Adjudicative Public Informational Hearings.** For the purposes of an application under section 22a-174-3a or section 22a-174-33 of Regulations of Connecticut State Agencies, the

commissioner shall hold a non-adjudicative public informational hearing following receipt of a material request therefore, prior to the issuance of a subject permit, or order pursuant to section 22a-174-33(d) of Regulations of Connecticut State Agencies. The commissioner shall publish, at the applicant's expense, a notice of such public informational hearing in a newspaper of general circulation in the affected area at least thirty (30) days prior to such a hearing. The commissioner may consider more than one permit application, or order pursuant to section 22a-174-33(d) of Regulations of Connecticut State Agencies, at any such hearing, provided the notice requirements of this subdivision have been satisfied. The commissioner shall consider all written comments submitted within the public comment period in the notice including all comments received at the public hearing when making a final decision on the approvability of the application.

(7) **Non-Adjudicative Informational Meetings.** For the purposes of an application under section 22a-174-3a or section 22a-174-33 of Regulations of Connecticut State Agencies, the commissioner may hold a non-adjudicative informational meeting prior to the issue of a subject permit, either following receipt of a request therefore or upon the commissioner's own initiative. The commissioner shall publish, at the applicant's expense, notice of such public informational meeting in a newspaper of general circulation in the affected area at least thirty (30) days prior to such a meeting. The commissioner may consider more than one permit application at any such meeting.

(8) Any notice of hearing or meeting pursuant to this subsection shall provide the name of the applicant; the location of the proposed activity; the application number; the type of permit being sought; name, address and phone number for a contact person at the Department; name, address and number for the Department's Americans with Disabilities Act coordinator; and the date, time and location of the public hearing or meeting. In addition, the commissioner may publish, at the applicant's expense, such notice in other media and in languages other than English.

(d) New Source Review and Title V Non-Minor Permit Modification

(1) General. Prior to making the change that is the subject of the non-minor permit modification application the owner or operator shall apply for and obtain a non-minor permit modification pursuant to this subsection.

(2) Exemptions. A permittee may conduct an activity described in section 22a-174-3a(a)(2) of the Regulations of Connecticut State Agencies without applying for and obtaining a new source review non-minor permit modification under this subsection.

(3) Except as provided in subdivision (2) of this subsection, the permittee of any stationary source or emission unit permitted under

section 22a-174-3a or former section 22a-174-3 of the Regulations of Connecticut State Agencies shall apply for and obtain a new source review non-minor permit modification for any stationary source, emission unit, or modification identified in section 22a-174-3a(a)(1) of the Regulations of Connecticut State Agencies.

(4) Notwithstanding the exemptions in subdivision (2) of this subsection, the permittee of any Title V source shall apply for and obtain a Title V non-minor permit modification for any one or more of the following:

(A) To incorporate the requirements of any new source review permit issued to the permittee under former section 22a-174-3(k) or (*l*) of the Regulations of Connecticut State Agencies or section 22a-174-3a(k) or (*l*) of the Regulations of Connecticut State Agencies;

(B) To change a Title V permit term or condition which had prevented a Title V source from being subject to an otherwise applicable requirement;

(C) To relax the form or type of or any reduction in the frequency of any monitoring, reporting or record keeping required by the Title V permit; or

(D) To incorporate a change to an applicable requirement not otherwise subject to subsections (e) or (f) of this section or otherwise allowed as an off-permit change pursuant to 40 CFR 70.4(b)(14) or as operational flexibility pursuant to 40 CFR 70.4(b)(12).

(5) The procedural requirements for all non-minor permit modifications under subdivisions (3) and (4) of this subsection are as follows:

(A) An application for a non-minor permit modification shall be made on forms provided by the commissioner. Such application shall include a description of any proposed changes, a proposed permit, any proposed monitoring procedures, any changes in potential emissions resulting from the proposed changes, and an identification of all regulatory, statutory, or otherwise applicable requirements that would become applicable as a result of such changes;

(B) The permittee shall not deviate from the terms and conditions of the existing permit until and unless the commissioner has modified that permit; and

(C) A non-minor permit modification pursuant to this subsection, shall only be granted, granted with conditions, or denied following public notice and

opportunity for public comment and public hearing, in accordance with the procedures set forth in subsections (b) and (c) of this section.

(6) In addition to the procedural requirements provided in subdivision (5) of this subsection, an application for a new source review non-minor permit modification under subdivision (3) of this subsection shall meet the requirements set forth in section 22a-174-3a(c) and 22a-3a-5 of the Regulations of Connecticut State Agencies.

(7) In addition to the procedural requirements provided in subdivision (5) of this subsection, an application for a Title V non-minor permit modification under subdivision (4) of this subsection shall meet the requirements set forth in section 22a-174-33(g) and 22a-3a-5 of the Regulations of Connecticut State Agencies and shall:

(A) Meet the requirements of 40 CFR 70.5(c), as amended from time to time;

(B) Meet the requirements of 40 CFR 70.7(a)(1), (4), (5) and (6) as amended from time to time;

(C) Shall, where applicable, meet the requirements of 40 CFR 72 through 78, inclusive, as amended from time to time; and

(D) Shall only be granted or denied following opportunity for a public informational hearing described in subsection (c)(6) of this section, as may be applicable.

(8) With respect to an application for a Title V non-minor permit modification under subdivision (4) of this subsection, the commissioner shall:

(A) Take final action on a Title V non-minor permit modification within twelve (12) months from receipt of a complete application. In the event that this deadline is exceeded no application for a Title V non-minor permit modification shall automatically be deemed sufficient or approved; and

(B) Submit the modified Title V permit to the Administrator.

(9) If, pursuant to section 22a-174-3a(f) of the Regulations of Connecticut State Agencies, the commissioner modifies a new source review permit issued under section 22a-174-3a or former section 22a-174-3 of the Regulations of Connecticut State Agencies, the following procedures shall apply:

(A) The permittee shall not deviate from the terms and conditions of the existing permit until and unless the commissioner has modified that permit; and

(B) A non-minor permit modification pursuant to this subsection, shall only be granted, granted with conditions, or denied following public notice and opportunity for public comment and public hearing, in accordance with the procedures set forth in subsections (b) and (c) of this section.

(e) New Source Review and Title V Minor Permit Modification

(1) The permittee of any source that is subject to a new source review permit issued by the commissioner under section 22a-174-3a(a)(1)(D) or (E) of the Regulations of Connecticut State Agencies shall apply for a new source review minor permit modification to incorporate any modification of an emission unit with an increase in allowable emissions of less than fifteen (15) tons per year of any individual air pollutant, unless such modification is subject to the provisions of section 22a-174-3a(a)(1)(A), (B), (C) or (F) of the Regulations of Connecticut State Agencies.

(2) The permittee of any Title V source shall apply for a Title V minor permit modification to incorporate:

(A) Any modification not covered by permit revisions in subsection (f)(2)(A) through (F), inclusive, of this section; and

(B) Any modification allowed pursuant to the Title V minor permit modification criteria under 40 CFR 70.7 (e)(2)(i)(A)(1) through (6), inclusive, as amended from time to time.

(3) The procedural requirements for all new source review and Title V minor permit modifications, except as otherwise provided in subdivisions (4) and (5) of this subsection, are as follows:

(A) An application for a minor permit modification shall be made on forms provided by the commissioner and signed in accordance with subsection (a) of this section;

(B) An application for a minor permit modification shall include the following:

(i) a description of the proposed modification, a proposed modified permit, any proposed monitoring procedures, any modification in potential emissions resulting from the proposed modification, and an identification of all regulatory, statutory, or

otherwise applicable requirements that would become applicable as a result of such modification, and

(ii) a statement, certified in accordance with subsection (a)(5) of this section, that the proposed minor permit modification meets all regulatory, statutory, or applicable requirements identified in the subject application pursuant;

(C) Subject to limitations specified in subdivision (5)(F) of this subsection, a permittee may implement the modifications proposed in the minor permit modification application no less than twenty-one (21) days after filing a complete application with the commissioner. The permittee shall comply with the terms and conditions of the proposed modified permit and the terms and conditions of the existing permit that are not being modified, until the commissioner issues or denies the proposed modified permit.

(D) The commissioner shall process any minor permit modification, subject to subdivision (1) of this subsection, at a Title V source in accordance with both the Title V and new source review minor modifications provisions in subdivisions (3) through (5), inclusive of this subsection unless otherwise allowed pursuant to subdivision (r)(2) of section 22a-174-33 of the Regulations of Connecticut State Agencies.

(4) With respect to an application for a new source review minor permit modification, under subdivision (1) of this subsection, to a permit issued under section 22a-174-3a or former section 22a-174-3 of the Regulations of Connecticut State Agencies, the existing permit terms and conditions of the permit sought to be modified remain in full force and effect if the modification that is the subject of the application is determined by the commissioner to require a non-minor permit modification.

(5) The following requirements shall apply to an application for a Title V minor permit modification under subdivision (2) of this subsection:

(A) The application shall meet the requirements of 40 CFR 70.5(c), as amended from time to time, and shall be governed by 40 CFR 72 through 78, inclusive, as amended from time to time;

(B) The application shall include completed forms for the commissioner to use to notify the Administrator, affected states and federally recognized Indian governing bodies of the proposed Title V minor permit modification;

(C) The commissioner shall notify the Administrator, affected states and the federally recognized Indian governing bodies within five (5) business days of receiving an application for a Title V minor permit modification;

(D) The commissioner shall comply with the timetable for issuance set forth in 40 CFR 70.7(e)(2)(iv), as amended from time to time;

(E) The commissioner shall not grant the permit shield provided by section 22a-174-33(k) of the Regulations of Connecticut State Agencies for Title V minor permit modifications made under this subsection;

(F) The permittee shall comply with the existing permit terms and conditions of the Title V permit if:

(i) the permittee fails to comply with the proposed permit terms and conditions during the pendency of an application for a Title V minor permit modification,

(ii) such application is subject to the provisions of subsection (d) of this section and the owner or operator has already implemented or began implementing the proposed modifications,

(iii) the commissioner denies the proposed Title V modified permit,

(iv) the commissioner has made a determination under 40 CFR 70.7(e)(2)(iv)(C), as amended from time to time, or

(v) the commissioner determines that the proposed modification would make the source subject to section 22a-174-3a of the Regulations of Connecticut State Agencies; and

(G) Notwithstanding the requirements of subsections (b) and (c) of this section, the commissioner may modify a Title V permit under this subsection without published notice, public comment, or hearing.

(f) Permit Revisions

(1) Exemptions. The owner or operator of a stationary source may perform the activites described in sections 22a-174-3a(a)(2)(A)(i) through (iii) and 22a-174-3a(a)(2)(B) through (C) of the Regulations of Connecticut State Agencies unless otherwise required by any provision of such permit or an order of the commissioner.

(2) The permittee of any stationary source for which the commissioner has issued a permit under 22a-174-33, section 22a-174-3a, or former section 22a-174-3 of the Regulations of Connecticut State Agencies shall apply for and obtain a permit revision, for the purposes of:

(A) Correcting a clerical error;

(B) Revising the address or phone number of any person identified in such permit, or making another revision reflecting a similarly minor administrative change at or concerning the subject source;

(C) Revising the name of the authorized representative of the permittee, provided that a request to change such authorized representative shall be accompanied by written authorization in accordance with subsection (a)(2)(A) through (D), inclusive, of this section;

(D) Requiring more frequent or additional monitoring, record keeping or reporting;

(E) Reflecting a transfer in ownership or operational control of the subject source, in accordance with subsection (g) of this section, provided that:

(i) no other modification of the subject permit is required as a result of such transfer,

(ii) if the subject permit contains a provision for changing ownership or operational control of the subject source, the provision stated in the permit shall be followed provided that such provision is consistent with section 22a-6o of the Connecticut General Statutes, and

(iii) any transfer of the permit required by section 22a-6o of the Connecticut General Statutes has been granted by the commissioner;

(F) Implementing an administrative Title V permit amendment set forth in 40 CFR 70.7(d)(1)(v), as amended from time to time; or

(G) Implementing a fuel conversion described in Section 22a-174-3a(a)(2)(A)(iv) or (v).

(3) Notwithstanding the requirements of subsections (b) and (c) of this section, the commissioner may revise a permit under this subsection without published notice, public comment, or hearing.

(4) Except as provided in subdivision (2) of this subsection, upon submitting to the commissioner a written request for a permit revision under this subsection, a permittee may make changes as set forth in such request.

(5) With respect to a request to revise a Title V permit the commissioner shall comply with the applicable provisions of 40 CFR 70.7 (d)(2) and (3), as amended from time to time

(6) The commissioner shall not grant the permit shield provided by section 22a-174-33(k) of the Regulations of Connecticut State Agencies for permit revisions made under this subsection.

(g) Permit Transfer

(1) No person shall act or purport to act under the authority of a permit issued to another person unless such permit has been transferred in accordance with section 22a-6o of the Connecticut General Statutes.

(2) If the permit transferred is a Title V permit, such transfer shall comply with 40 CFR 70.7(d)(1)(iv), as amended from time to time, and proceed under subsection (f)(2)(E) of this section.

(h) Permit Revocation

(1) The commissioner may revoke any permit on his own initiative or at the request of the permittee in accordance with sections 4-182(c) and 22a-174c of the Connecticut General Statutes, section 22a-3a-5(d) of the Regulations of Connecticut State Agencies, and any other applicable law. Any such request shall be in writing and contain facts and reasons supporting the request.

(2) A permittee requesting the revocation of the permitteeâs Title V permit shall also state the requested date of revocation and provide evidence satisfactory to the commissioner that the subject source is no longer a Title V source.

(3) The Administrator, pursuant to the Act, is authorized to revoke or revoke and reissue a Title V permit if the Administrator has determined that the commissioner failed to act in a timely manner on a permit renewal application.

(i) Permit Renewal

(1) In addition to the requirements of section 22a-3a-5(c) of the Regulations of Connecticut State Agencies, except as provided in subdivision (2) of this subsection, the permittee shall apply for a permit renewal, if the subject permit contains an expiration date, at least one hundred twenty (120) days prior to the permit expiration date. Such application shall include a description of any proposed modifications, a proposed permit, any proposed monitoring

procedures, any modifications in potential emissions resulting from the proposed modifications, and an identification of all regulatory, statutory, or otherwise applicable requirements that would become applicable as a result of such modifications.

(2) The owner or operator of a Title V source shall apply for a renewal of a Title V permit no later than twelve (12) months prior to the expiration date of such permit.

(3) Notwithstanding subdivision (1) of this subsection, permits to operate issued after June 1, 1972 and before April 2, 1986 need not be renewed even when there is a expiration date on the permit.

Statement of purpose: To adopt regulations to establish a minor permit revision procedure for holders of Title V operating permits in accordance with 40 CFR 70.7(e)(2); and to provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications in accordance with the conditions imposed on the Connecticut Department of Environmental Protection by the United States Environmental Protection Agency (EPA) in the proposed interim approval of the Connecticut Title V program. See proposed interim approval of the Connecticut Title V program by EPA, 61 *Federal Register* 64656 (December 6, 1996), finalized by EPA at 62 *Federal Register* 13830 (March 24, 1997). In addition, this proposal establishes modification and revision procedures for permits issued pursuant to former section 22a-174-3 or section 22a-174-3a of the Regulations of Connecticut State Agencies. This proposal also consolidates many procedural requirements that must be met prior to the issuance of new source review permits under proposed section 22a-174-3a of the Regulations of Connecticut State Agencies and Title V operating permits under section 22a-174-33 of the Regulations of Connecticut State Agencies.

F. Text of Proposed R.C.S.A. section 22a-174-3 and 22a-174-3a:

Sec. 4 The Regulations of Connecticut State Agencies are amended by deleting section 22a-174-3.

Sec. 5 The Regulations of Connecticut State Agencies are amended by adding a new section 22a-174-3a as follows:

(NEW)

Sec. 22a-174-3a. Permit to Construct and Operate Stationary Sources

(a) Applicability and Exemptions

(1) Applicability. Prior to beginning actual construction of any stationary source or modification not otherwise exempted in accordance with subdivision (2)(A) through (C) of this subsection, the owner or operator shall apply for and obtain a permit to construct and operate under this section for any:

(A) New major stationary source;

(B) Major modification;

(C) New or reconstructed major source of hazardous air pollutants subject to the provisions of subsection (m) of this section;

(D) New emission unit with potential emissions of fifteen (15) tons or more per year of any individual air pollutant;

(E) Modification to an existing emission unit which increases potential emissions of any individual air pollutant from such unit by fifteen (15) tons or more per year; or

(F) Any stationary source or modification that becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant.

(2) Exemptions. Notwithstanding the provisions of subdivision (1) of this subsection, the owner or operator of a stationary source or modification may conduct activities listed in subdivision (2)(A), and may construct or operate the sources listed in subdivision (2)(B) and (2)(C) of this section, without a permit under this section:

(A) Any activity that:

(i) constitutes routine maintenance, repair, or replacement at a stationary source,

(ii) adds air pollution control equipment unless the addition results in an increase in actual emissions of any individual air pollutant of fifteen (15) tons or more per year, or ten (10) tons or more per year of a hazardous air pollutant subject to the provisions of subsection (m) of this section,

(iii) relocates a portable rock crusher which is subject to a permit or exemption letter issued by the commissioner under former section 22a-174-3 Regulations of Connecticut State Agencies, or which is registered under a general permit for such sources issued by the commissioner under section 22a-174(*l*) of the Connecticut General Statutes, provided the owner or operator is in compliance with any such

permits and provides written notice to the commissioner prior to such relocation,

(iv) constitutes a conversion from fuel oil to natural gas, or in addition to fuel oil, provided such conversion does not increase actual emissions of any individual air pollutant by fifteen (15) tons or more per year, unless such conversion results in reconstruction; or

(v) constitutes a conversion from residual fuel oil to distillate fuel oil, or in addition to residual fuel oil, provided such conversion does not increase actual emissions of any individual air pollutant by fifteen (15) tons or more per year, unless such conversion results in reconstruction.

(B) Any stationary source that is:

(i) registered under and is in compliance with any new source review general permit to construct and operate a new or existing stationary source issued pursuant to section 22a-174(*l*) of the Connecticut General Statutes,

(ii) a stripping facility used to remove VOC from contaminated groundwater or soil pursuant to an order issued by the commissioner, provided such facility has a control device with VOC removal efficiency of at least ninety-five percent (95%),

(iii) a portable engine or boiler temporarily replacing an existing engine or boiler, provided that the number of days total that any and all such portable engines or boilers may be used does not exceed ninety (90) days in any calendar year and does not contribute to a violation of a National Ambient Air Quality Standard, or

(iv) in compliance with section 22a-174-3b or Section 22a-174-3c of the Regulations of Connecticut State Agencies, unless otherwise subject to this section pursuant to subdivisions (6) or (7) of this subsection;

(C) Any:

(i) mobile source, or

(ii) source subject to 40 CFR Part 89.

(3) In determining the applicability of subsections (k) or (*l*) of this section, the owner or operator may determine the net emissions increase. However, the net emissions increase shall not be used determining the applicability of:

(A) This section to any minor source or modification; or

(B) Subsection (j) of this section.

(4) This section and section 22a-174-2a of the Regulations of Connecticut State Agencies shall apply to any stationary source or modification for which a permit application under former section 22a-174-3 of the Regulations of Connecticut State Agencies was filed prior to the effective date of this section, and for which a permit has yet to be issued or denied.

(5) Any permit modification or permit revision to a permit issued under this section shall be made as required in, and in accordance with, the provisions of this section and section 22a-174-2a of the Regulations of Connecticut State Agencies.

(6) To determine the applicability of subdivision (1)(B) of this subsection, pursuant to the de minimis rule under section 182(c)(6) and (f) of the Act, the owner or operator of a major stationary source shall make and keep records of actual VOC and NOx emission increases and decreases at such source including emission increases below fifteen (15) tons per year of any individual air pollutant.

(7) To determine if the net emission increase of a modification exceeds the major source threshold levels and is subject to subsection (k) of this section, the owner or operator shall make and keep records of actual emissions increases and decreases including those below fifteen (15) tons per year, over the five (5) consecutive calendar years preceding the completion of construction.

(8) Any permit issued under former section 22a-174-3 of the Regulations of Connecticut State Agencies shall remain in full force and effect unless otherwise determined by the commissioner.

(b) Authorized activities prior to permit issuance

(1) The owner or operator of a stationary source or modification who is required to obtain a permit or non-minor permit modification under the provisions of this section may, prior to obtaining such permit:

(A) Enter into binding agreements or contractual obligations to undertake construction of the proposed stationary source or modification for which a permit is required; and

(B) Begin site clearing activities.

(2) The owner or operator of a stationary source or modification who must obtain a permit or non-minor permit modification under the provisions of this section, shall not begin actual construction before permit issuance. Such construction activities include, but are not limited to, the following activities which are specifically required for construction of the proposed stationary source or modification:

(A) Excavating, blasting, removing rock and soil; or

(B) Installing footings, foundations, retaining walls, or permanent storage structures.

(c) Applications

(1) The owner or operator of a stationary source or modification subject to the provisions of this section shall apply for a permit on forms provided by the commissioner. All permit applications shall include:

(A) An executive summary and all other information required by section 22a-3a-5 of the Regulations of Connecticut State Agencies. The executive summary shall summarize the information contained in the application;

(B) Background information, including, but not limited to, the address of the premises, the legal name and business address of the applicant and of the applicant's agent for service of process and, if the applicant is not the owner of the subject source, the legal name and business address of such owner and of the owner's agent for service of process, the names and telephone numbers of the plant or site manager and any other individual, such as an engineer or consultant, designated by the owner or operator to answer questions pertaining to such application, including but not limited to, the siting of the subject stationary source or modification;

(C) The premises' site plan, including: a linear scale and north arrow, the plot plans depicting existing and proposed building locations, building dimensions, the legal boundaries of the property, stack locations, location of the subject stationary source or modification on the premises, final grade elevations for all structures located on the premises, and a United States Geological Survey topographic quadrangle map identifying the latitude and longitude of the subject stationary source or modification;

(D) Technical information, including, but not limited to:

(i) descriptions of equipment, processes, air pollution control equipment, stack, fuels, process materials to be used, and process flow diagrams,

(ii) a completed pre-inspection questionnaire, if requested by the commissioner, which describes the equipment, processes and materials used,

(iii) the type, size, and efficiency of control equipment, and

(iv) the date, or proposed date, for commencement of construction of the subject stationary source or modification;

(E) The rate of emissions for individual air pollutants from the subject stationary source or modification. To calculate the rate of emissions, the owner or operator shall use data from one or more of the following, unless the commissioner determines otherwise:

(i) a continuous monitoring system which has been certified by the commissioner, provided that such data may be taken from a source similar to that for which a permit is sought,

(ii) stack testing data, provided such testing was conducted in accordance with protocols preapproved by the commissioner in writing and such test was observed by department staff; and further provided that such data may be taken from a source similar to that for which a permit is sought,

(iii) material balances conducted by an individual with knowledge of the subject process,

(iv) data from the "Compilation of Air Pollutant Emission Factors (AP-42)" as published by the Environmental Protection Agency,

(v) a calculation submitted to the commissioner, or

(vi) manufacturer's data submitted to the commissioner;

(F) Pursuant to subsection (j) of this section, proposed best available control technology (BACT) determination, including, but not limited to, an analysis, as required by subsection (j) of this section, of the amount of emission reduction achievable through the use of BACT;

(G) For any stationary source or modification subject to subsection (l) of this section, the proposed lowest achievable emission rate (LAER) determination, including an analysis of the proposed LAER for each air pollutant, as required by subsection (l) of this section. Such analysis shall include the amount of emission reduction achievable through the use of LAER;

(H) For any stationary source or reconstruction subject to subsection (m) of this section, the proposed maximum achievable control technology (MACT) determination, as required by subsection (m) of this section;

(I) If the premises is a major stationary source, for the purposes of determining compliance with subdivisions (a)(6) and (7) of this section, a summary of the potential emissions from the new subject stationary source or modification and actual emissions from existing stationary sources located at the premises over the preceding five (5) consecutive calendar years;

(J) Compliance information pursuant to and required by section 22a-6m of the Connecticut General Statutes;

(K) Certification in accordance with section 22a-174-2a of the Regulations of Connecticut State Agencies; and

(L) All application fees required by law.

(2) The commissioner may require the owner or operator of the subject stationary source or modification to provide such additional information as the commissioner deems necessary.

(d) Standards for Granting and Renewing a Permit

(1) The commissioner may impose conditions on any permit or renewal thereof to ensure compliance with the regulations adopted pursuant to section 22a-174 of the Connecticut General Statutes and the Act.

(2) A permit or permit renewal shall not be issued unless the commissioner determines, upon evidence submitted by the owner or operator or otherwise made part of the record, that the owner or operator of the subject stationary source or modification shall comply with the applicable provisions of subdivision (3) of this subsection.

(3) Before issuance of a permit or permit modification, the owner or operator shall demonstrate, to the satisfaction of the commissioner, that, with respect to the construction and operation of the subject stationary source or modification, the owner or operator shall:

(A) Construct and operate such stationary source or modification in accordance with the permit, and operate such stationary source or modification in accordance with all applicable and relevant emission limitations, statutes, regulations, schedules for stack tests, and other order of the commissioner. In the event a conflict exists between the permit and another state or federally enforceable statute, regulation or order of the commissioner, the most stringent provision shall apply;

(B) Operate such stationary source or modification without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standards or any Prevention of Significant Deterioration increments under subsection (k) of this section;

(C) Operate such stationary source or modification without preventing or interfering with the attainment or maintenance of any National Ambient Air Quality Standard in any other state and without interfering with the application of the requirements in any other state's implementation plan, adopted under section 110 of the Act;

(D) Operate such stationary source or modification in accordance with all applicable emission standards and standards of performance under 40 CFR Parts 60, 61, and 63, as may be amended from time to time;

(E) Install:

(i) sampling ports of a size, number and location as the commissioner may reasonably require,

(ii) instrumentation to monitor and record emission and other parameter data as the commissioner may require, and

(iii) such other sampling and testing facilities as the commissioner may require;

(F) As the commissioner may require, conduct stack tests at the expense of such owner or operator, in accordance with subsection (e) of this section, and in accordance with permit conditions and methods prescribed by the commissioner. Such stack tests shall demonstrate, to the commissioner's satisfaction, that the requirements of each and every applicable permit or order of the commissioner for such stationary source or modification are being met and that such stationary source or modification complies with the Regulations of Connecticut State Agencies and federal requirements;

(G) Pay all fees required by the Department within forty-five (45) days of receipt of a tentative determination of the commissioner;

(H) Incorporate Best Available Control Technology (BACT), as directed by the commissioner, for each individual air pollutant subject to, and in accordance with, subsection (j) of this section;

(I) Incorporate the lowest achievable emission rate (LAER), as directed by the commissioner, for each individual air pollutant subject to, and in accordance with, subsection (*l*) of this section;

(J) Incorporate the maximum available control technology (MACT), as directed by the commissioner, for each individual air pollutant subject to, and in accordance with, subsection (m) of this section;

(K) As required by the commissioner, install monitoring equipment and perform monitoring to demonstrate compliance with any permit provision. Such monitoring may include, but not be limited to, continuous emission monitoring (CEM);

(L) Provide the commissioner with current information regarding air pollutant emissions from such stationary source or modification, and in accordance with

the commissioner's request, submit updated and current information regarding air pollutant emissions from any other stationary sources located on the applicable premises;

(M) Comply with any applicable maximum allowable stack concentration or other emission limitation of section 22a-174-29 of the Regulations of Connecticut State Agencies, as may be amended;

(N) Demonstrate that the emission limitation required of such stationary source or modification for the control of any air pollutant shall not be affected by that portion of the stack height of such stationary source or modification that exceeds good engineering practice stack height or by any other dispersion technique;

(O) Comply with an approved operation and maintenance plan submitted pursuant to subsection (c)(2) of this section;

(P) Have completed and submitted, on forms prescribed by the commissioner, a pre-inspection questionnaire, if requested to do so by the commissioner, which describes the equipment, processes and materials used;

(Q) Make the permit available at the subject premises throughout the period that such permit is in effect; and

(R) Comply with the applicable provisions of this section and any other applicable regulations, permits or orders of the commissioner for such stationary source or modification.

(4) An expiration date may be placed within any permit issued pursuant to this section or former section 22a-174-3 of the Regulations of Connecticut State Agencies. Any permit containing an expiration date shall be renewed in accordance with the provisions of section 22a-174-2a(i) of the Regulations of Connecticut State Agencies.

(e) Emission Testing

(1) The permit may require that the owner or operator conduct emission (stack) testing to assure compliance with the permit terms and conditions in accordance with this subsection and section 22a-174-5 of the Regulations of Connecticut State Agencies.

(2) Emission tests shall be conducted in a manner acceptable to and approved by the commissioner. The owner or operator shall provide the results of any emission test in a form satisfactory to the commissioner. The commissioner shall have the opportunity to observe all emission tests or the results of any such tests may be disapproved by the commissioner.

(3) Based upon emission test results, the commissioner may modify, revise, or revoke a permit in accordance with subsection (f) of this section.

(f) Modification, revision, or revocation of a permit

(1) The commissioner may modify, revise, or revoke a permit in accordance with this section, section 22a-174-2a of the Regulations of Connecticut State Agencies, and sections 4-182 and 22a-174c of the Connecticut General Statutes.

(2) The commissioner may modify, revise or revoke any permit if the owner or operator:

(A) Has not commenced construction authorized by the permit within eighteen (18) months from the date of issuance, or such other period, as the permit provides, whichever is later;

(B) Has discontinued construction for eighteen (18) months or more after actual construction authorized by the permit has begun; or

(C) Has not commenced operation authorized by the permit within twenty-four (24) months from the completion of construction, or such other period as the permit provides, whichever is later.

(3) The commissioner may modify or renew on his own initiative, any permit if the owner or operator:

(A) Has failed to comply with any applicable regulation; or

(B) Has a permit for an incinerator or resources recovery facility.

(g) Non-Minor Permit Modifications, Minor Permit Modifications and Permit Revisions

(1) Any non-minor permit modification to a permit issued pursuant to this section shall be made in accordance with subsections (d)(1), (2), (3), (5) and (6) or subsection (d)(8) of section 22a-174-2a of the Regulations of Connecticut State Agencies, respectively.

(2) Any minor permit modification to a permit issued pursuant to this section shall be made in accordance with subsections (e)(1), (3) and (4) of section 22a-174-2a of the Regulations of Connecticut State Agencies, respectively.

(3) Any revision to a permit issued pursuant to this section shall be made in accordance with section 22a-174-2a(f) of the Regulations of Connecticut State Agencies.

(h) Duty to Comply

An owner or operator shall comply with the permit or modification thereto issued by the commissioner under this section.

(i) **Ambient Air Quality Analysis**

(1) An application for a permit subject to this subsection, if requested to be provided under subsection (c)(2) of this section, shall contain an analysis of the effect of the pollutants listed in Table 3a(i)-(1) below. For the purposes of this subsection, the allowable emissions of an air pollutant will be deemed to have a significant impact on air quality if such impact is greater than or equal to the amount listed for any individual air pollutant in Table 3a(i)-1 below.

Table 3a(i)-1 Ambient Impact

AIR POLLUTANT	AMBIENT IMPACT (MICROGRAMS PER CUBIC METER)
PM_{10}	
Annual average	1
24-hour average	5
Sulfur Dioxide	
Annual average	1
24-hour average	5
3-hour average	25
Carbon Monoxide	
8-hour average	500
1-hour average	2000
Nitrogen Dioxide	
Annual average	1
Dioxin	
Annual average (as calculated according to Section 22a-174-1(29) of the Regulations of Connecticut State Agencies) (Polychlorodibenzodioxins (PCDDs)) (Polychlorodibenzofurans (PCDFs))	(Notwithstanding above units) 0.1 picograms/m^3
Lead (Pb)	
Three (3) month average	0.3

(2) Any person who makes estimates of ambient air quality impacts shall use applicable air quality models, databases or other techniques approved by the commissioner. The commissioner may request any owner or operator to submit an ambient air quality impact analysis using applicable air quality models and modeling protocols approved by the commissioner.

(j) **Best Available Control Technology (BACT)**

(1) An owner or operator shall incorporate BACT for:

(A) Each major stationary source with potential emissions of a regulated air pollutant above the significant emission rate thresholds in Table 3a(k) –1 of subsection (k) of this section;

(B) Each major modification with net emission increases of a regulated air pollutant above the significant emission rate thresholds in Table 3a(k) –1 of subsection (k) of this section. This requirement applies to each individual emission unit that is being modified as part of such major modification;

(C) Each new emission unit with potential emissions of fifteen (15) tons or more per year of any individual air pollutant; and

(D) Each modification to an existing emission unit which increases potential emissions of any individual air pollutant from such unit by fifteen (15) tons or more per year.

(2) The owner or operator:

(A) Shall make and submit to the commissioner for written approval a BACT analysis for each air pollutant subject to subdivision (1) of this subsection, including but not limited to, secondary and cumulative impacts and cost estimates of all control options, or the use of innovative technology.

(B) Shall install BACT as approved by the commissioner.

(3) The commissioner's review and written approval regarding BACT or the use of innovative technology shall be conducted prior to the issuance of the permit and prior to beginning actual construction.

(4) Notwithstanding any permit for a new source or modification under this subsection the commissioner may require for the phased construction projects that the permittee resubmit for review and approval a BACT analysis prior to the commencement of each phase of the construction.

(5) Prior to commencing construction, including each phase of phased construction, the owner or operator may be required by the commissioner to demonstrate the adequacy of the technology used pursuant to any previous BACT determination.

(6) In determining whether to approve BACT, the commissioner shall:

(A) Take into account any emission limitation, including any visible emission standard, which is achievable under any permit limitation or any stack test demonstration acceptable to the commissioner;

(B) Consider a previous BACT approval for a similar or a representative type of source; and

(C) If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, the commissioner may prescribe a design, equipment, work practice or operational standard, or combination thereof, to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

(7) In determining whether to approve BACT, the commissioner shall take into account energy, economic and environmental impacts, including secondary and cumulative impacts, and other costs.

(8) In no event shall the application of BACT result in:

(A) Emissions of any pollutant which would exceed the emission allowed by an applicable standard under 40 CFR Parts 60 and 61, and any State Implementation Plan limitation;

(B) The use of offsetting emission reductions to meet the commissioner's approval of BACT; or

(C) The use of a net emissions increase to meet the commissioner's approval of BACT.

(9) The commissioner may allow the use of innovative technology as BACT, in accordance with 40 CFR 52.21(v), provided that Administrator means commissioner for the purposes of this provision. The owner or operator shall demonstrate that the proposed innovative technology will comply with 40 CFR 52.21(v), provide a net air quality benefit, and meet at least two (2) of the following criteria:

(A) Improves the process or operation of existing equipment;

(B) Requires the use of new equipment or air pollution control technology;

(C) Reduces localized impacts of any individual air pollutant; or

(D) Implements principles of pollution prevention or environmental management systems.

(k) Permit Requirements for Attainment Areas: Prevention of Significant Deterioration of Air Quality (PSD) Program

(1) The provisions of this subsection apply to the owner or operator of a new major stationary source which emits a criteria air pollutant and is located in an attainment area or unclassified area for such pollutant.

(2) The provisions of this subsection apply to a major modification which emits a criteria air pollutant and is located in an attainment area or unclassified area for such pollutant. For purposes of this subsection a major modification has:

(A) Actual emissions that are equal to or greater than the significant emission rate thresholds in Table 3a(k)-1 of this subsection; and

(B) A net emissions increase that is equal to or greater than the significant emission rate thresholds in Table 3a(k)-1 of this subsection.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, the provisions of this subsection do not apply to the owner or operator of a major stationary source or major modification with potential emissions of nitrogen oxides of more than twenty-five (25) tons but less than forty (40) tons per year.

(4) The owner or operator of a new major stationary source or major modification subject to this subsection shall install BACT as approved by the commissioner in accordance with subsection (j) of this section.

(5) Ambient Monitoring

(A) The permit application shall contain an analysis of the effect on ambient air quality in the area of the subject source or modification, of the following pollutants:

(i) those that have allowable emissions in excess of the amount listed in Table 3a(k)-1 of this subsection,

(ii) those listed in section 22a-174-24 of the Regulations of Connecticut State Agencies, or

(iii) those which are subject to a National Ambient Air Quality Standard;

(B) For any pollutant for which a National Ambient Air Quality Standard does not exist, the analysis shall contain such air quality monitoring data as the commissioner determines is necessary to assess ambient air quality for that pollutant in any area that such pollutant may affect;

(C) For any pollutant (other than nonmethane hydrocarbons) for which a National Ambient Air Quality Standard exists, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of such

standard or a Prevention of Significant Deterioration increment listed in Table 3a(k)-2 of this subsection;

(D) The continuous air quality monitoring data that is required by subparagraphs (B) and (C) of this subdivision shall have been gathered over a period of one (1) year and shall represent the year preceding receipt of the application, unless the commissioner determines in writing that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year, but not to be less than four (4) months;

(E) The owner or operator shall, after construction of the subject source or modification, conduct such ambient monitoring as the commissioner determines is necessary to determine the effect which the emissions from such source or modification may have, or are having, on air quality in any area. In addition, the owner or operator shall submit the results of such ambient monitoring to the commissioner within thirty (30) days of data collection;

(F) The owner or operator shall meet the requirements of 40 CFR 58, Appendix B during the operation of monitoring;

(6) Source Impact Analysis.

(A) The owner or operator of the subject source or modification which will have an impact on air quality equal to or greater than any amount listed in Table 3a(i)-1 of subsection (i) of this section shall not exceed or contribute to an exceedance of the maximum allowable increase above baseline concentration established in Table 3a(k)-2 of this subsection;

(B) Compliance with the requirements of this subsection shall be determined using the Department's air emissions inventory and the Prevention of Significant Deterioration increments listed in Table 3a(k)-2 of this subsection;

(C) A permit application for the subject source or modification shall include a calculation of the increase, above the baseline concentration, in ambient concentrations of pollutants to be expected from the new major stationary source or major modification. Such calculation shall be based on:

(i) the allowable emissions from the subject source or modification,

(ii) the actual emissions from all major stationary sources which were required to obtain a permit after the major source baseline date,

(iii) the increased actual emissions from all modifications to the major stationary source which were required to be permitted after the major source baseline date and before the minor source baseline date. The owner or operator shall use allowable emissions instead of actual

emissions if such modifications are located on the owner's or operator's premises,

(iv) the actual emissions from all stationary sources, other than major stationary sources, which were required to obtain a permit after the minor source baseline date,

(v) the allowable emissions for any stationary source for which a permit is pending and for which the commissioner has made a determination of application sufficiency, and

(vi) the reductions, occurring on or after the minor source baseline date, in actual emissions and federally enforceable allowable emissions from stationary sources located on the owner's or operator's premises;

(D) When determining the increase over the baseline concentration of criteria air pollutant emissions from the subject major stationary source or major modification, the commissioner may consider any proposed reductions in actual emissions and allowable emissions which will occur prior to the commencement of operation of the subject major stationary source or major modification, provided such reductions become enforceable.

(7) A permit application for the subject source or modification shall contain an analysis, in accordance with subsection (i) of this section, of the effect of the pollutants listed in Table 3a(k)-1.

Table 3a(k)-1 Significant Emission Rate Thresholds

AIR POLLUTANT	EMISSION LEVELS (TONS PER YEAR)
Carbon Monoxide	100
Nitrogen Oxides (ozone national ambient air quality standard)	25
Nitrogen Oxides (NOx National Ambient Air Quality Standard)	40
Sulfur Dioxide	40
Particulate Matter	25
PM_{10}	15
Volatile Organic Compounds	25
Hydrogen Sulfide (H~S)	10
Total Reduced Sulfur (including H_2S)	10
Reduced Sulfur Compounds (including H_2S)	10

Sulfuric Acid Mist	7
Fluorides	3
Vinyl Chloride	1
Lead	0.6
Mercury	0.1
Asbestos	0.007
Beryllium	0.0004
Municipal Waste Combustor Organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6}
Municipal Waste Combustor Metals (Measured as particulate matter)	15
Municipal Waste Combustor Acid Gases (Measured as sulfur dioxide and hydrogen chloride)	40

Table 3a(k)-2 Maximum Allowable Increase above Baseline Concentration

AIR POLLUTANT	PSD INCREMENT (ug/m^3)
Particulate Matter, as PM_{10}	
Annual Arithmetic Mean	17
24-Hour Average	30
Sulfur Dioxide	
Annual Arithmetic Mean	20
24-Hour Average	91
3-Hour Average	512
Nitrogen Dioxide	
Annual Arithmetic Mean	25

(8) Additional Source Information.

(A) The owner or operator of the subject source or modification shall include in the application:

(i) an analysis of the impairment to visibility, soils, and vegetation that would result from construction and operation of the subject source or modification, and an analysis of the general commercial, residential,

industrial and other associated growth. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or residential value,

(ii) an analysis, based upon methods approved by the commissioner in writing, of the ambient air quality impact projected for the area as a result of the general commercial, residential, industrial, and other growth associated with the subject source or modification,

(iii) a description of the nature, location, design capacity and typical operating schedule of the subject source or modification, including specifications and drawings showing its design and plant layout,

(iv) a schedule for construction of the subject source or modification,

(v) a detailed description as to what system of continuous emission reduction is planned for the subject source or modification, emission estimates, or any other information necessary to demonstrate to the commissioner that BACT will be applied, and

(vi) any other information deemed necessary by the commissioner to perform any analysis or make any determination under this subsection;

(B) Upon the commissioner's request, the owner or operator of the subject source or modification shall submit:

(i) the ambient air quality impact of the subject source or modification, including meteorological and topographical data necessary to estimate such impact, and

(ii) the ambient air quality impacts and the nature and extent of the general commercial, residential, industrial and other growth which have or has occurred since August 7, 1977 in the area the subject source or modification will affect.

(9) Additional Public Participation Requirements. In addition to the public participation requirements of section 22a-174-2a of the Regulations of Connecticut State Agencies:

(A) The commissioner shall include in the notice of tentative determination published pursuant to section 22a-174-2a of the Regulations of Connecticut State Agencies and section 22a-6h of the Connecticut General Statutes, notice of opportunity for public comment at a public hearing, if one is requested, the opportunity to submit written comment, the degree of Prevention of Significant Deterioration increment consumption that is expected if the proposed activity is permitted, and any other information the commissioner deems appropriate; and

(B) The owner or operator of the subject source or modification shall send a copy of the notice required under subparagraph (A) of this subdivision to those individuals or entities listed under subsection (b)(5), as specified in subsection (b)(6), of section 22a-174-2a of the Regulations of Connecticut State Agencies.

(l) Permit Requirements For Non-attainment Areas

(1) Applicability. Except as provided in subdivision (2) of this subsection, and in accordance with subsection (a) of this section, the provisions of this subsection shall apply to the owner or operator of any new major stationary source or major modification which emits any non-attainment air pollutant if such source:

(A) Is located in a non-attainment area for such air pollutant;

(B) Is located in an attainment area or unclassifiable area, but the allowable emissions of such air pollutant would cause or exacerbate a violation of a National Ambient Air Quality Standard in an adjacent non-attainment area. Allowable emissions of such air pollutant will be deemed not to cause or exacerbate a violation of a National Ambient Air Quality Standard provided that such emissions are less than levels set forth in Table 3a(i)-1 in subsection (i) of this section; or

(C) Is located in a serious or severe non-attainment area for ozone and is a proposed major stationary source or major modification of volatile organic compounds or nitrogen oxides.

(2) Analysis of alternatives.

(A) An owner or operator of the subject source or modification shall include an analysis of alternative sites for the proposed activity, alternative sizes for the subject source or modification, alternative production processes, and all environmental control techniques and technologies which are available for such major stationary source or major modification;

(B) Such analysis shall demonstrate whether the benefits of the subject source or modification would significantly outweigh its adverse environmental impacts, including secondary impacts and cumulative impacts, and social costs imposed as a result of the location, construction or modification;

(C) The owner or operator of the subject source or modification shall submit such analysis prior to the issuance of any tentative determination on a permit application under this section.

(3) Control Technology Review and Approval.

(A) An owner or operator of the subject source or modification shall submit, for approval in writing:

(i) a LAER determination for each non-attainment air pollutant with allowable emissions in excess of the amount listed in Table 3a(k)-1, and

(ii) an evaluation of secondary impacts or cumulative impacts for each non-attainment air pollutant with potential emissions in excess of the amount listed in Table 3a(k)-1of subsection (k);

(B) In determining whether to approve LAER, the commissioner may take into account any emission limitation, including a visible emission limit. The commissioner may disregard any emissions test on a pilot plant or prototype equipment which does not have reasonable operating experience or which may not be generally available for industry use;

(C) The owner or operator of the subject source or modification shall not be granted a permit under this section unless and until the commissioner determines that such owner or operator will install air pollution control technology which complies with the commissioner's approval of LAER for each non-attainment air pollutant;

(D) If the owner or operator of the subject source or modification has made modifications to the subject source or modification and any of these modifications are subject to but have not previously been evaluated under this subsection, the commissioner shall conduct a LAER review under this subsection and require implementation of LAER for such modifications; and

(E) In no event shall the application of LAER result in an emission limit or rate of emissions that is less stringent or environmentally protective than an emission limitation approved by the commissioner as BACT, an emission limitation demonstrated or established in any State Implementation Plan or any applicable limitation or standard under 40 CFR Parts 60, 61, 62 or 63.

(4) Offsetting emission reductions or Emission Reduction Credits.

(A) Except as provided in subdivision (8)(B) of this subsection, prior to commencing operation pursuant to a permit issued under this section, the owner or operator of the subject source or modification shall:

(i) reduce actual emissions from other stationary sources on such premises, sufficient to offset the allowable emissions increase for each individual non-attainment air pollutant which is the subject of the application, or

(ii) obtain certified emission reduction credits in accordance with subdivision (5) of this subsection, which credits are sufficient to offset the allowable emissions increase for each individual non-attainment air pollutant; and

(B) The commissioner shall not grant a permit to an owner or operator of the subject source or modification unless the owner or operator demonstrates that internal offset or certified emission reduction credits under subparagraph (A) of this subdivision:

(i) have occurred or were created within the five (5) years preceding the submission of such application and prior to the date that the subject source or modification becomes operational and begins to emit any air pollutant. The commissioner may consider a different time period, beginning no earlier than November 15, 1990,

(ii) are not otherwise required by any of the following: the Act; a federally enforceable permit or order; the State Implementation Plan; or the regulations or statutes in effect when such application is filed,

(iii) will be incorporated into a permit or order of the commissioner and would be federally enforceable,

(iv) will create a net air quality benefit in conjunction with the proposed emissions increase. In determining whether such a net air quality benefit would be created, the commissioner may consider emissions on an hourly, daily, seasonal or annual basis. For carbon monoxide or particulate matter (total suspended particulate and PM_{10}), the net air quality benefits shall be determined by the use of atmospheric modeling procedures approved by the commissioner and the Administrator in writing. Upon the request of the commissioner, the owner or operator shall make and submit to the commissioner, a net air quality benefit determination for each air pollutant. Such determination shall include, but not be limited to, all increases and decreases of emissions from stationary sources at any premises providing the offsetting emission reductions,

(v) shall be based on the pounds per hour of potential emissions increase from the subject source or modification. The commissioner may consider other more representative periods, including, but not limited to, tons per year or pounds per day,

(vi) are identified in an emissions inventory maintained by the commissioner or otherwise approved in writing by the commissioner,

(vii) are of the same non-attainment air pollutant of which the owner or operator proposes to increase. Reductions of any exempt volatile organic compound listed in Table 1-3 of section 22a-174-1 of the Regulations of Connecticut State Agencies or those listed in 40 CFR 51.100 shall not be used to offset proposed increases emissions of non-exempt volatile organic compounds,

(viii) occurred at either: one or more stationary sources in the same non-attainment area or stationary sources in another non-attainment area if, under the Act, such area has an equal or higher non-attainment classification than the area in which the proposed activity would take place, and if emissions from such other non-attainment area contribute to a violation of a National Ambient Air Quality Standard in the non-attainment area in which the proposed activity would take place,

(ix) for the applicable non-attainment air pollutant, shall be from reductions in actual emissions, and

(x) offset actual emissions at a ratio greater than one to one, as determined by the commissioner. In addition, the owner or operator shall offset emission increases of allowable emissions at a ratio, for volatile organic compounds or nitrogen oxides, of at least: 1.3 to 1 in any severe non-attainment area for ozone, and 1.2 to 1 in any serious non-attainment area for ozone.

(5) The owner or operator of the subject source or modification shall secure certified emission reduction credits before using them. Discrete emission reduction credits shall be secured in twenty-four (24) month allotments prior to their use. Emission reduction credits shall be:

(A) Created and used in accordance with 40 CFR 51;

(B) Real, that is, resulting in a reduction of actual emissions, net of any consequential increase in actual emissions resulting from shifting demand. The emission reductions shall be measured, recorded and reported to the commissioner;

(C) Quantifiable, based on stack testing approved by the commissioner in writing, conducted pursuant to an appropriate, reliable, and replicable protocol approved by the commissioner. Such quantification shall be in terms of the rate and total mass amount of non-attainment pollutant emission reduction;

(D) Surplus, not required by any Connecticut General Statute or regulation adopted thereunder, or mandated by the State Implementation Plan, and not currently relied upon for any attainment plan, any Reasonable Further Progress plan or milestone demonstration;

(E) Permanent, in that at the source of the emission reduction, the emission reduction system shall be in place and operating, and an appropriate record keeping system is maintained to collect and record the data required to verify and quantify such emissions reductions; and

(F) Enforceable and approved by the commissioner in writing after the submission to the commissioner of documents satisfactory to the commissioner or incorporated into a permit as a restriction on emissions.

(6) Compliance Requirements.

(A) The owner or operator of the subject source or modification shall demonstrate that all stationary sources owned, operated or controlled by the owner, operator, applicant, permittee and any parent company or subsidiary thereof are in compliance with all environmental protection laws or are on a federally enforceable schedule for achieving such compliance; and

(B) The owner or operator of the subject source or modification shall demonstrate that compliance with any enforcement orders for stationary sources in Connecticut owned, operated or controlled by the owner, operator, applicant, or permittee are on the most expeditious compliance schedule practicable.

(7) Public Notice. The notice of tentative determination under section 22a-6h of the Connecticut General Statutes shall include any information concerning the proposal by the owner or operator to offset the potential emissions increase from the subject source or modification and the commissioner's approval of LAER.

(8) Notwithstanding any provision of this section:

(A) No permit shall be granted under this subsection if the Administrator has made a final determination that the applicable implementation plan is not being implemented for the nonattainment area in which the subject source or modification is to be located; and

(B) Pursuant to section 173(a)(1)(B) of the Act, the owner or operator any new major stationary source or major modification which is located in a zone within the non-attainment area, which zone has been identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, shall not be required to obtain offsetting emission reductions pursuant to this subsection unless the proposed emissions would cause or contribute to emissions levels which exceed the emissions levels allowed by the State Implementation Plan.

(m) Permit Requirements for Hazardous Air Pollutants subject to the provisions of section 112(g) of the Act, as may be amended from time to time

(1) For the purposes of this subsection:

(A) "Major source of hazardous air pollutants" means any stationary source that emits or has the potential to emit, ten (10) tons per year or more of any particular hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants;

(B) "Hazardous air pollutant" or "HAP" means, notwithstanding the definition in section 22a-174-1 of the Regulations of Connecticut State Agencies, any air pollutant listed in section 112(b) of the Act, excluding hydrogen sulfide and caprolactam;

(C) "Construct a major source of hazardous air pollutants" means to fabricate, erect or install a major source of hazardous air pollutants or group of major sources of hazardous air pollutants within a contiguous area and under common control; and

(D) "Reconstruct a major source of hazardous air pollutants" means to replace one or more components at a major source of hazardous air pollutants, provided that:

(i) the fixed capital cost of the new component(s) exceeds fifty (50%) percent of the fixed capital cost of constructing a comparable source, and

(ii) it is technically and economically feasible for the source as determined by the commissioner, if reconstructed as proposed, to meet the applicable MACT emission limitation under this subsection.

(2) The owner or operator of the following sources are exempt from the requirements of this subsection:

(A) A major source of hazardous air pollutants subject to the MACT standards of 40 CFR 63, provided that such owner or operator has met all requirements for preconstruction review and any other applicable requirements of 40 CFR 63, Subpart A;

(B) A major source of hazardous air pollutants de-listed by the Administrator pursuant to section 112(c)(9) of the Act; or

(3) An application for a permit to construct, reconstruct, or operate a major source of hazardous air pollutants shall include:

(A) The names of the hazardous air pollutant(s) to be emitted, and the estimated emission rate of each such pollutant;

(B) A proposed determination of MACT, including, but not necessarily limited to, specific design, equipment, work practice, or operational standard, or a combination thereof, that will meet the MACT, technical information on the design, operation, size, and estimated control efficiency of any proposed emission control equipment. The commissioner may require the owner or operator to submit the manufacturer's name, address, telephone number, and design specifications of such equipment for:

(i) each single hazardous air pollutant with potential emissions of ten (10) tons per year or more, and

(ii) any combination of hazardous air pollutants with potential emissions of twenty-five (25) tons per year or more;

(C) A description of the subject source including identification of any listed source category or categories such source is included within under the Act;

(D) The owner's or operator's proposed dates for:

(i) commencement of construction or reconstruction of such source,

(ii) completion of construction or reconstruction of such source, and

(iii) start-up of such source;

(E) Any federally enforceable emission limitations applicable to such source;

(F) The proposed maximum utilization capacity of such source, and the associated:

(i) uncontrolled emission rates per year, and

(ii) controlled emission rates per year;

(G) A proposed emission limitation for each hazardous air pollutant from such source;

(H) Supporting documentation for the proposed determination of MACT, such as an identification of alternative control technologies and an analysis of the cost, health and environmental impacts and energy requirements; and

(I) Any other relevant information required pursuant to 40 CFR 63, Subpart A, or as the commissioner may require.

(4) No permit will be granted unless the commissioner approves the proposed MACT determinations and determines that the owner or operator shall:

(A) Comply with any applicable emission standards or work practice standards adopted by the Administrator under sections 112(d) or 112(h) of the Act, respectively; and

(B) Comply with any applicable determination of the commissioner pursuant to section 112(j) of the Act.

(5) In establishing MACT for any major source of hazardous air pollutants, the commissioner shall:

(A) Consider any relevant emission standard or work practice standard proposed by the Administrator under sections 112(d) or 112(h) of the Act;

(B) Consider any presumptive MACT determination adopted by the Administrator for the applicable source category which includes the source under consideration;

(C) Require the limitation or requirements to be no less stringent than the emission control which is achieved in practice by the best controlled similar source, as determined by the commissioner; and

(D) Require the maximum degree of reduction in emissions of hazardous air pollutants which can be achieved by utilizing those control technologies, taking into consideration the costs of achieving such emission reduction and any health and environmental impacts and energy requirements associated with the emission reduction.

(6) The owner or operator of a source subject to this subsection and the commissioner shall comply with the provisions of 40 CFR Part 63.56 as amended from time to time.

(7) Any permit issued pursuant to this subsection will require the permittee to comply with the applicable emission standard promulgated by the Administrator under section 112(d) or 112(h) of the Act no later than eight (8) years after such standard is promulgated or eight (8) years after the date by which the permittee was first required to comply with emission limitation established by such permit, whichever is earlier.

(8) Notwithstanding subdivisions (5), (6) and (7) of this subsection the permittee will not be required to comply with an applicable emission standard promulgated by the Administrator under section 112(d) or 112(h) of the Act if the emission limitation established by the permit issued pursuant to this subsection is at least as stringent as that required by the applicable emission standard promulgated by the Administrator under section 112(d) or 112(h) of the Act as determined by the commissioner.

Statement of Purpose: This amendment streamlines the applicability of the requirement to obtain an air permit, thereby reducing the administrative burden of having to apply for, but not obtain an air permit. This amendment provides the application requirements and standards for granting a permit and permit modification in subsections 3a(b) through 3a(m) of this section. This amendment increases the threshold for state specific program from 5 tons potential to 15 tons potential thereby reducing the burden of having to apply for permits that are not otherwise federally required. This amendment also provides for exemptions from new source review under certain specific conditions. In addition, this amendment provides the specifications for using secured emission reduction credits to offset emission increases which provides industry with flexibility while continuing to ensure compliance. In addition, this amendment distinguishes between a major modification and the requirement to obtain a permit modification or revision in accordance with subsection 22a-174-2a.

Subsection (m) has been amended to include federal Clean Air Act requirements; specifically, to incorporate Maximum Achievable Control Technology (MACT) requirements for major stationary sources of hazardous air pollutants into new source review permits pursuant to Section 112(g) of the Clean Air Act.

G. Text of Proposed R.C.S.A. section 22a-174-3b:

The Regulations of Connecticut State Agencies are amended by adding section 22a-174-3b as follows:

(NEW)

Section 22a-174-3b. Exemptions from permitting for construction and operation of external combustion units, automotive refinishing operations, emergency engines, nonmetallic mineral processing equipment and surface coating operations.

(a) Definitions. For the purposes of this section:

(1) "As applied" means a coating prepared according to a manufacturer's mixing instructions, including all components such as dilution solvents and reactive constituents, and prepared at the time of application to a substrate;

(2) "Automobile" means a passenger car, van, motorcycle, truck or any other motorized vehicle for transportation;

(3) "Automotive refinishing operation" means the processes for coating, painting or repairing the pre-existing coat or paint applied to automobiles and automotive components at an automobile manufacturing plant, including but not limited to surface preparation, primer application, topcoat application and applicator cleaning;

(4) "Electrostatic application" means the application of charged atomized paint droplets by electrostatic attraction;

(5) "Emergency" means "emergency" as defined in section 22a-174-22 of the Regulations of Connecticut State Agencies;

(6) "Emergency engine" means "emergency engine" as defined in section 22a-174-22 of the Regulations of Connecticut State Agencies;

(7) "Existing stationary source" means a stationary source for which a permit to control emissions to the air has been issued by the Department;

(8) "External combustion unit" means a device that combusts only natural gas, propane or fuel oil, which is not a stationary internal combustion engine or turbine, and includes, but is not limited to, a boiler, heater, drying oven, curing oven or furnace;

(9) "Hazardous air pollutant" means, notwithstanding the definition in section 22a-174-1 of the Regulations of Connecticut State Agencies, any air pollutant listed in Section 112(b) of the Act, excluding hydrogen sulfide and caprolactum;

(10) "New stationary source" means a stationary source for which a permit to control emissions to the air has not been issued by the Department;

(11) "Nonmetallic mineral" means "nonmetallic mineral" as defined in 40 CFR 60.671;

(12) "Nonmetallic mineral processing equipment" means any crusher, grinding mill, screening operation, bucket elevator, belt conveyer, bagging operation, storage bin or other equipment used to crush or grind any nonmetallic mineral at a nonmetallic mineral processing plant;

(13) "Nonmetallic mineral processing plant" means "nonmetallic mineral processing plant" as defined in 40 CFR 60.671;

(14) "Spray booth" means a structure, housing automatic or manual spray application equipment, that is used to apply coatings;

(15) "Surface coating operation" means a process used to apply a layer of material including spray painting, dip coating, roller coating, and electrostatic deposition, but exclusive of printing, publishing or packaging operations;

(16) "Tune-up" means to perform maintenance and adjust equipment to proper or required operating condition; and

(17) "Twelve (12) month rolling aggregate" means the sum of the total fuel use, actual emissions, coating use, solvent use or actual operating time calculated for each month by

adding the current month's fuel use, actual emissions, coating use, solvent use or actual operating time to those of the previous eleven months.

(b) Applicability.

(1) The owner or operator of a stationary source that is an external combustion unit, an automotive refinishing operation, a nonmetallic mineral processing equipment, an emergency engine or a surface coating operation may construct and operate such source without obtaining a general permit for such source issued pursuant to section 22a-174(*l*) of the Connecticut General Statutes or a permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies if:

(A) The source is an emission unit with potential emissions of fifteen (15) tons or more per year of any individual air pollutant;

(B) The source is not a new major stationary source;

(C) The source is not a newly constructed or reconstructed major source of hazardous air pollutants subject to the requirements of section 22a-174-3a(m) of the Regulations of Connecticut State Agencies; and

(D) The owner or operator complies with all applicable provisions of this section.

(2) The owner or operator of an existing stationary source that is an external combustion unit, an automotive refinishing operation, a nonmetallic mineral processing equipment, an emergency engine or a surface coating operation may modify such source without obtaining a general permit for such source issued pursuant to section 22a-174(l) of the Connecticut General Statutes or a permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies if:

(A) The source is a modification to an existing emission unit which increases potential emissions of any individual air pollutant from such unit by fifteen (15) tons or more per year;

(B) At the time of modification, the source is not authorized to operate pursuant to an individual permit issued pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies;

(C) The modification is not a major modification to an existing major stationary source; and

(D) The owner or operator complies with all applicable provisions of this section.

(3) The requirements of this section do not apply to the owner or operator of a stationary source that is an external combustion unit, an automotive refinishing operation, a nonmetallic mineral processing equipment, an emergency engine or a surface coating operation if such source has potential emissions of less than fifteen (15) tons per year of each individual air

pollutant, including those sources operating in compliance with section 22a-174-3c of the Regulations of Connecticut State Agencies.

(c) External combustion unit.

(1) The owner or operator of an external combustion unit shall properly maintain equipment and operate such unit in accordance with the following requirements:

(A) Maximum rated heat input shall not exceed the following limitations:

(i) 50 MMBtu/hr for sources burning gaseous fuels,

(ii) 25 MMBtu/hr for sources burning distillate fuel oil, and

(iii) 15 MMBtu/hr for sources burning residual fuel oil;

(B) Fuel use shall not exceed the following limitations:

(i) natural gas usage shall not exceed 214 million cubic feet in any twelve (12) month rolling aggregate,

(ii) propane usage shall not exceed 1.57 million gallons in any twelve (12) month rolling aggregate,

(iii) distillate fuel oil usage shall not exceed 704,000 gallons in any twelve (12) month rolling aggregate,

(iv) residual fuel oil usage shall not exceed 191,000 gallons in any twelve (12) month rolling aggregate, and

(v) use of any combination of the fuels listed in subparagraphs (B)(i) through (B)(iv) of this subdivision shall not result in emissions of any individual air pollutant greater than fifteen (15) tons per year in any twelve (12) month rolling aggregate;

(C) Fuel content shall be as follows:

(i) any residual fuel oil used shall contain 0.5%, or less, sulfur by weight, dry basis, and

(ii) no fuel oil used shall be blended with waste oil or solvent;

(D) The height of any stack associated with the unit shall be the greater of:

(i) ten (10) meters, or

(ii) the lesser of 1.3 times the building height or maximum building width; and

(E) A tune-up of the external combustion unit shall be performed on an annual basis.

(2) The owner or operator of an external combustion unit shall maintain records of the information necessary for the commissioner to determine compliance with the requirements of subdivision (1) of this subsection. Information sufficient to make such determinations may include the information specified in subdivision (3) of this subsection. All records made to determine compliance with the requirements of this section shall be:

(A) Made available to the commissioner to inspect and copy upon request; and

(B) Maintained for five (5) years from the date such record is created.

(3) The owner or operator of an external combustion unit may make and maintain records of the following information, as applicable:

(A) Records of the fuel type and quantity used, in gallons or million cubic feet, for each month and each twelve (12) month rolling aggregate;

(B) If the fuel used is residual oil, records of the sulfur content for each nongaseous fuel shipment received;

(C) If multiple fuels are used, records of the quantity in tons of each criteria pollutant emitted for each month and each twelve (12) month rolling; and

(D) The date each annual tune-up is performed.

(d) Automotive refinishing operation.

(1) The owner or operator of an automotive refinishing operation shall properly maintain equipment and perform such operation in accordance with the following requirements:

(A) The total amount of VOC-containing coatings or solvents used shall not exceed 2,000 gallons in any twelve (12) month rolling aggregate;

(B) Any paint or coating shall be applied by one of the following means:

(i) high volume low pressure spray equipment,

(ii) electrostatic application equipment, or

(iii) any other application method that has a manufacturer's guaranteed transfer efficiency of at least sixty-five percent (65%);

(C) Any application equipment used shall be cleaned using one of the following means:

(i) in a device that remains closed at all times when not in use,

(ii) in a system that discharges unatomized cleaning solvent into a waste container that remains closed when not in use,

(iii) in a vat that allows for disassembly and cleaning of application equipment and that is kept closed when not in use, or

(iv) in a system that atomizes spray into a paint waste container that is fitted with a device designed to capture atomized solvent emissions;

(D) Spray operations shall be performed in an enclosed area; and

(E) If a spray booth is used, such booth shall contain particulate control equipment that is operated and maintained in good working condition at all times the booth is in use.

(2) The owner or operator of an automotive refinishing operation shall maintain records of the information necessary for the commissioner to determine compliance with the requirements of subdivision (1) of this subsection. Information sufficient to make such determinations may include the information specified in subdivision (3) of this subsection. All records made to determine compliance with the requirements of this section shall be:

(A) Made available to the commissioner to inspect and copy upon request; and

(B) Maintained for five (5) years from the date such record is created.

(3) The owner or operator of an automotive refinishing operation may make and maintain records of the following information:

(A) Records of the amount of coating and solvent used, in gallons, for each month and each twelve (12) month rolling aggregate; and

(B) If a paint or coating is applied by other than the methods specified in subsection (c)(3)(B)(i) or (c)(3)(B)(ii), a record of the manufacturer's guaranteed transfer efficiency.

(e) Emergency engine.

(1) The owner or operator of an emergency engine shall properly maintain equipment and operate such engine in accordance with this subsection.

(2) No owner or operator of an emergency engine shall cause or allow such engine to operate except in an emergency and unless the following conditions are met:

(A) Operation of such engine shall not exceed 500 hours during any twelve (12) month rolling aggregate; and

(B) Any nongaseous fuel consumed by such engine shall not exceed a sulfur content of 0.3% by weight, dry basis.

(3) The owner or operator of an emergency engine shall maintain records of the information necessary for the commissioner to determine compliance with the requirements of subdivision (2) of this subsection. Information sufficient to make such determinations may include the information specified in subdivision (4) of this subsection. All records made to determine compliance with the requirements of this section shall be:

(A) Made available to the commissioner to inspect and copy upon request; and

(B) Maintained for five (5) years from the date such record is created.

(4) The owner or operator of an emergency engine may make and maintain records of the hours of operation for each month and each twelve (12) month rolling aggregate.

(f) Nonmetallic mineral processing equipment.

(1) The owner or operator of nonmetallic mineral processing equipment shall properly maintain equipment and operate such equipment in accordance with the following conditions on fuel use and content:

(A) Equipment powered by an internal combustion engine greater than or equal to 600 horsepower shall not exceed 67,400 gallons of fuel oil usage in any twelve (12) month rolling aggregate;

(B) Equipment powered by an internal combustion engine less than 600 horsepower shall not exceed 48,900 gallons fuel oil usage in any twelve (12) month rolling aggregate; and

(C) Any nongaseous fuel oil consumed by such equipment shall not exceed a sulfur content of 0.05% by weight, dry basis.

(2) The owner or operator of nonmetallic mineral processing equipment shall maintain records of the information necessary for the commissioner to determine compliance with the requirements of subdivision (1) of this subsection. Information sufficient to make such determinations may include the information specified in subdivision (3) of this subsection. All records made to determine compliance with the requirements of this section shall be:

(A) Made available to the commissioner to inspect and copy upon request; and

(B) Maintained for five (5) years from the date such record is created.

(3) The owner or operator of nonmetallic mineral processing equipment may make and maintain records of the following information:

(A) Records of the quantity of fuel used, in gallons, for each month and each twelve (12) month rolling aggregate; and

(B) For each nongaseous fuel shipment received, records of the sulfur content as a percent by weight, dry basis, and type of fuel.

(g) Surface coating operation.

(1) The owner or operator of a surface coating operation shall properly maintain equipment and conduct such coating operations only in accordance with the following limitations on VOCs, hazardous air pollutants and particulate matter:

(A) The VOC content of any coating used shall not exceed 6.3 pounds per gallon, as applied;

(B) The hazardous air pollutant content of any coating used shall not exceed 6.3 pounds per gallon, as applied;

(C) Coating and solvent usage, including diluents and cleanup solvents but excluding water, shall not, in any twelve (12) month rolling aggregate, exceed 3,000 gallons; and

(D) Any electrostatic dry powder coating operation or plasma spray operation shall be operated only with particulate control equipment that meets the following requirements:

(i) is integrated in the coating or spray operation,

(ii) includes a minimum collection efficiency of 90%, and

(iii) is operated and maintained in good working condition.

(2) The owner or operator of a surface coating operation shall maintain records of the information necessary for the commissioner to determine compliance with the requirements of subdivision (1) of this subsection. Information sufficient to make such determinations may include the information specified in subdivision (3) of this subsection. All records made to determine compliance with the requirements of this section shall be:

(A) Made available to the commissioner to inspect and copy upon request; and

(B) Maintained for five (5) years from the date such record is created.

(3) The owner or operator of a surface coating operation may make and maintain records of the following information:

(A) Records of the type and quantity of coating and solvent used, in gallons, for each month and each twelve (12) month rolling aggregate;

(B) Records of the hazardous air pollutant and VOC content per gallon of each coating and solvent used, as applied; and

(C) If the surface coating operation includes an electrostatic dry powder coating operation or a plasma spray operation, a record of the manufacturer's specifications for particulate control efficiency.

(h) Fuel sulfur content. Any of the records listed in subdivisions (1), (2) and (3) of this subsection are sufficient to demonstrate the sulfur content of fuel used as required by subsections (c), (e) and (f) of this section:

(1) A fuel certification for a delivery of nongaseous fuel from a bulk petroleum provider;

(2) A sales receipt for the sale of motor vehicle diesel fuel from a retail location; or

(3) A copy of a current contract with the fuel supplier supplying the fuel used by the equipment that includes the applicable sulfur content of nongaseous fuel as a condition of each shipment.

(i) Reporting.

(1) The owner or operator of any source required to make and maintain records pursuant to this section shall provide any such records, or a copy thereof, to the commissioner upon request and shall make such records available to the commissioner to inspect at the location maintained and shall make and provide copies of any records requested by the commissioner.

(2) Any record requested pursuant to subdivision (1) of this subsection shall be submitted with a certification in accordance with section 22a-174-2a(a) of the Regulations of Connecticut State Agencies.

(j) Applicable law. Nothing in this section shall relieve an owner or operator from any obligation to comply with:

(1) The requirements of 40 CFR 63, Subpart B as implemented in section 22a-174-3a(m) of the Regulations of Connecticut State Agencies; and

(2) Any other applicable federal, state or local law.

(k) Individual application.

(1) Nothing in this section shall preclude the commissioner from requiring an owner or operator to obtain an individual permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies.

(2) An owner or operator who has filed an application for an individual permit pursuant to subdivision (1) of this subsection shall comply with the requirements of this section while such application is pending.

Statement of Purpose: This section establishes emissions limitations, operating practices, and recordkeeping requirements for certain categories of stationary sources of air pollution to restrict emissions to levels that are not significant contributions to air pollution; and exempts such sources from the permitting process by removing owners and operators from the duty to apply for and obtain individual operating permits.

H. Text of Proposed R.C.S.A. section 22a-174-3c:

The Regulations of Connecticut State Agencies are amended by adding section 22a-174-3c as follows:

(NEW)

Section 22a-174-3c. Limitations on potential to emit for external combustion units, emergency engines, automotive refinishing operations, nonmetallic mineral processing equipment and surface coating operations.

(a) Limitations on potential to emit.

(1) Notwithstanding the definition of "potential emissions" or "potential to emit" in section 22a-174-1 of the Regulations of Connecticut State Agencies, the potential emissions or potential to emit of any individual air pollutant for a stationary source identified in subdivision (2) of this subsection is less than fifteen tons per year, unless otherwise determined by a permit or order of the commissioner, if the owner or operator operates the source to comply with all applicable requirements of subsections (b) and (c) of this section.

(2) The owner or operator of any new or existing stationary source that is an external combustion unit, an automotive refinishing operation, a nonmetallic mineral processing equipment, an emergency engine or a surface coating operation may limit potential emissions pursuant to subdivision (1) of this subsection.

(b) Operating requirements.

(1) The owner or operator of an external combustion unit using gaseous fuel and operating to limit potential emissions in accordance with this section shall:

(A) Limit gaseous fuel purchase for the premises to equal to or less than 100 million cubic feet in any calendar year; and

(B) Maintain a maximum rated heat input less than 50 mmBTU/hr.

(2) The owner or operator of an external combustion unit using distillate fuel and operating to limit potential emissions in accordance with this section shall:

(A) Limit distillate fuel oil purchase for the premises to equal to or less than 328,000 gallons in any calendar year; and

(B) Maintain a maximum rated heat input less than 25 mmBTU/hr.

(3) The owner or operator of an external combustion unit using residual fuel and operating to limit potential emissions in accordance with this section shall:

(A) Limit residual fuel oil purchase for the premises to equal to or less than 89,000 gallons in any calendar year; and

(B) Maintain a maximum rated heat input for the external combustion unit of less than 15 mmBTU/hr.

(4) The owner or operator of an external combustion unit using propane and operating to limit potential emissions in accordance with this section shall:

(A) Limit propane purchase for the premises to equal to or less than 736,000 gallons in any calendar year; and

(B) Maintain a maximum rated heat input less than 50 mmBTU/hr.

(5) The owner or operator of an emergency engine using gaseous fuel and operating to limit potential emissions in accordance with this section shall limit gaseous fuel purchase for the premises to equal to or less than 41 million cubic feet in any calendar year.

(6) The owner or operator of an emergency engine using distillate fuel and operating to limit potential emissions in accordance with this section shall limit distillate fuel oil purchase for the premises to equal to or less than 21,000 gallons in any calendar year.

(7) The owner or operator of an emergency engine using propane and operating to limit potential emissions in accordance with this section shall limit propane purchase for the premises to equal to or less than 100,000 gallons in any calendar year;

(8) The owner or operator of an automotive refinishing operation operating to limit potential emissions in accordance with this section shall limit VOC containing coating or solvent purchase for the premises to equal to or less than 1,000 gallons in any calendar year.

(9) The owner or operator of a nonmetallic mineral processing equipment operating to limit potential emissions in accordance with this section shall limit fuel oil purchase for the premises to equal to or less than 22,000 gallons in any calendar year.

(10) The owner or operator of a surface coating operation operating to limit potential emissions in accordance with this section shall limit purchase for the premises of VOC containing coatings, including diluents and cleanup solvents but excluding water, to equal to or less than 1,500 gallons in any calendar year.

(c) Records.

(1) The owner or operator of any source that is operating to comply with the requirements of subsection (b) of this section shall maintain purchase records to demonstrate compliance with applicable fuel, coating and solvent limitations.

(2) The owner or operator of any source shall make purchase records maintained pursuant to subdivision (1) of this subsection available to the commissioner to inspect and copy upon request.

(3) The owner or operator of any source maintaining purchase records pursuant to subdivision (1) of this subsection shall maintain such records for five (5) years from the date such records are created.

(d) Applicable law. Nothing in this section shall relieve an owner or operator from any obligation to comply with:

(2) The requirements of 40 CFR 63, Subpart B as implemented in section 22a-174-3a(m) of the Regulations of Connecticut State Agencies; and

(3) Any other applicable federal, state or local law.

(e) Individual application.

(3) Nothing in this section shall preclude the commissioner from requiring an owner or operator to obtain an individual permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies.

(4) An owner or operator who has filed an application for an individual permit pursuant to subdivision (1) of this subsection shall comply with the requirements of this section while such application is pending.

Statement of Purpose: This section establishes limitations on fuel purchase and use and coating and solvent use for certain categories of stationary sources of air pollution to restrict emissions to levels that do not contribute significantly to air pollution. An owner or operator of a source operating in compliance with this section does not need to obtain an individual operating permit or operate the source to comply with the requirements of section 22a-174-3b of the Regulations of Connecticut State Agencies.

I. Text of Proposed R.C.S.A. section 22a-174-33:

Section 5.

Section 22a-174-33 of the Regulations of Connecticut State Agencies is being amended as follows:

Sec. 22a-174-33. Title V Sources.

(a) Definitions. For the purposes of this section:

[(1) "Act" means the Clean Air Act, as amended in 1990, 42 U.S.C. 7401 et seq.

(2) "Administrator" means the Administrator of the United States Environmental Protection Agency or his designee.]

[(3) "Affected states" means the States of Massachusetts, New York, and Rhode Island and any other State located within fifty (50) miles of a Title V source.]

[(4)] (1) "Alternative operating scenario" means a condition, including equipment configurations, process parameters, or materials used in a process under which the owner or operator of a Title V source may be allowed to operate.

[(5)] (2) "Applicable requirements" means:

(A) [any] ANY standard or other requirement in the State implementation plan or in a federal implementation plan for the State of Connecticut promulgated by the Administrator pursuant to the Act;

(B) [any] ANY term or condition of a permit [to construct] issued pursuant to FORMER section 22a-174-3 OR SECTION 22a-174-3a of the Regulations of Connecticut State Agencies;

(C) [any] ANY standard or other requirement of the acid rain program pursuant to 40 CFR Parts 72 through 78, inclusive, ; and

(D) [any] ANY standard or other requirement pursuant to 40 CFR [Part] 51, 52, 59, 60, 61, 62, 63, 64, 68, [or] 70, OR 82.

[(6)](3) "Code of Federal Regulations" or "CFR" means the Code of Federal Regulations [revised as of September 16, 1994, unless otherwise specified] AS AMENDED FROM TIME TO TIME.

[(7) "Emissions unit" means any part or activity of a stationary source which part or activity emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant.]

(4) "DEVIATION" HAS THE SAME MEANING AS IN 40 CFR 71.6(a)(3)(iii)(C).

[(8)](5) "Hazardous air pollutant" means, notwithstanding the definition in section 22a-174-1 of the Regulations of Connecticut State Agencies, any air pollutant listed in section 112(b) of the Act [except] EXCLUDING hydrogen sulfide AND CAPROLACTAM.

[(9)](6) "Implementation date of this section" means APRIL 23, 1997. [the earlier of:

(A) June 1, 1997; or

(B) the date of interim or final approval of this section by the Administrator pursuant to 40 CFR Part 70.4.]

[(10) "Maximum achievable control technology" or "MACT" means a method of achieving an emission limitation or reduction in emissions of hazardous air pollutants determined by the commissioner pursuant to subsection (e) of this section or by the Administrator pursuant to 40 CFR Part 63.]

[(11) "Monitoring" means any particular procedures required to determine emissions or compliance with parameters in accordance with applicable requirements or any particular procedures necessary to determine whether applicable requirements are being met.]

[(12)](7) "Regulated air pollutant" means any of the following:

(A) [nitrogen] NITROGEN oxides or any volatile organic compound;

(B) [any] ANY pollutant which is a criteria air pollutant AS DEFINED IN SECTION 22a-174-1 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES;

(C) [any] ANY pollutant [from] EMITTED BY a stationary source which is subject to any standard of performance for new stationary sources pursuant to 40 CFR [Part] 60;

(D) [any] ANY pollutant from a substance subject to a stratospheric ozone protection requirement pursuant to 40 CFR [Part] 82, Subpart A, Appendix A or B;

(E) [any] ANY pollutant subject to a national emission standard or other requirement under 40 CFR [Part] 63,and emitted by a source in a category listed in THE Federal Register [Vol. 58 No. 231, December 3, 1993] IN ACCORDANCE WITH SECTION 112(e)(3) OF THE ACT;

(F) [any] ANY pollutant from a stationary source which is subject to any standard or other requirement pursuant to 40 CFR 61; or

(G) [any] ANY pollutant listed in 40 CFR [Part] 68.

(8) "RESEARCH AND DEVELOPMENT OPERATION" MEANS ANY ACTIVITY WHICH:

(A) OCCURS IN A LABORATORY;

(B) IS INTENDED TO (i) DISCOVER SCIENTIFIC FACTS, PRINCIPLES OR SUBSTANCES, OR (ii) ESTABLISH METHODS OF MANUFACTURE OR DESIGN OF SALEABLE SUBSTANCES, DEVICES OR OTHER PRODUCTS, BASED UPON PREVIOUSLY DISCOVERED SCIENTIFIC FACTS, PRINCIPLES OR SUBSTANCES; AND

(C) DOES NOT INCLUDE (i) PRODUCTION OF A PRODUCT FOR SALE, OR (ii) PRODUCTION OF A PRODUCT FOR DISTRIBUTION THROUGH MARKET TESTING CHANNELS.

[(13) "Throughput" means the rate of production by volume or weight, in a manufacturing process, for which the combined quantities of all materials introduced, excluding air and water, are used to determine such rate.]

[(14)](9) "Title V permit" means any permit issued, renewed, or modified by the commissioner pursuant to this section.

[(15)](10) "Title V source" means any [premise] PREMISES AT, IN, OR ON which [includes] any of the following IS LOCATED:

(A) [any] ANY stationary source subject to 40 CFR [Part] 60 or 61 ;

(B) [any] ANY stationary source subject to 40 CFR [Part] 62, 63 OR 68;

(C) [any] ANY stationary source subject to 40 CFR [Parts] 72 through 78, inclusive;

(D) [any] ANY stationary source subject to section 129(e) of the Act OR ANY FINAL PLAN UNDER SECTION 111(d) OF THE ACT;

(E) [any] ANY one or more stationary sources, which are located on one or more contiguous or adjacent properties under [common] THE control of the same person or persons and which IN THE AGGREGATE emit, or have the potential to emit, including fugitive emissions [to the extent quantifiable, in the aggregate], ten (10) tons or more per year of any hazardous air pollutant, twenty-five (25) tons or more per year of any combination of hazardous air pollutants[, or the quantity established by the Administrator pursuant to 40 CFR Part 63]; or

(F) [any] ANY one or more stationary sources, which are located on one or more contiguous or adjacent properties under [common] THE control of the same person or persons and which belong to the same two-digit Standard Industrial Classification code, as published by the United States Office of Management and Budget in the Standard Industrial Classification Manual of 1987, and which IN THE AGGREGATE emit, or have the potential to emit AIR POLLUTANTS, including fugitive emissions, from those categories of sources listed in (2)(i) through (xxvii) in the definition of "major source" in 40 CFR [Part] 70.2, OF:

(i) one hundred (100) tons or more per year of any regulated air pollutant[;], ,

(ii) fifty (50) tons or more per year of volatile organic compounds or nitrogen oxides in a serious ozone [nonattainment] NON-ATTAINMENT area[;], or

(iii) twenty-five (25) tons or more per year of volatile organic compounds or nitrogen oxides in a severe ozone [nonattainment] NON-ATTAINMENT area[.]; AND

(G) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (F) OF THIS SUBDIVISION, ANY LANDFILL CONTAINING ONLY MUNICIPAL SOLID WASTE, AS THAT TERM IS DEFINED IN SECTION 22a-207(23) OF THE CONNECTICUT GENERAL STATUTES, SHALL NOT BE CONSIDERED A TITLE V SOURCE UNLESS SUCH LANDFILL IS SUBJECT TO ANY APPLICABLE REQUIREMENT IDENTIFIED IN SUBPARAGRAPH (B) OR (D) OF THIS SUBDIVISION.

(b) Signatory Responsibilities.

[(1)] An application for a Title V permit, any form, report, compliance [certificate] CERTIFICATION or other document required by

a Title V permit, and any other information submitted by an [applicant] OWNER OR OPERATOR or a permittee pursuant to this section shall be signed [by the following individual:] IN ACCORDANCE WITH SECTION 22a-174-2a(a) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(A) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or the duly authorized representative responsible for overall operation of one or more manufacturing, production, or operating facilities subject to this section provided;

(i) the operating facilities subject to this section employ more than 250 persons or have gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars); or

(ii) the authority to sign documents has been assigned or delegated to such representative in accordance with corporate procedures

(B) For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

(C) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) A duly authorized representative under subparagraph (A)(i) or (ii) of subdivision (1) of this subsection may be either a named individual or any individual occupying a named position. Such named individual or individual occupying a named position is a duly authorized representative only if:

(A) his or her authorization has been given in writing by an individual as prescribed in subparagraph (A)(ii) of subdivision (1) of this subsection;

(B) such authorization specifically authorizes either;

(i) an individual or a position having responsibility for the overall operation of the premise or activity, such as the position of plant manager,

superintendent, or position of equivalent responsibility, or

(ii) an individual or position having overall responsibility for environmental matters for the company; and

(C) such written authorization is submitted to the commissioner and has been approved in writing by the commissioner in advance of such delegation. Such approval does not constitute approval of corporate procedures.

(3) If an authorization under subdivision (2) of this subsection is no longer effective because a different individual or position has assumed the applicable responsibility, a new authorization satisfying the requirements of such subdivision shall be submitted to the commissioner prior to or together with the submission of any applications, reports, forms, compliance certifications, documents or other information which is, pursuant to subdivision (1) of this subsection, signed by an individual or a duly authorized representative of such individual.

(4) Any individual signing any document pursuant to subdivision (1) of this subsection shall also sign the certification provided in section 22a-3a-5(a)(2) of the Regulations of Connecticut State Agencies.

(5) The owner or operator of a Title V source shall comply with the applicable provisions of 40 CFR Parts 72 through 78, inclusive. If such provisions conflict with this subsection of this section, the provisions and requirements of 40 CFR Part 72 through 78, inclusive, shall apply.]

(c) Applicability.

(1) The provisions of this section shall apply to THE OWNER OR OPERATOR OF every Title V source.

(2) Notwithstanding subdivision (1) of this subsection AND EXCEPT AS PROVIDED IN SUBDIVISION (3) OF THIS SUBSECTION, this section shall not apply to any [premise] PREMISES which is defined as a Title V source solely because a stationary source on such [premise] PREMISES is subject to one or more of the following:

(A) [standard] STANDARD of performance for new residential wood heaters pursuant to 40 CFR [Part] 60, Subpart AAA;

(B) 40 CFR [Part 61, Subpart M, section] 61.145 ;

(C) [accidental] ACCIDENTAL release requirements pursuant to 40 CFR [Part] 68 ;

(D) [40 CFR Part 61 Subpart I; or

(E)] 40 CFR [Part] 60, 61, 63[,] OR 68 [or 72], if such source is exempt [by the terms of such part or is exempted by the Administrator] OR DEFERRED from the requirement [of obtaining] TO OBTAIN a Title V permit[.]:

(i) BY THE TERMS OF THE APPLICABLE CFR,

(ii) BY THE TERMS OF 40 CFR 70,

(iii) BY THE ADMINISTRATOR, OR

(iv) WITH THE ADMINISTRATOR'S AUTHORIZATION, BY THE COMMISSIONER;

[(3) If a premise is subject to this section, any stationary source subject to 40 CFR Part 61 Subpart I located at such premise shall, notwithstanding subparagraph (2)(D) of this subsection, also be subject to this section.]

[(4)] (3) Notwithstanding the definition of a Title V source SET FORTH IN SUBSECTION (a) OF THIS SECTION, for the purpose of determining whether this section applies to a [premise] PREMISES at which research and development operations are located, the owner or operator of such [premise] PREMISES may calculate the emissions from such [premise] PREMISES by subtracting the emissions from such research and development operations from the total emissions [from] OF such [premise] PREMISES. [Such premise] THE EMISSIONS FROM THE REMAINDER OF SUCH PREMISES and research and development operations shall be separately evaluated BY THE COMMISSIONER for purposes of determining whether [a] Title V [permit is] PERMITS ARE required FOR EACH PORTION OF SUCH PREMISES. [For the purposes of this subsection, a research and development operation means any activity which:

(A) occurs in a laboratory;

(B) involves (i) the discovery of scientific facts, principles, reactions or substances, or (ii) the structuring or establishment of methods of manufacture or of specific designs of saleable substances, devices or procedures, based upon previously discovered scientific facts, principles, reaction or substances; and

(C) does not include (i) production for sale of established products through established processes, or (ii) production of a product for distribution through market testing channels.]

(4) IF THE COMMISSIONER OR ADMINISTRATOR DETERMINES THAT THE OWNER OR OPERATOR OF ANY TITLE V SOURCE THAT IS SUBJECT TO A TITLE V GENERAL PERMIT ISSUED UNDER THIS SECTION HAS NOT COMPLIED WITH SUCH GENERAL PERMIT, SUCH NONCOMPLIANCE SHALL BE A VIOLATION OF THIS SECTION AND SUCH OWNER OR OPERATOR SHALL BE DEEMED TO HAVE BEEN OPERATING A TITLE V SOURCE WITHOUT A TITLE V PERMIT.

(5) IF THE COMMISSIONER OR ADMINISTRATOR DETERMINES THAT THE OWNER OR OPERATOR OF ANY TITLE V SOURCE THAT IS SUBJECT TO A TITLE V GENERAL PERMIT ISSUED UNDER THIS SECTION HAS NOT QUALIFIED FOR APPLICABILITY UNDER SUCH GENERAL PERMIT, SUCH NONCOMPLIANCE SHALL BE A VIOLATION OF THIS SECTION AND SUCH OWNER OR OPERATOR SHALL BE DEEMED TO HAVE BEEN OPERATING A TITLE V SOURCE WITHOUT A TITLE V PERMIT.

(d) Limitations on Potential to Emit.

(1) In lieu of requiring an owner or operator of a [premise] TITLE V SOURCE described in [subdivision (a)(15)] SUBSECTION (a)(10)(E) OR (F) of this section to obtain a Title V permit, the commissioner may, by permit or by order, limit ALL AGGREGATE potential emissions from such [premise] PREMISES to less than the following amounts:

(A) [one] ONE hundred (100) tons per year of any regulated air pollutant;

(B) [fifty] FIFTY (50) tons per year of volatile organic compounds or nitrogen oxides, in a serious ozone nonattainment area;

(C) [twenty-five] TWENTY-FIVE (25) tons per year of volatile organic compounds or nitrogen oxides, in a severe ozone nonattainment area; and

(D) [in the aggregate, ten] TEN (10) tons per year of any hazardous air pollutant, twenty-five (25) tons per year of any combination of hazardous air pollutants, or the quantity established by the Administrator under 40 CFR Part 63 .

(2) [The] A permit or order ISSUED PURSUANT TO THIS SUBSECTION shall require the owner or operator of [a] THE subject [premise] PREMISES to:

(A) [limit] LIMIT potential emissions at such [premise] PREMISES to less than the amounts specified in [the] subparagraphs (A) through (D), inclusive, of subdivision [(d)](1) of this subsection;

(B) [conduct] CONDUCT monitoring, recordkeeping, or a combination of monitoring and recordkeeping sufficient to ensure compliance with [this subsection] SUCH PERMIT;

(C) [for each emission unit at such premise, maintain records indicating, for every month, throughput, hours of operation, and capacity;

(D)] [maintain any record] MAINTAIN ALL RECORDS required by such permit or order at the [premise] PREMISES for five (5) years after the creation of such [record] RECORDS and make such [record] RECORDS available, upon request, to the commissioner;

[(E)](D) [submit] SUBMIT compliance certifications to the commissioner pursuant to subdivision (q)(2) of this section; AND

[(F)](E) [comply] COMPLY with every term, emission limitation, condition, or other requirement of such permit or order, including the requirements that the terms, limitations and conditions of such permit or order are binding[,] and legally enforceable, and THAT THE emissions [to be] allowed are quantified[;].

(3) A permit or order shall not be issued pursuant to this subsection, and any such permit or order shall not be federally enforceable, unless the commissioner:

(A) [requires] REQUIRES the owner or operator of a subject [premise] PREMISES to comply with each provision of subdivision (2) of this subsection;

(B) [for] FOR a general permit, complies with the requirements for notice and opportunity for public comment pursuant to section 22a-174(l)(2) of the [general statutes] CONNECTICUT GENERAL STATUTES;

(C) [for] FOR an individual order, sends a copy of a notice to those listed in subparagraph (D)(i) through (vi), inclusive, of this subdivision, and, at least thirty (30) days before approving or denying a [draft] PROPOSED order under this subsection, publishes or causes to be published, at the respondent's expense, once in a newspaper having substantial circulation in the affected area, such notice of [his] THE [draft] PROPOSED order regarding the subject [premise] PREMISES. IN ADDITION, THE COMMISSIONER MAY REQUIRE THE OWNER OR OPERATOR TO PUBLISH SUCH NOTICE IN OTHER MEDIA AND IN LANGUAGES OTHER THAN ENGLISH. Such notice shall contain the following:

(i) the name and mailing address of the owner or operator of the subject [premise] PREMISES and the address of the location of the proposed activity[;],

(ii) the draft order number[;],

(iii) the summary of the draft order provisions regarding the proposed activity[;],

(iv) the type of authorization sought, including a reference to the applicable statute or regulation[;],

(v) a description of the location of the proposed activity and any natural resources affected thereby[;],

(vi) the name, address and telephone number of any agent of the [respondent] OWNER OR OPERATOR from whom interested persons may obtain copies of the draft order[;],

(vii) a brief description of all opportunities for public participation provided by statute or regulation, including the length of time available for submission of public comments to the commissioner on the draft order[;], and

(viii) such additional information as the commissioner deems necessary to comply with any provision of the Regulations of Connecticut State Agencies or with the Act[.];

(D) [for an individual] FOR A TENTATIVE DETERMINATION REGARDING A permit APPLICATION UNDER THIS SUBSECTION, OTHER THAN A GENERAL PERMIT, sends a copy of the notice required by section 22a-6h of the [general statutes] CONNECTICUT GENERAL STATUTES to[:] THOSE IDENTIFIED IN, AND AS REQUIRED BY, SECTION 22a-174-2a(b)(5)(A) THROUGH (G) INCLUSIVE, OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(i) the Administrator;

(ii) the Chief Executive Officer of the municipality where the premise is or will be located;

(iii) the appropriate Connecticut Regional Planning Agency;

(iv) any federally-recognized Indian governing body whose lands may be affected by emissions from the premise which is the subject of such permit;

(v) the Director of the air pollution control program in any affected state; and

(vi) any individual who makes a request to the commissioner, in writing, to receive such a notice.

(E) In addition to any notice in accordance with subparagraph (B), (C) or (D) of this subdivision, the commissioner shall contemporaneously send a copy of the tentative determination, or draft order, to the Administrator and the Director of the air pollution control program in any affected state.]

(4) Following receipt of a request for a public hearing pursuant to [subdivision (d)(3) this subsection] SECTION 22a-174-2a(c)(6) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, THE COMMISSIONER SHALL PUBLISH a notice of such public hearing [shall be published] AT THE OWNER OR OPERATOR'S EXPENSE in a newspaper of general circulation in the affected area at least thirty (30) days prior to such hearing. IN ADDITION, THE COMMISSIONER MAY REQUIRE THE OWNER OR OPERATOR TO PUBLISH SUCH NOTICE IN OTHER MEDIA AND IN LANGUAGES OTHER THAN ENGLISH.

(5) The commissioner shall not issue any permit or order pursuant to this subsection which waives or makes less stringent any limitation, standard or requirement contained in or issued pursuant to the State implementation plan or that is otherwise federally enforceable, including any standard established in 40 CFR [Part] 63

(6) The commissioner shall provide the Administrator with a copy of any general permit issued pursuant to this subsection.

(7) Notwithstanding a permit or order issued pursuant to subdivision [d)](1) of this subsection, the owner or operator of any [premise] PREMISES subject to this section shall pay the [department] DEPARTMENT all fees required by section 22a-174-26 of the Regulations of Connecticut State Agencies.

(8) Notwithstanding the provisions of section 22a-174(l) of the [general statutes] CONNECTICUT GENERAL STATUTES, the commissioner shall not issue a general permit covering a stationary source subject to any standard or other requirement pursuant to 40 CFR [Parts] 72 through 78, inclusive .

(9) IF THE COMMISSIONER OR ADMINISTRATOR DETERMINES THAT THE OWNER OR OPERATOR OF ANY PREMISES THAT IS SUBJECT TO A GENERAL PERMIT ISSUED UNDER THIS SECTION HAS NOT QUALIFIED FOR APPLICABILITY UNDER

SUCH GENERAL PERMIT, SUCH NONCOMPLIANCE SHALL BE A VIOLATION OF THIS SECTION AND SUCH OWNER OR OPERATOR SHALL BE DEEMED TO HAVE BEEN OPERATING A TITLE V SOURCE WITHOUT A TITLE V PERMIT.

(10) IF THE COMMISSIONER OR ADMINISTRATOR DETERMINES THAT THE OWNER OR OPERATOR OF ANY PREMISES THAT IS SUBJECT TO A PERMIT OR ORDER ISSUED UNDER THIS SUBSECTION HAS NOT COMPLIED WITH THE TERMS OR CONDITIONS OF SUCH PERMIT OR ORDER, SUCH NONCOMPLIANCE SHALL BE A VIOLATION OF THIS SECTION AND SUCH OWNER OR OPERATOR SHALL BE DEEMED TO HAVE BEEN OPERATING A TITLE V SOURCE WITHOUT A TITLE V PERMIT.

(11) THE COMMISSIONER SHALL SUBMIT THIS SUBSECTION FOR APPROVAL BY THE ADMINISTRATOR UNDER TITLE I OF THE ACT TO AUTHORIZE THE ISSUANCE OF FEDERALLY ENFORCEABLE STATE OPERATING PERMITS IN LIEU OF TITLE V PERMITS. ANY PERMIT ISSUED UNDER THIS SUBSECTION SHALL NOT BE DEEMED A TITLE V PERMIT.

(e) MACT and Acid Rain Requirements.

(1) [If the Administrator does not promulgate a MACT standard for a category of sources within eighteen (18) months of the federal deadline for promulgating a for such category of sources, the commissioner shall determine a MACT standard for such category of sources. The federal deadline for promulgating a MACT standard is as published in the Federal Register, Vol.58, No. 231, December 3, 1993.] IF THE ADMINISTRATOR FAILS TO PROMULGATE A MACT STANDARD FOR A CATEGORY OF SOURCES CONSISTENT WITH THE DEADLINE UNDER SECTION 112(j)(2) OF THE ACT, THEN THE COMMISSIONER SHALL DETERMINE A MACT STANDARD FOR SUCH CATEGORY OF SOURCES. The commissioner shall determine such MACT standard in the same manner as IS required of the Administrator under section 112(d)(3)of the Act. In no event shall such a standard allow emissions of any hazardous air pollutant [which emissions] THAT would exceed [those] THE EMISSIONS allowed by an applicable standard under 40 CFR [Part] 63 .

(2) Within three (3) years of the commissioner's determination of [such] A MACT standard FOR A CATEGORY OF SOURCES or upon notice from the commissioner TO THE OWNER OR OPERATOR OF THE SOURCE, whichever is earlier, the owner or operator of a source with respect to which the commissioner has determined a MACT standard shall [assure that such source is in compliance] COMPLY with such MACT standard.

(3) The owner or operator of a Title V source shall comply with the applicable provisions of 40 CFR [Parts] 72 through 78, inclusive . If ANY such provision [conflicts with or is not made a term or condition] IS STRICTER THAN A SIMILAR PROVISION of an applicable permit issued pursuant to this section, [such provisions shall nonetheless apply to such source.] THE STRICTER PROVISION SHALL PREVAIL.

(f) Timetable For Submitting An Application For A Title V Permit.

(1) The owner or operator of a Title V source which is subject to this section shall not be required to apply for a Title V permit before the implementation date of this section. After such date, the owner or operator of such a source shall apply for a Title V permit within ninety (90) days of receipt of notice from the commissioner that such application is required or by the date specified by such notice, whichever is earlier. If such owner or operator does not receive such notice, such owner or operator shall apply for such permit within nine (9) months of the implementation date of this section.

(2) EXCEPT AS PROVIDED IN SUBDIVISION (3) OF THIS SUBSECTION, [The] THE owner or operator of a Title V source [which becomes subject to this section after its implementation date] shall apply for a Title V permit within ninety (90) days of receipt of notice from the commissioner that such application is required or twelve (12) months after becoming subject to this section, whichever is earlier.

(3) The owner or operator of a Title V source which is subject to this section solely pursuant to a standard in [subparagraph (A) of subdivision (a)(15) of this section, if such standard became effective prior to July 21, 1992,] 40 CFR 60 OR 61, shall apply for a Title V permit within ninety (90) days of receipt of notice from the commissioner that such application is required [or five (5) years after the implementation date of this section,whichever is earlier] OR AS PROVIDED FOR BY THE ADMINISTRATOR MAY ISSUE, WHICHEVER IS EARLIER.

(4) The owner or operator of a PROPOSED MAJOR STATIONARY [Title V] source to whom a Title V permit has not been issued and who is required to obtain a permit [to construct pursuant to subparagraph (B) or (D) of section 22a-174-3(b)(1) of the Regulations of Connecticut State Agencies] UNDER SECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES shall apply for a Title V permit [upon] WITHIN NINETY (90) DAYS OF RECEIPT OF notice from the commissioner that such Title V permit is required or within twelve (12) months of applying for [such] A permit [to construct] UNDER SECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, whichever is earlier.

(5) [The owner or operator of a Title V source who wishes to apply] APPLICATION for renewal of a Title V permit shall [apply therefor] BE MADE no later than [six (6)] TWELVE (12) months prior to the date of expiration of [such] THE TITLE V permit.

[(6) Notwithstanding subdivisions (1) through (5) of this subsection, the owner or operator of a Title V source subject to 40 CFR Parts 72 through 78, inclusive, shall submit an application to the commissioner by January 1, 1996 pertaining to the emission of

sulfur dioxide and by January 1, 1998 pertaining to the emission of nitrogen oxides.]

(6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION, THE OWNER OR OPERATOR OF A TITLE V SOURCE SUBJECT TO 40 CFR 72 THROUGH 78, INCLUSIVE, WHICH BECOMES SUBJECT TO THIS SECTION AFTER JANUARY 1, 1998 SHALL SUBMIT A TITLE V APPLICATION TO THE COMMISSIONER WITHIN THE TIME PROVIDED BY 40 CFR 72.30 OR WITHIN NINETY (90) DAYS OF RECEIPT OF NOTICE FROM THE COMMISSIONER THAT SUCH APPLICATION IS REQUIRED, WHICHEVER IS EARLIER.

(g) TITLE V PERMIT Applications.

(1) [(A)] An application for a Title V permit shall be made on forms provided by the [department] COMMISSIONER. The application shall [comply with subparagraphs (B) through (G) of this subdivision and with subdivisions (2), (3) and (4) of this subsection] CONTAIN THE FOLLOWING[.]:

[(B)] (A) [The application shall identify the applicant's legal name and address, the name and agent for service of the owner of the subject source, if the applicant is not the owner,] THE LEGAL NAME AND BUSINESS ADDRESS OF THE APPLICANT AND OF THE APPLICANT'S AGENT FOR SERVICE OF PROCESS AND, IF THE APPLICANT IS NOT THE OWNER OF THE SUBJECT SOURCE, THE LEGAL NAME AND BUSINESS ADDRESS OF SUCH OWNER AND OF THE OWNER'S AGENT FOR SERVICE OF PROCESS, and names and telephone numbers of THE plant site manager and other individuals designated by the applicant to answer questions pertaining to such application[.];

[(C)] (B) [The application shall contain all] ALL information required by section 22a-3a-5 of the Regulations of Connecticut State Agencies, including an executive summary [clearly and concisely summarizing the information contained in the application.];

[(D)] (C) [The application shall contain a] A compliance plan pursuant to subsection (i) of this section MEETING THE REQUIREMENTS OF 40 CFR 70.5(c)(8), [and a statement certifying notification pursuant to subsection (l) of this section.] ;

(D) A COMPLIANCE CERTIFICATION PURSUANT TO SUBSECTION (q)(2) OF THIS SECTION MEETING THE REQUIREMENTS OF 40 CFR 70.5(c)(9);

(E) [The applicant may apply for more than one alternative operating scenario for such source. For each alternative operating scenario, the applicant shall submit the] THE information required by this subsection FOR EACH

ALTERNATIVE OPERATING SCENARIO THAT THE APPLICANT HAS INCLUDED IN THE TITLE V PERMIT APPLICATION[.];

(F) [If the applicant has complied with section 22a-174-22 or 22a-174-32 of the Regulations of Connecticut State Agencies, by an alternative means of compliance for nitrogen oxides or volatile organic compounds by order or permit or a certification, the application shall identify and describe] AN IDENTIFICATION AND DESCRIPTION OF ANY [each such] alternative means of compliance WITH SECTIONS 22a-174-22 OR 22a-174-32 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES ISSUED BY ORDER, PERMIT OR CERTIFICATION. In addition, a copy of such order, permit or certification shall be submitted with the application[.]; AND

(G) [The application shall contain a] A certification pursuant to [subdivision (b)(4) of this] section 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

(2) [An application for a Title V permit, for] FOR the purpose of determining the applicability of this section pursuant to subsection (c) of this section, to impose any applicable requirement, or to determine compliance with any applicable requirement, AN APPLICATION FOR A TITLE V PERMIT shall provide the following information about the subject TITLE V source:

(A) [for] FOR each alternative operating scenario proposed, a description of the processes utilized, the standard industrial classification code, [identify] IDENTIFICATION OF each emission unit involved, as well as its throughput, hours of operation and capacity [of each such emission unit,] for [any] THE calendar year prior to the YEAR OF application or such other time period as the commissioner deems appropriate;

(B) [for] FOR each regulated air pollutant emitted or proposed to be emitted by the subject source, the amount of potential and actual emissions from such source during the TIME PERIOD SPECIFIED IN SUBPARAGRAPH (A) OF THIS SUBDIVISION [calendar year preceding the date of the application or during such other time period as the commissioner deems appropriate]; such emissions shall [include fugitive emissions to the extent quantifiable, and shall] be expressed in tons per year and in such terms as are necessary to demonstrate compliance with the applicable standard reference test method, if any;

(C) [the] THE methodology used by the applicant to quantify EMISSIONS, in such terms as are necessary to determine compliance with the applicable standard reference test method, if any, the potential and actual emissions referred

to in subparagraph (B) of this subdivision, and the emission rates in tons per year of each regulated air [pollutants] POLLUTANT emitted or proposed to be emitted by the subject TITLE V source;

(D) [the] THE calculations used by the applicant to determine whether such source is a Title V source to which this section applies;

(E) [a] A description of all air pollution control equipment [in use] USED at the subject TITLE V source and a description of all monitoring equipment [in use] USED at the subject TITLE V source to quantify [such] emissions or to determine compliance WITH ANY APPLICABLE REQUIREMENT;

(F) [for] FOR each regulated air pollutant emitted or proposed to be emitted by the subject TITLE V source, a description of any [applicable] operational limitations or work [practice standards] PRACTICES in effect at such source which affect emissions at the time the application is submitted or A DESCRIPTION OF THE work [practice standards] PRACTICES to be implemented which will affect PROPOSED emissions [proposed to be emitted] at a specified later date;

(G) [identification] FOR EACH EMISSION UNIT, AN IDENTIFICATION of all applicable requirements, AND IDENTIFICATION AND EXPLANATION OF ANY EXEMPTIONS THE APPLICANT PROPOSES TO EXERCISE FROM OTHERWISE APPLICABLE REQUIREMENTS, AND [for each emission unit, including] IDENTIFICATION OF any applicable MACT source category as published in the Federal Register, [Vol.57, No. 137, July 16, 1992] IN ACCORDANCE WITH SECTION 112(e)(3) OF THE ACT, [and] including [those] ANY CATEGORY which [are] IS subject to compliance dates occurring after the effective date of this section;

(H) [any] ANY [applicable] test method to be used by the applicant for determining compliance with each applicable requirement [listed] IDENTIFIED pursuant to subparagraph (G) of this subdivision; and

(I) [any] ANY other information, required by each applicable requirement [listed] IDENTIFIED pursuant to subparagraph (G) of this subdivision[, including good engineering practices used to determine stack height].

(3) [Notwithstanding subdivisions (1) and (2) of this subsection, an] AN [applicant] APPLICATION need not CONTAIN [provide] the information REQUIRED UNDER SUBDIVISIONS (1) AND (2) OF THIS SUBSECTION on those items or activities specified in subparagraphs (A) and (B) of this subdivision.

(A) A laboratory hood used solely for the purpose of experimental study or teaching of any science or testing or analysis of drugs, chemicals, chemical compounds, or other substances, provided that the containers used for reactions, transfers, and other handling of substances under such laboratory hood are designed to be easily and safely manually manipulated by one person[.]; OR

(B) Any of the following items or activities which are not the principal function of [such Title V] THE SUBJECT TITLE V source:

(i) office equipment, including but not limited to copiers, facsimile and communication equipment, and computer equipment[;],

(ii) grills, ovens, stoves, refrigerators, vending machines and other restaurant-style food preparation or storage equipment[;],

(iii) lavatory vents, hand dryers, and noncommercial clothes dryers, not including dry cleaning machinery[;],

(iv) garbage compactors and waste barrels[;],

(v) aerosol spray cans[;],

(vi) heating, air conditioning, and ventilation systems which do not remove air contaminants generated by or released from process or fuel burning equipment and which are separate from such equipment AND WHICH ARE NOT SUBJECT TO 40 CFR PART 82,

(vii) routine housekeeping activities such as painting buildings, roofing, and paving parking lots[;],

(viii) all clerical and janitorial activities[;],

(ix) maintenance activities such as: THE MECHANICAL REPAIR OF [vehicle repair] VEHICLES[,]; THE USE OF brazing, soldering and welding equipment, carpentry, [shops,] electrical charging [stations], grinding and polishing operations, maintenance shop vents[,]; AND miscellaneous non-production surface cleaning, preparation and painting operations[;], and

(x) space heaters which can reasonably be carried by one person by hand.

(4) Notwithstanding subdivision (3) of this subsection, an [applicant] APPLICATION shall include [the emissions from] INFORMATION REGARDING each activity or item[,] set forth in [paragraph] SUBPARAGRAPHS (A) AND (B) of subdivision (3) of this subsection, if necessary to determine whether a [source] PREMISES is a Title V source [to which this section is applicable] OR TO IMPOSE AN APPLICABLE REQUIREMENT. [If] IN ADDITION, IF the commissioner determines the emissions from any activity or items are needed to determine the applicability of this section or to impose any applicable requirement, the applicant shall list on the application such activities or items listed in subparagraphs (A) and (B) of subdivision (3) of this subsection.

(5) AN APPLICATION TO RENEW OR MODIFY A TITLE V PERMIT SHALL BE MADE ON FORMS PROVIDED BY THE COMMISSIONER AND IN ACCORDANCE WITH SECTION 22a-174-2a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. SUCH APPLICATION SHALL INCLUDE A DESCRIPTION OF ANY PROPOSED CHANGES, A PROPOSED PERMIT, ANY PROPOSED MONITORING PROCEDURES, ANY CHANGES IN ACTUAL EMISSIONS RESULTING FROM THE PROPOSED CHANGES, AND AN IDENTIFICATION OF ALL REGULATORY, STATUTORY, OR OTHERWISE APPLICABLE REQUIREMENTS THAT WOULD BECOME APPLICABLE AS A RESULT OF SUCH CHANGES.

(h) TITLE V Application Processing

(1) Unless the commissioner notifies the applicant WITHIN SIXTY (60) DAYS OF RECEIPT OF A SUFFICIENT AND TIMELY FILED APPLICATION that [an] THE application [is not sufficient, in accordance with] FAILS TO MEET THE REQUIREMENTS IN subsection (g) of this section and section 22a-3a-5(a)(1) of the Regulations of Connecticut State Agencies, THE OWNER OR OPERATOR SHALL NOT BE LIABLE FOR FAILING TO OBTAIN SUCH PERMIT. [within sixty (60) days of receipt of the application, such application shall be deemed sufficient.] If, subsequent to such [60] SIXTY (60) days, while processing an application for a Title V permit [that has been determined or deemed sufficient], the commissioner determines that additional information is necessary to take final action regarding such application, the commissioner may notify the applicant in writing that particular information is necessary. The applicant shall submit such information in writing within forty-five (45) days of such notification.

(2) An applicant for a Title V permit shall submit[, during the pendency of the application,] information to address any requirements that become applicable to the subject source AND SHALL SUBMIT CORRECT, COMPLETE AND SUFFICIENT INFORMATION [or] upon THE APPLICANT'S becoming aware of any incorrect, INCOMPLETE, AND or insufficient submittal, DURING THE PENDENCY OF THE APPLICATION, OR ANY TIME THEREAFTER, with an explanation for such deficiency and a certification pursuant to [subdivision (b)(4) of this section]

SECTION 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(3) An application to renew or, pursuant to subsection (r) of this section, to modify a Title V permit, shall include all of the information required pursuant to subsection (g) of this section and shall indicate how, if at all, such application differs from the application for the permit sought to be renewed or modified.]

[(4) If the owner or operator of a Title V source makes a timely and sufficient application for a new Title V permit pursuant to this subsection, such owner or operator shall not be liable for failure to previously have obtained such a permit, provided such owner or operator shall be liable for such failure if he does not timely provide information requested pursuant to a notice of the commissioner issued pursuant to subdivision (1) of this subsection.]

[(5)] (3) The owner or operator of a Title V source shall submit a copy of [his] THE application for a Title V permit, or for renewal or modification thereof, and of any compliance plan prepared under subsection (i) of this section, to the Administrator at the same time such owner or operator submits [such documents] THE APPLICATION to the commissioner.

(i) Compliance HISTORY, Plans WITH SCHEDULES AND CERTIFICATIONS.

(1) [Together with his application for a Title V permit, the applicant shall submit to the commissioner in writing a compliance plan which, describes the compliance status of the subject source with respect to all applicable requirements, in accordance with this subdivision, and which plan meets the other requirements of this subsection. For the purposes of this section, compliance status means the degree to which the applicant is in compliance with all applicable requirements. The information in the compliance plan shall be consistent with the requirements of any judgement or administrative order against the applicant concerning such source. The compliance plan shall contain a certification pursuant to subdivision (b)(4) of this section and a compliance certification pursuant to subdivision (q)(2) of this section. The compliance plan shall provide information on each of the following proceedings involving the owner or operator.] EACH APPLICATION FOR A TITLE V PERMIT SHALL INCLUDE:

(A) A COMPLIANCE HISTORY, IF REQUIRED BY THE COMMISSIONER, IN ACCORDANCE WITH SECTION 22a-6m OF THE CONNECTICUT GENERAL STATUTES;

[(A) Any criminal conviction involving a violation of any environmental protection law if such violation occurred within the five (5) years immediately preceding the date the application is submitted;]

[(B) any civil penalty imposed in any state or federal judicial proceeding, or any civil penalty exceeding five thousand (5,000) dollars imposed in any administrative proceeding, for a violation of any environmental protection law if such violation occurred within five (5) years immediately preceding the date the application is submitted; and]

[(C) any judicial or administrative orders issued to the applicant regarding any such violation.]

[With respect to any such proceeding initiated by the commissioner or the Connecticut Attorney General, the applicant shall provide the docket, case, or order number or, if there is no such number, other identifying information; the date such proceeding commenced; and, if such proceeding has terminated, the date it terminated. With respect to any such proceeding by another state or by an agency thereof or by the federal government, the applicant shall provide a copy of the complaint, order, or other official document which initiated such proceeding and, if such proceeding has terminated, a copy of the final judgement, decree, order, decision, or other official document which terminated such proceeding.]

(B) A COMPLIANCE PLAN, IN ACCORDANCE WITH 40 CFR 70.5(c)(8) , THAT DESCRIBES THE COMPLIANCE STATUS OF THE TITLE V SOURCE WITH RESPECT TO ALL APPLICABLE REQUIREMENTS AND INCLUDING THE FOLLOWING:

[(2)](i) [With] WITH respect to applicable requirements with which the subject source is in compliance at the time the application is submitted, the applicant shall submit with [his] THE application a statement that the owner and operator of such source will continue to comply with such requirements[.],

(ii) WITH RESPECT TO APPLICABLE REQUIREMENTS WHICH WILL NOT TAKE EFFECT UNTIL AFTER THE REASONABLY ANTICIPATED ISSUANCE DATE OF THE TITLE V PERMIT SOUGHT BY THE APPLICANT, THE APPLICANT SHALL SUBMIT A STATEMENT THAT THE OWNER AND OPERATOR OF SUCH SOURCE WILL COMPLY AND CONTINUE TO COMPLY WITH SUCH REQUIREMENTS ONCE THEY ARE APPLICABLE,

(iii) WITH RESPECT TO APPLICABLE REQUIREMENTS FOR WHICH THE SOURCE IS NOT IN COMPLIANCE AT THE TIME OF PERMIT ISSUANCE, A DESCRIPTION OF HOW THE OWNER AND OPERATOR OF SUCH SOURCE WILL ACHIEVE COMPLIANCE WITH SUCH REQUIREMENTS IN ACCORDANCE WITH THE COMPLIANCE PLAN, AND

(iv) FOR EACH APPLICABLE REQUIREMENT IDENTIFIED IN ACCORDANCE WITH SUBPARAGRAPHS (B)(ii) AND (B)(iii) OF THIS SUBDIVISION, A COMPLIANCE SCHEDULE, WHICH SHALL BE AT LEAST AS STRINGENT AS ANY REQUIREMENT CONTAINED IN ANY FINAL JUDGMENT OR DECREE OR ANY ADMINISTRATIVE ORDER TO WHICH THE APPLICANT IS SUBJECT, SPECIFYING THE DATES BY WHICH MEASURES WILL BE TAKEN TO BRING THE TITLE V SOURCE INTO COMPLIANCE WITH THE APPLICABLE REQUIREMENT;

[(3)](C) A COMPLIANCE CERTIFICATION, WHICH MEETS THE REQUIREMENTS OF SUBSECTION (q) OF THIS SECTION AND 40 CFR 70.5(c)(9), THAT SHALL REQUIRE:

(i) THE SUBMISSION OF CERTIFIED PROGRESS REPORTS IN ACCORDANCE WITH SUBDIVISION (q)(1) OF THIS SECTION, AND

(ii) THE SUBMISSION OF COMPLIANCE CERTIFICATIONS IN ACCORDANCE WITH SUBDIVISION (q)(2) OF THIS SECTION.

(2) THE SUBMITTAL OF A COMPLIANCE SCHEDULE UNDER SUBDIVISION (1)(B)(iv) OF THIS SUBSECTION SHALL NOT PRECLUDE THE COMMISSIONER FROM IMPOSING A MORE STRINGENT COMPLIANCE SCHEDULE OR TAKING ENFORCEMENT ACTION AGAINST THE OWNER OR OPERATOR OF THE TITLE V SOURCE FOR SUCH NONCOMPLIANCE.

(3) THE COMPLIANCE PLAN CONTENT REQUIRED BY THIS SUBSECTION SHALL BE INCLUDED IN THE ACID RAIN PORTION OF A COMPLIANCE PLAN FOR A TITLE V SOURCE THAT IS ALSO SUBJECT TO ANY PROVISION OF 40 CFR 72 THROUGH 78, INCLUSIVE, EXCEPT AS SPECIFICALLY SUPERSEDED THEREIN.

[(3) The compliance plan required by this subsection shall include a schedule for bringing the subject source into compliance with each applicable requirement. Such schedule shall include a schedule of remedial measures to be taken, assuring compliance by specified dates, with such applicable requirements for which the Title V source will be in noncompliance at the time of Title V permit issuance. Such submittal of a compliance schedule shall not preclude the commissioner from taking enforcement action.]

[(4) With respect to applicable requirements with which the subject source is not in compliance at the time the application is submitted and which will not take effect until after the reasonably anticipated issuance date of the Title V permit sought by the applicant, the applicant shall submit a statement that the such source will comply with such requirements by such dates.]

[(5) Notwithstanding subdivisions (1) through (4) of this subsection, for any Title V source that comprises one or more emission units subject to any provision of 40 CFR Parts 72 through

78, inclusive, the applicable requirements with regard to such schedule and compliance methods, shall be identified as required by this subsection, except as specifically superseded by 40 CFR Parts 72 through 78, inclusive.]

[(6) Such schedule shall require the submission of certified progress reports in accordance with subdivision (q)(1) of this section, no less frequently than once every six (6) months.

(7) Such schedule shall require the submission of compliance certifications in accordance with subdivision (q)(2) of this section, no less frequently than one every twelve (12) months.]

(j) Standards for Issuing and Renewing Title V permits.

(1) EXCEPT WITH RESPECT TO AN APPLICATION FOR A TITLE V PERMIT FOR A SOURCE SUBJECT TO A DEADLINE PURSUANT TO 40 CFR 72 THROUGH 78, INCLUSIVE, WITHIN EIGHTEEN (18) MONTHS OF RECEIVING A TITLE V PERMIT APPLICATION, AND WITHIN TWELVE (12) MONTHS OF RECEIVING AN APPLICATION TO MODIFY OR RENEW A TITLE V PERMIT, [The] THE commissioner shall [take final action with respect to a sufficient application within eighteen (18) months of receiving a such application,] MAKE A DECISION TO GRANT OR DENY SUCH APPLICATION. [and] THE COMMISSIONER shall submit a copy of such [final action] DECISION to the Administrator. Failure of the commissioner to act within such period shall not entitle the applicant to PERMIT issuance, modification or renewal of any Title V permit. The commissioner shall not issue a Title V permit, PERMIT MODIFICATION, OR PERMIT RENEWAL to the owner or operator of a Title V source unless the commissioner determines that [such owner or operator is likely to be able to comply] THE SUBJECT SOURCE IS IN COMPLIANCE OR WILL BE IN COMPLIANCE with all relevant and applicable requirements and [such] THE permit OR PERMIT MODIFICATION [provides as follows] CONTAINS THE FOLLOWING CONDITIONS:

(A) [The permit expires on a] AN EXPIRATION date no later than five (5) years after the date the commissioner issues such permit[.];

(B) [The permit contains a] A statement that [upon expiration of the permit the permittee shall not continue to operate the subject source, unless he has filed a timely and sufficient renewal application in accordance with subsections (g), (h) and (i) of this section and any other applicable provisions of law.] ALL OF THE TERMS AND CONDITIONS OF THE PERMIT SHALL REMAIN IN EFFECT UNTIL THE RENEWAL PERMIT IS ISSUED OR DENIED PROVIDED THAT A TIMELY RENEWAL APPLICATION IS FILED IN ACCORDANCE WITH THIS SECTION;

(C) [The permit contains a] A statement that the permittee shall operate the [subject] source in compliance with the terms of all applicable [administrative] regulations, the terms of such permit, and any other applicable provisions of law. In addition, the permit [states] SHALL STATE THAT any noncompliance [with such permit] constitutes a violation of the Act and is grounds for enforcement action[;], [for] permit termination, revocation[,] AND REISSUANCE, or modification[;], [or for] AND denial of a permit renewal application[.];

(D) [The permit identifies] A STATEMENT OF the legal authority AND TECHNICAL ORIGIN for each PERMIT term or condition [thereof], including any difference in form from the applicable requirement upon which the term or condition is based[.];

(E) [The permit identifies] A STATEMENT IDENTIFYING which terms or conditions [thereof] OF THE PERMIT are federally enforceable and which [terms or conditions thereof] are enforceable only by the commissioner, and [the permit states] EXPLAINING that the federally enforceable provisions, AND THOSE NOT OTHERWISE IDENTIFIED AS ENFORCEABLE ONLY BY THE COMMISSIONER, are enforceable by the Administrator and the citizens under the Act[.];

(F) If the subject source is required by an applicable requirement to limit emissions of a regulated air pollutant, the permit imposes such limits, provided that, where allowed by such applicable requirement:

[(i) such limits shall be no less than one (1) ton per year for each emission unit, for total suspended particulates, sulfur oxides, nitrogen oxides, volatile organic compounds, carbon monoxide, and PM 10; and]

[(ii)](i) such limits [shall be] ARE no less than 1,000 pounds per year or any quantity prescribed by 40 CFR [Part] 63, WHICHEVER IS MORE STRINGENT, for each emission unit, for any hazardous air pollutant[.], AND

(ii) FOR ALL OTHER REGULATED AIR POLLUTANTS SUCH LIMITS ARE NO LESS THAN ONE (1) TON PER POLLUTANT PER YEAR FOR EACH EMISSION UNIT;

(G) [The permit states that it] A STATEMENT THAT THE PERMIT shall not be deemed to:

(i) preclude the creation or use of emission reduction credits OR ALLOWANCES or the trading [of such

credits] THEREOF in accordance with subparagraphs (I) and (P) of this subdivision[;],

(ii) authorize emissions of an air pollutant so as to exceed levels that [might otherwise be] ARE prohibited under 40 CFR [Part] 72 [;],

(iii) authorize the use of allowances pursuant to 40 CFR [Parts] 72 through 78, inclusive, as a defense to noncompliance with any [other] applicable requirement[;], or

(iv) impose limits on emissions from items or activities specified in subparagraphs (A) and (B) of subdivision (g)(3) of this section unless imposition of such limits is required by an applicable requirement[.];

(H) [For each emissions unit covered by such permit, the permit contains all] A STATEMENT OF ALL limitations, requirements, and standards that apply to [the subject source] EACH EMISSION UNIT.[, including without limitation] SUCH STATEMENT SHALL INCLUDE:

(i) those operational limitations, requirements and standards necessary to assure compliance with all applicable requirements, including 40 CFR [Part] 63 [;], and

(ii) any applicable requirement of 40 CFR Part 72 through 78, inclusive [.];

(I) [The permit contains] A STATEMENT OF all [allowable] alternative emission limits or means of compliance ALLOWED BY THE COMMISSIONER. Such alternative emission limits OR MEANS shall be quantified, AND legally enforceable, and the method for [achieving] DEMONSTRATING COMPLIANCE WITH such limits shall BE based upon replicable procedures. The permit may contain an emissions limitation facilitating [intra-premise] INTRA-PREMISES EMISSION REDUCTION trades allowed by [subparagraph (A) of subdivision (r)(3)] SUBSECTION (r) of this section and any other applicable requirements[.];

(J) [The permit contains] A STATEMENT OF all terms and conditions applicable to any [legally permissible] ALLOWABLE alternative operating scenario[.], INCLUDING A REQUIREMENT [The permit must provide] that each such alternative operating scenario shall meet all applicable requirements[.] AND NOT RESULT IN ADVERSE EFFECTS ON PUBLIC HEALTH OR THE ENVIRONMENT;

(K) [The permit requires] A REQUIREMENT THAT the permittee [to] monitor regulated air pollutants emitted by the subject source to determine compliance with applicable emission limitations and [standard] STANDARDS. Unless otherwise required by an applicable requirement, such monitoring shall cover items and activities other than those listed in subdivision (g)(3) of this section and other than emissions below the levels of emissions prescribed in subparagraph (1)(F) [of subdivision (1)] of this subsection. Such monitoring REQUIREMENTS shall consist of one or more of the following:

(i) all emissions monitoring and analysis procedures or test methods required [under the] BY applicable requirements, including any procedures and methods required pursuant to 40 CFR Part 70 [;], and

(ii) where an applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, [the permittee may be required by the permit to conduct] periodic monitoring or recordkeeping sufficient to yield reliable data [from] DURING the relevant time period [that] WHICH DATA is representative of the emissions or parameters required by the permit to be monitored. Recordkeeping [may] SHALL be sufficient to meet the requirements of this subsection IF SO DETERMINED BY THE COMMISSIONER[.];

(L) [The permit contains all permit] ALL requirements for emissions monitoring analysis procedures and test methods. SUCH REQUIREMENTS SHALL SPECIFY TO THE EXTENT APPLICABLE: WHAT MONITORING EQUIPMENT SHALL BE INSTALLED AND USED OR THE MONITORING METHOD THAT SHALL BE USED; MAINTENANCE PROCEDURES FOR THE MONITORING EQUIPMENT; AND UNITS OF MEASUREMENT, AVERAGING PERIODS, AND OTHER MEASUREMENTS CONVENTIONS, CONSISTENT WITH APPLICABLE REQUIREMENTS. [shall, as appropriate, specify the use, maintenance, and installation of monitoring equipment or methods, monitoring requirements, terms, units of measurement, averaging periods, and other statistical conventions consistent with the applicable requirement and good engineering practices.];

(M) [The permit provides] A STATEMENT that the commissioner may, for the purpose of determining compliance with the permit and other applicable requirements, enter the [subject source] PREMISES at reasonable times to inspect any facilities, equipment, practices, or operations regulated or

required under the permit; to sample or OTHERWISE monitor substances or parameters; and to [have access to] review and copy relevant records[, at reasonable times,] lawfully required to be maintained at such [source] PREMISES in accordance with the permit[.];

(N) [The permit contains all] ALL [applicable] recordkeeping requirements and all reporting AND NOTIFICATION requirements pursuant to subsections (o), (p) and (q) of this section[.];

[(O) The permit contains a] INCLUDING A requirement that the permittee shall report in writing to the commissioner any DEVIATION PROVIDED UNDER SUBSECTION (p) IN ACCORDANCE WITH SUBSECTION (p) OF THIS SECTION [deviation caused by upset or control equipment deficiencies, any deviation from a permit requirement, the likely cause of such deviation, and any corrective actions to address such deviation; such report shall be made within ninety (90)days of such deviation.];

(O) THE CONDITIONS UNDER WHICH THE PERMIT WILL BE REOPENED PRIOR TO THE EXPIRATION OF THE PERMIT AS IDENTIFIED IN 40 CFR 70.7(f)(1)(i) THROUGH (iv);

(P) [The permit contains any] ANY terms and conditions necessary to enable the permittee to create, use, and trade emissions reduction credits OR ALLOWANCES in accordance with sections 22a-174f and 22a-174i of the [general statutes] CONNECTICUT GENERAL STATUTES, ANY REGULATIONS ADOPTED THEREUNDER, and with the provisions of [the EPA's "Economic Incentive Program Rules", published April 7, 1994 (Federal Register, Volume 59, Number 67)] 40 CFR 51 SUBPART U . Such terms and conditions, to the extent that the applicable requirements provide for trading without the commissioner's or Administrator's case-by-case approval of each emission trade, shall meet all the applicable requirements[.];

(Q) [The permit contains a] A schedule [that identifies the methods the permittee shall use for achieving compliance with applicable requirements and the dates by which compliance shall be reached, in addition to dates] for monitoring, recordkeeping, and reporting with respect to [such actions. Such schedule may be based on information provided in] the compliance plan submitted in accordance with subsection (i) of this section[.];

(R) [The permit contains a] A severability clause to ensure the continued validity of provisions remaining in [such] THE TITLE V permit [after] IF other provisions [have been] ARE legally invalidated[.];

(S) [The permit may contain any] ANY term or condition of any other permit, OR REGISTRATION THEREUNDER, [to construct or operate] issued to the permittee pursuant to section 22a-174 of the [general statutes] CONNECTICUT GENERAL STATUTES OR ANY TERM OR CONDITION OF ANY ORDER ISSUED BY THE COMMISSIONER PRIOR TO ISSUANCE OF THE TITLE V PERMIT, MODIFICATION OR RENEWAL THEREOF[.];

(T) [The permit states that the permittee's need to halt or reduce operations at the subject source shall not be a defense in an enforcement action concerning a violation of the permit.] A STATEMENT THAT IT SHALL NOT BE A DEFENSE FOR THE PERMITTEE IN AN ENFORCEMENT ACTION THAT IT WOULD HAVE BEEN NECESSARY TO HALT OR REDUCE THE PERMITTED ACTIVITY IN ORDER TO MAINTAIN COMPLIANCE WITH THE CONDITIONS OF THIS PERMIT;

(U) [The permit states] A STATEMENT that [it] THE PERMIT may be modified, revoked, reopened, reissued, or suspended by the [commissioner, or the] Administrator in accordance with [this section] 40 CFR 70.7(f), 40 CFR 70.7(g) AND 40 CFR 70,6(a)(6)(iii), AND THAT IT MAY BE MODIFIED, REVOKED OR SUSPENDED BY THE COMMISSIONER IN ACCORDANCE WITH [section] SECTIONS 4-182 AND 22a-174c of the [general statutes] CONNECTICUT GENERAL STATUTES, or [subsection (d) of section 22a-3a-5] SECTION 22a-3a-5(d) of the Regulations of Connecticut State Agencies[.];

(V) [The permit states] A STATEMENT that the filing of an application [by a permittee for a permit modification, reissuance, or termination,] or of a notification of planned changes or anticipated noncompliance does not stay [any condition of such permit.] THE PERMITTEE'S OBLIGATION TO COMPLY WITH THE PERMIT;

(W) [The permit states] A STATEMENT that the permit does not convey any property rights or any exclusive privileges[.];

(X) [The permit requires] A REQUIREMENT THAT the permittee [to] submit additional information IN WRITING, at the commissioner's request, within [a reasonable time] THIRTY (30) DAYS OF RECEIPT OF NOTICE FROM THE COMMISSIONER OR BY SUCH OTHER DATE SPECIFIED BY THE COMMISSIONER, WHICHEVER IS EARLIER, including [any] information [that the commissioner may request in writing] to determine whether cause exists for modifying, revoking, REOPENING, [and] reissuing, or [terminating] SUSPENDING the permit or to determine compliance with the permit[.];

(Y) [The permit specifies the] THE conditions under which the permit will be modified [prior to the expiration of the

permit.] AND REFERENCES TO THE AUTHORITY FOR PERMIT MODIFICATION; AND

(Z) A STATEMENT THAT THE OWNER OR OPERATOR HAS PAID, AND WILL CONTINUE TO PAY, TO THE DEPARTMENT ALL FEES AS REQUIRED BY SECTION 22a-174-26 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, INCLUDING THOSE FEES DUE DURING THE TERM OF SUCH PERMIT.

[(2) The commissioner shall not issue a Title V permit unless the owner or operator of the subject source has paid to the department all fees AS required by section 22a-174-26 of the Regulations of Connecticut State Agencies.]

[(3)](2) The commissioner shall not issue a Title V permit unless all the requirements of subsections (l) and (m) of this section have been complied with.

(3) THE COMMISSIONER SHALL MAKE A SUMMARY OF THE LEGAL AUTHORITY AND TECHNICAL ORIGIN OF EACH PROPOSED PERMIT TERM AND CONDITION IDENTIFIED UNDER SUBDIVISION (1)(D) OF THIS SUBSECTION. THE SUMMARY SHALL PROVIDE THE LEGAL AND FACTUAL BASIS FOR EACH PROPOSED PERMIT TERM OR CONDITION.

(4) THE COMMISSIONER SHALL SEND TO THE ADMINISTRATOR, AND ANY INDIVIDUAL WHO SO REQUESTS IT IN WRITING, A COPY OF THE SUMMARY REQUIRED BY SUBDIVISION (3) OF THIS SUBSECTION.

(5) THE COMMISSIONER SHALL NOT ISSUE A GENERAL PERMIT UNDER SECTION 22a-174(*l*) OF THE CONNECTICUT GENERAL STATUTES WITH RESPECT TO A STATIONARY SOURCE WHICH IS SUBJECT TO ANY PROVISION OF 40 CFR 72 THROUGH 78, INCLUSIVE.

(k) TITLE V Permit Shield

(1) EXCEPT AS OTHERWISE PROVIDED, [The] THE commissioner may [include a condition] STATE in a new [or modified] Title V permit OR MODIFIED TITLE V PERMIT UNDER SECTION 22a-174-2a(d)(3) OR (4)OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, [stating] that compliance with the TERMS AND conditions of such permit shall be deemed compliance with [any] AN IDENTIFIED applicable requirement, provided that:

(A) [such] SUCH applicable requirement is stated in such permit APPLICATION AND PERMIT and the legal authority for such requirement is specifically identified in the permit; or

(B) [such] SUCH requirement is specifically identified in the permit and determined by the commissioner not to be

applicable to such Title V source, and the permit includes such determination or a concise summary thereof.

(2) Any Title V permit that does not expressly state that compliance with the conditions of such permit shall be deemed compliance with [any] A SPECIFIED applicable requirement shall be presumed not to provide [such] a [condition] PERMIT SHIELD as provided for by subdivision (1) of this subsection.

(3) Notwithstanding subdivision (1) of this subsection, [no such provision] THE [of a] Title V permit shall [alter or affect the following] COMPLY WITH THE PROVISIONS OF 40 CFR 70.6(f)(3)(i) through (iv), inclusive [:].

[(A) the provisions of section 303 of the Act, including the authority of the Administrator under the Act;

(B) the liability of an owner or operator of a Title V source for any violation of applicable requirements prior to or at the time of issuance of a Title V permit;

(C) the applicable requirements of the acid rain program under 40 CFR Part 72 ; and

(D) the ability of the Administrator to obtain information from the owner or operator of a Title V source.]

[(4) The commissioner may, upon granting a request for a permit modification pursuant to subdivision (1) or (2) of subsection (r) of this section, include a provision in the modified permit stating that compliance with the conditions of such modified permit, including the modification, shall be deemed compliance with any applicable requirement in accordance with subdivision (k)(1) of this section.]

[(5)] (4) The permit shield in subdivision (1) of this subsection shall not apply to:

(A) A modification of [the] A Title V permit pursuant to

(B) A REVISION OF A TITLE V PERMIT PURSUANT TO SECTION 22a-174-2a(f) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, INCLUDING ADMINISTRATIVE ADMENDMENTS IMPLEMENTED PURSUANT TO SECTION 22a-174-2a(f)(2)(F) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES; OR

(C) OFF-PERMIT CHANGES OR OPERATIONAL FLEXIBILITY PROVIDED

(1) Public Notice. THE REQUIREMENTS OF SECTION 22a-174-2a(b) AND 22a-174-2a(c) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES APPLY

TO AN APPLICATION FOR A TITLE V PERMIT AND THE OWNER OR OPERATOR OF A TITLE V SOURCE.

[(1) For any general permit, the commissioner shall comply with the notification requirements for notice and opportunity for public comment pursuant to section 22a-174(l)(2) of the general statutes;

(2) For any individual permit, the applicant shall comply with the requirements of section 22a-6g of the general statutes:

(3) The commissioner shall publish in the area where the source is located, a notice of tentative determination pursuant to section 22a-6h of the general statutes and send a copy of such notice to:

(A) the Administrator;

(B) the Chief Executive Officer of the municipality where the subject source is or is proposed to be located;

(C) the appropriate Connecticut Regional Planning Agency;

(D) any federally recognized Indian governing body whose lands may be affected by emissions from the subject source;

(E) the Director of the air pollution control program in any affected state; and

(F) the individuals who request such notices in writing.

In addition to such notice, the commissioner shall contemporaneously send a copy of the tentative determination to the Administrator and to the Director of the air pollution control program in any affected state.

(4) In addition to the provisions set forth in subdivision (3) of this subsection said notice shall include the name and address of the department, the activities involved in the permit action, the emission changes involved; any permit modification involved; the name and address and telephone number of a person from whom interested persons may obtain additional information.

(5) If the commissioner does not accept the recommendations of any such Director the commissioner shall inform such Director, and the Administrator, of the reasons therefor.

(6) The commissioner shall not issue a general permit under section 22a-174(l) of the general statutes with respect to a stationary source which is subject to any provision pursuant to 40 CFR Parts 72 through 78, inclusive.]

(m) Public Hearings. THE REQUIREMENTS OF SECTION 22a-174-2a(c) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES APPLY TO AN APPLICATION FOR A TITLE V PERMIT AND THE OWNER OR OPERATOR OF A TITLE V SOURCE.

[(1) Any person may file, within thirty (30) days following the publication of a notice of a tentative determination under subsection (l) of this section, written comments on such determination. Any such comments opposing the issuance of the subject permit shall describe, in detail, the basis for such opposition and may be accompanied by a request for a public informational or adjudicatory hearing, or for both.

(2) Following receipt of a request for a public informational hearing, or upon the commissioner's own initiative, the commissioner shall, prior to the issuance of a Title V permit, hold such hearing. The commissioner shall publish a notice of such public informational hearing in a newspaper of general circulation in the affected area at least thirty (30) days prior to such hearing. Such notice shall provide the date, time and location of the public informational hearing. The commissioner shall maintain a record of all comments made at a public informational hearing. The commissioner may consider more than one Title V permit application or renewal application at any such hearing, provided the notice requirements of this subdivision have been satisfied.

(3) Following receipt of a request for a public adjudicatory hearing or upon the commissioner's own initiative, the commissioner may, prior to the issuance of a Title V permit, hold such hearing pursuant to section 22a-3a-6 of the Regulations of Connecticut State Agencies. The commissioner shall publish a notice of such public adjudicatory hearing in a newspaper of general circulation in the affected area at least thirty (30) days prior to such hearing. Such notice shall provide the date, time and location of such hearing. Following the close of the public hearing, the commissioner shall make a decision based on the public hearing and recommendation of the hearing examiner, if any, as to whether to approve, deny or conditionally approve the issuance of the Title V permit sought.]

(n) Administrator's Review of [Tentative Determinations] PROPOSED PERMITS.

[(1) The commissioner shall not issue, renew or modify a Title V permit if the Administrator objects, in writing, within forty-five (45) days of receipt of the tentative determination issued pursuant to subdivision (l)(3) of this section. Pursuant to the Act, the commissioner shall provide the Administrator with an additional forty-five (45) day review period prior to the issuance, renewal or modification of the Title V permit if , within the previous forty-five (45) day period, the commissioner either:

(i) made any substantive changes to the tentative determination, or

(ii) received any written objection from any affected state or the Administrator recommending changes to the tentative determination which the commissioner does not accept.

Pursuant to the Act, the Administrator has the power to submit any such written objection to the commissioner and the owner or operator of the subject source. Such objection will state the reasons for the objection and describe the terms and conditions that the permit must include to resolve such objections. The reasons for such objection may be based on one or more of the following:

(A) the Title V permit does not comply with applicable requirements or THE requirements of 40 CFR Part 70;

(B) the applicant did not submit copies of the application and compliance plan to the Administrator pursuant to subdivision (h)(5) of this section;

(C) the commissioner did not send a copy of the tentative determination to the Administrator or each affected state pursuant to subdivision (l)(3) of this section;

(D) the commissioner did not notify in accordance with subdivision (l)(5) of this section each affected state of the commissioner's reasons for not accepting any recommendation submitted by such state; or

(E) failure to comply with a requirement of subsection (l) or (m) of this section.]

(1) THE ADMINISTRATOR IS AUTHORIZED BY THE ACT TO REVIEW THE COMMISSIONER'S PROPOSED TITLE V PERMITS WITHIN FORTY-FIVE (45) DAYS OF RECEIPT.

(2) THE COMMISSIONER SHALL COMPLY WITH THE APPLICABLE PROVISIONS OF 40 CFR 70.8.

(3) THE COMMISSIONER SHALL HAVE NINETY (90) DAYS FROM RECEIPT OF AN OBJECTION FROM THE ADMINISTRATOR TO RESOLVE SUCH OBJECTION.

[(2)](4) Pursuant to the Act, if the Administrator does not object in writing IN ACCORDANCE WITH [under subdivision(1) of this subsection] 40 CFR 70.8(c), any person may petition the Administrator TO OBJECT TO A PROPOSED PERMIT [within sixty (60) days after the expiration of the Administrator's time for making SUCH objections. The commissioner shall not issue a Title V permit to the owner or

operator of such Title V source if the Administrator objects to the issuance of such permit, in writing, within forty-five (45) days of receipt of such a petition. Such objection shall include the reasons for the objection, and a description of the terms and conditions the permit must include to respond to the objections. Pursuant to the Act, any of the following constitutes grounds for objection by the Administrator] IN ACCORDANCE WITH 40 CFR 70.8(d)[:].

[(A) an objection to the permit that was raised with reasonable specificity during the public comment period under subsection (m) of this section; or

(B) an objection not raised by the petitioner within the Administrator's initial forty-five (45) day review period but which has been demonstrated by the petitioner to have been impractical to raise within that period; or

(C) the grounds for an objection arose after the Administrator's initial forty-five (45) day review period.]

[(3) If the commissioner does not, within ninety (90) days after receipt of an objection by the Administrator under subdivision (1) or (2) of this subsection, submit to the Administrator a revised tentative determination addressing such objection, under the Act, the Administrator has the power to issue or deny the subject permit in accordance with the requirements of the Act.]

(5) IF THE COMMISSIONER DOES NOT, WITHIN NINETY (90) DAYS AFTER RECEIPT OF AN OBJECTION RAISED BY THE ADMINISTRATOR PURSUANT TO 40 CFR 70.8(c), SUBMIT A REVISED PROPOSED PERMIT TO THE ADMINISTRATOR IN RESPONSE TO THE OBJECTION, THE ADMINISTRATOR WILL ISSUE OR DENY THE TITLE V PERMIT PURSUANT TO 40 CFR 71.

(6) THE COMMISSIONER SHALL NOT ISSUE A TITLE V PERMIT UNTIL ANY OBJECTION RAISED BY THE ADMINISTRATOR PURSUANT TO 40 CFR 70.8(d), IS RESOLVED. IF THE COMMISSIONER HAS ISSUED A TITLE V PERMIT PRIOR TO RECEIPT OF AN OBJECTION FROM THE ADMINISTRATOR PURSUANT TO 40 CFR 70.8(d), THE ADMINISTRATOR WILL MODIFY, TERMINATE OR REVOKE SUCH PERMIT IN ACCORDANCE WITH 40 CFR 70.7(g)(4) OR (5)(i) AND (ii).

[(4) Except with respect to an application for a Title V permit for a source subject to a deadline pursuant to 40 CFR Parts 72 through 78, inclusive, the commissioner shall issue or deny a Title V permit within eighteen (18) months, of the date of submittal of an application conforming with subsections (g), (h) and (i) of this section.]

(o) TITLE V Monitoring Reports AND MAKING AND KEEPING RECORDS.

(1) **MONITORING REPORTS.** A permittee required to perform monitoring pursuant to [the subject] A TITLE V permit shall submit to the commissioner written monitoring reports ON JANUARY 30 AND JULY 30 OF EACH YEAR OR on [the] A MORE FREQUENT schedule IF specified in such permit [but in no event less frequently than once each six months]. Such [a] monitoring [report shall provided the following:] REPORTS SHALL INCLUDE THE DATE AND DESCRIPTION OF EACH DEVIATION FROM A PERMIT REQUIREMENT INCLUDING, BUT NOT LIMITED TO:

(A) [the date and description of each deviation caused by upset or control equipment deficiencies, each deviation from a permit requirement] EACH DEVIATION CAUSED BY UPSET OR CONTROL EQUIPMENT DEFICIENCIES[, and];

(B) [each violation] EACH DEVIATION of a [Title V] permit requirement that has been monitored by the monitoring systems required under the Title V permit, which has occurred since the date of THE last monitoring report; and

[(B)] (C) [the date and description of each occurrence of] EACH DEVIATION CAUSED BY a failure of the monitoring system to provide reliable data.

(2) **MAKING AND KEEPING RECORDS.** Unless otherwise required by the subject permit, the permittee shall MAKE AND KEEP [maintain] records of all required monitoring data and supporting information FOR AT LEAST FIVE (5) YEARS FROM THE DATE SUCH DATA AND INFORMATION WERE OBTAINED[,]. [and] THE PERMITTEE shall make such records available for inspection [by the department] at the site of the subject source, [for at least five years from the date such data and information were obtained,] and SHALL submit such records to the commissioner upon request. [Supporting information shall include:] THE FOLLOWING INFORMATION, IN ADDITION TO REQUIRED MONITORING DATA, SHALL BE RECORDED FOR EACH PERMITTED SOURCE:

(A) [the] THE type of monitoring[, which may include] OR RECORDS USED TO OBTAIN SUCH DATA, INCLUDING record keeping[, by which such data was obtained];

(B) [the] THE date, place, and time of sampling or [measurements] MEASUREMENT;

(C) THE NAME OF THE INDIVIDUAL WHO PERFORMED THE SAMPLING OR THE MEASUREMENT AND THE NAME OF SUCH INDIVIDUAL'S EMPLOYEE;

[(C)] (D) [the] THE date(s) ON WHICH analyses of such samples or measurements were performed;

[(D)] (E) [the] THE NAME AND ADDRESS OF THE entity that performed the analyses;

[(E)] (F) [the] THE analytical techniques or methods used for such analyses;

[(F)] (G) [the] THE results of such analyses;

[(G)] (H) [the] THE operating conditions at the subject source at the time of such sampling or measurement; and

[(H)] (I) [all] ALL calibration and maintenance records relating to the instrumentation used in such sampling or measurements, all original strip-chart recordings or computer printouts generated by continuous monitoring instrumentation, and copies of all reports required by the subject permit.

(3) [A permittee shall, contemporaneously] CONTEMPORANEOUSLY with making a change from one alternative operating scenario to another pursuant to a Title V permit, A PERMITTEE SHALL maintain a record at the site of THE subject source INCLUDING AN IDENTIFICATION OR DESCRIPTION of the current alternative operating scenario AND THE DATE ON WHICH THE PERMITTEE CHANGED FROM ONE ALTERNATIVE OPERATING SCENARIO TO ANOTHER.

(4) Any [monitoring] report submitted to the commissioner pursuant to this subsection shall be certified in accordance with [subdivision (b)(4) of this] section 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

(p) Notifications OF DEVIATIONS

(1) A permittee shall notify the commissioner in writing of any [violation at the subject source] DEVIATION FROM [of an applicable requirement, including any term or condition of the subject permit] AN EMISSIONS LIMITATION, and shall identify the cause or likely cause of such DEVIATION, [violation and] all corrective actions and preventive measures taken with respect thereto, and the dates of such actions and measures, as follows:

(A) [any such violation, including an exceedance of a technology-based emission limitation, that poses an imminent and substantial danger to public health, safety, or the environment shall be reported immediately but no later than twenty-four (24) hours after the permittee learns, or in the exercise of reasonable care should have learned, of such violation] FOR ANY HAZARDOUS AIR POLLUTANT, NO LATER THAN TWENTY-FOUR (24) HOURS AFTER SUCH DEVIATION COMMENCED; AND

(B) [any exceedance of a technology-based emission limitation imposed by the subject permit, which does not pose an imminent and substantial danger to public health, safety, or

the environment, shall be reported within two working days after the permittee learns of such exceedence; and] FOR ANY OTHER REGULATED AIR POLLUTANT, NO LATER THAN TEN (10) DAYS AFTER SUCH DEVIATION COMMENCED;

[(C) any other such violation shall be reported in accordance with subsections (o) and (q) of this section.]

[(2) For the purposes of this section an exceedance of a technology-based emission limitation means emission of pollutants beyond the level of emissions allowed by a term or condition of the subject permit.]

[(3)](2) [As an] AN affirmative defense to an administrative or civil action by the state with respect to a violation OF A TECHNOLOGY-BASED EMISSION LIMITATION MAY BE MADE BY THE PERMITTEE PURSUANT TO 40 CFR 70.6(g), PROVIDED THAT THE PERMITTEE MEETS ALL APPLICABLE PROVISIONS OF 40 CFR 70.6(g)(1) THROUGH (5), INCLUSIVE.[, a permittee may prove that compliance with an applicable requirement at issue was impossible due to the occurrence of an event beyond the reasonable control of the permittee. In order to prevail upon such affirmative defense:

(A) the permittee shall have the burden of going forward and of persuasion both, with respect to establishing that a violation was caused by an alleged event including the facts relevant to such alleged event;

(B) the permittee shall submit all information required by subdivision (1) of this subsection; and

(C) the permittee shall prove that:

(i) the subject source was being properly operated at the time that such event allegedly occurred; and

(ii) during such event the permittee took all reasonable steps to prevent emissions in excess of those authorized by law.]

[(4) For the purposes of subdivision (3) of this subsection, an event beyond the reasonable control of the permittee means an event which was reasonably unforeseeable and the results of which could not have been avoided or repaired by the permittee in order to prevent the subject violation. Increased cost shall not constitute an event beyond the reasonable control of the permittee. A violation to the extent it is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error, shall not constitute an event beyond the reasonable control of the permittee.]

[(5)](3) THE PERMITTEE SHALL CERTIFY [Any] ANY written notification submitted TO THE COMMISSIONER pursuant to [subdivision (1) of] this subsection [shall be certified] in accordance with [subdivision (b)(4)of this section] SECTION 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

(q) TITLE V Progress Reports and Compliance Certifications.

(1) **PROGRESS REPORTS.** A permittee shall, on [the schedule specified in the subject permit or every six months and] JANUARY 30 AND JULY 30 OF EACH YEAR, OR ON A MORE FREQUENT SCHEDULE IF SPECIFIED IN SUCH PERMIT [whichever is more frequent], submit to the commissioner A progress [reports] REPORT [which are] certified in accordance with [subdivision (b)(4) of this section] SECTION 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. [and which report the] SUCH REPORT SHALL DESCRIBE THE permittee's progress in achieving compliance under the compliance PLAN schedule CONTAINED in [such] THE permit. Such progress report shall:

(A) [identify] IDENTIFY those obligations under the compliance PLAN schedule IN THE PERMIT which the permittee has met, and the dates [by] ON which they were met; and

(B) [identify] IDENTIFY those obligations under the compliance PLAN schedule IN THE PERMIT which the permittee has not timely met, explain why they were not timely met, describe all measures taken or to be taken to meet [such obligations] THEM and identify the date by which the permittee expects to meet [such obligations] THEM.

(2) **COMPLIANCE CERTIFICATION.** A permittee shall, [on the schedule specified in the subject permit or every twelve months] ON JANUARY 30 OF EACH YEAR, OR ON A MORE FREQUENT SCHEDULE IF SPECIFIED IN SUCH PERMIT [whichever is more frequent], submit to the commissioner, A written compliance [certifications] CERTIFICATION [which are] certified in accordance with [subdivision (b)(4) of this section] SECTION 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES and which [identify the terms and conditions contained in the subject permit for the subject source, including emission limitations. In addition, a compliance certification shall contain the following] INCLUDES THE INFORMATION IDENTIFIED IN TITLE 40 CFR 70.6(c)(5)(iii)(A) through (C), INCLUSIVE [:].

[(A) a means for monitoring the compliance of the subject source with emissions limitations, standards, and work practices;

(B) the identification of each permit term or condition with respect to which the certification is being made;

(C) the permittee's compliance status with respect to the subject permit;

(D) whether compliance, with respect to the subject permit, was continuous or intermittent since the date of the next prior compliance certification;

(E) the method(s) the permittee used for determining the compliance status of such source, currently and since the date of the next prior compliance certification;

(F) such other information as the subject permit may require to facilitate the commissioner's determination of the compliance status of such source, and additional requirements specified pursuant to 40 CFR Part 70; and

(G) whether the monitoring system, which may include record keeping, was functioning in accordance with the subject permit and this section.]

(3) Any progress report PREPARED AND SUBMITTED pursuant to subdivision (1) of this subsection, or COMPLIANCE certification PREPARED AND submitted pursuant to subdivision (2) of this subsection [to the commissioner] shall be simultaneously submitted BY THE PERMITTEE to the Administrator.

(r) TITLE V Permit Modifications, REVISIONS, OPERATIONAL FLEXIBILITY AND OFF PERMIT CHANGES.

[(1)Following receipt from a permittee of a request to modify his Title V permit, or upon the commissioner's own initiative the commissioner may modify such permit for any of the reasons specified in subparagraphs (A) through (G), inclusive, of this subdivision. The commissioner will take no more than eighteen (18) months from receipt of a written request from the permittee for a permit modification to take final action on such request. If the commissioner modifies a permit, whether on request of the permittee or his own initiative he will submit a copy of the modified permit to the Administrator. If the permittee has requested the modification he shall not deviate from the terms and conditions of the permit unless and until the commissioner has modified such permit in accordance with this subsection. If the commissioner on his own initiates a proceeding to modify a Title V permit, the commissioner shall comply with the procedural requirements of section 22a-3a-5 of the Regulations of Connecticut State Agencies and section 4-182 of the general statutes as may be applicable. The commissioner may modify a Title V permit under this subsection for any of the following reasons:

(A) to incorporate any applicable requirement adopted by the commissioner or the Administrator;

(B) to incorporate any change in the frequency, form or type of any monitoring, reporting or record keeping required by the permit;

(C) to incorporate an applicable MACT standard or determination under subdivision (e)(1) of this section, if there are more than three (3) years before such permit expires;

(D) to incorporate the requirements of any permit to construct or operate, or modification thereof, issued to the permittee pursuant to subsection (k) or (l) of section 22a-174-3 of the Regulations of Connecticut State Agencies;

(E) to incorporate any change to make a permit term or condition less stringent if such term or condition prevented the Title V source from being subject to an otherwise applicable requirement;

(F) to incorporate any change necessary to ensure compliance with any applicable requirement; and

(G) for any reason set forth in section 22a-174c of the general statutes or subsection (d) of section 22a-3a-5 of the Regulations of Connecticut State Agencies.

Following public notice and opportunity for public hearing and comment pursuant to subsections (l) and (m) of this section, the commissioner may modify such permit in accordance with section 40 CFR Part 70.7(a)(1), (4), (5) and (6).

(2)(A) A permittee may submit a written request to the commissioner for a permit modification to:

(i) correct a clerical error;

(ii) revise the name, address, or phone number of any person identified in such permit or to make another revision reflecting a similarly minor administrative change at or concerning the subject source;

(iii) require more frequent monitoring or reporting;

(iv) reflect a transfer in ownership or operational control of the subject source provided no other modification of the subject permit is required as a result of such transfer and provided that if a

transfer of the permit will be sought, a request therefor has been submitted to the commissioner in accordance with this section; or

(v) incorporate the requirements of any permit to construct, or modification thereof, pursuant to section 22a-174-3 of the Regulations of Connecticut State Agencies except for such requirements pursuant to subsection (k) or (l) of sections 22a-174-3 of the Regulations of Connecticut State Agencies;

(B) Upon submitting to the commissioner a written request for a permit modification under Subpart (A) of this subdivision, a permittee may take action as if such a modification had already been made.

(C) The commissioner will take no more than sixty (60) days from the receipt of a written request under subparagraph (A) of this subdivision to take final action on such request and, if the commissioner modifies the subject permit, he will submit a copy of the modified permit to the Administrator. The commissioner may modify a permit under this subdivision without published notice or allowing opportunity for comment and hearing.]

(1) NON-MINOR PERMIT MODIFICATIONS, MINOR PERMIT MODIFICATIONS AND REVISIONS TO TITLE V PERMITS SHALL BE MADE IN ACCORDANCE WITH SECTION 22a-174-2a(d), (e) AND (f) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(3)](2) **OPERATIONAL FLEXIBILITY AND OFF-PERMIT CHANGES.**

(A) EXCEPT AS PROVIDED IN SUBPARAGRAPH (B) OF THIS SUBDIVISION, A PERMITTEE MAY ENGAGE IN ANY ACTION ALLOWED BY THE ADMINISTRATOR IN ACCORDANCE WITH 40 CFR 70.4(b)(12)(i) THROUGH (iii)(B) INCLUSIVE, AND 40 CFR 70.4(b)(14)(i) THROUGH (iv), INCLUSIVE [A permittee may engage in any of the following actions,] without A TITLE V NON-MINOR permit modification, MINOR PERMIT MODIFICATION OR REVISION and without requesting a TITLE V NON-MINOR permit modification, MINOR PERMIT MODIFICATION OR REVISION[:].

[(i) change his practices concerning monitoring, testing, record keeping, reporting, or compliance certification, provided such changes do not violate applicable requirements, including the terms and conditions of the applicable Title V permit;

(ii) engage in an intra-premise trade in emissions under an emissions cap established pursuant to subparagraph (I) of subdivision (j)(1) of this section;

(iii) relocate an emissions unit provided such relocation does not require a permit modification under section 22a-174-1(52)of the Regulations of Connecticut State Agencies and does not result in an increase in emissions violating any applicable requirements including the terms and conditions of the applicable Title V permit;

(iv) incorporate any requirements authorizing use of emission reduction credits in accordance with section 22a-174f or 22a-174i of the general statutes and EPA's "Economic Incentive Program Rules", published April 7, 1994 (Federal Register, Volume 59, No. 67); and

(v) engage in any other action, for which the permittee is not otherwise required to obtain a permit modification pursuant to this subsection.]

(B) [A permittee may engage in an] ANY action AUTHORIZED PURSUANT TO SUBPARAGRAPH (A) OF THIS SUBDIVISION [provided in subparagraphs (A)(i) through (v), of this subdivision, provided such action does] SHALL not:

(i) constitute a modification under 40 CFR [Part] 60, [or] 61[; and] OR 63,

(ii) exceed emissions allowable under the subject permit[.],

(iii) CONSTITUTE AN ACTION WHICH WOULD SUBJECT THE PERMITTEE TO ANY STANDARD OR OTHER REQUIREMENT UNDER 40 CFR 72 THROUGH 78, INCLUSIVE, OR

(iv) CONSTITUTE A NON-MINOR PERMIT MODIFICATION UNDER SECTION 22a-174-2a(d)(4) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(C) At least seven (7) days before initiating an action specified in subparagraph (A) of this subdivision, the permittee shall notify the commissioner in writing of such intended action.]

[(4) At the time a permittee changes any practice at the subject source, which practice is not addressed by the subject permit, and

which change would be consistent with all applicable requirements, including the terms and conditions of such permit, the permittee shall provide written notice of the intended change to the commissioner and the Administrator, provided this subdivision shall not apply to a source subject to any standard or other requirement pursuant to 40 CFR Parts 72 through 78, inclusive.

(5) Written notification pursuant to subdivisions (3) and (4) of this subsection shall include a brief description of each change to be made, the date on which such change will occur, any change in emissions that may occur as a result of such change, any Title V permit terms and conditions that may be affected by such change, and any applicable requirement that would apply as a result of such change. The owner or operator of subject source shall thereafter maintain a copy of such notice with the Title V permit for subject source. The commissioner and the permittee shall each attach a copy of such notice to his copy of the subject permit.

(6) A permit modification pursuant to subdivisions (1), (2) or (3) of this subsection, shall be governed by 40 CFR Parts 72 through 78, inclusive.

(7) A copy of a request for a permit modification submitted to the commissioner pursuant to this subsection shall be submitted to the Administrator at the same time.

(8) The commissioner shall modify a Title V permit in accordance with subdivision (1) of this subsection if:

(A) a new or additional applicable requirement under the Act becomes applicable to a Title V source with a remaining permit term of three (3) or more years. Such a modification shall be completed not later than 18 months after promulgation of the new or additional applicable requirement. No modification is required if the effective date of such new or additional requirement is later than the date on which the permit is due to expire;

(B) an additional requirement, including an excess emission requirement, becomes applicable to subject source if such source is subject to any standard or other requirement pursuant to 40 CFR Parts 72 through 78, inclusive;

(C) the commissioner or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made during establishment of the emissions standards of the permit, or other terms or conditions of the permit; or

(D) the commissioner or the Administrator determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(9) The commissioner shall notify the permittee thirty (30) days prior to initiating a modification of such permit pursuant to subdivision (8) of this subsection.

(10) The commissioner shall, within ninety (90) days after receipt of notification from the Administrator to modify the subject permit, forward to the Administrator a tentative determination regarding termination, modification, or revocation of the subject permit. In the event that the commissioner requires the permittee to submit additional information, the Administrator, pursuant to the Act, has the power to extend such ninety (90) day period by an additional ninety (90) days.

(11) Pursuant to the Act the Administrator has the power to review the tentative determination from the commissioner within ninety (90) days of receipt.

(12) The commissioner shall have ninety (90) days from receipt of an objection from the Administrator to resolve any objection that the Administrator makes and to terminate, modify, or revoke the permit in accordance with the Administrator's objection.

(13) If the commissioner fails to submit a tentative determination to the Administrator pursuant to subdivision (10) of this subsection or fails to resolve any objection pursuant to subdivision (12) of this subsection, pursuant to the Act the Administrator has the power to terminate, modify, or revoke the permit after taking the following actions:

(A) providing at least thirty (30) days' notice to the permittee in writing of the reasons for any such action; and

(B) providing the permittee an opportunity for comment on the proposed action by the Administrator, and an opportunity for a hearing pursuant to subsection (m) of this section.

(14) Proceedings to modify a permit shall follow the same procedures as apply to initial permit issuance pursuant to subsections (l) and (m) of this section and shall affect only those parts of the permit for which cause to modify exists.]

[(s) Transfers.

(1) No person shall act or refrain from acting under the authority of a Title V permit issued to another person unless such permit has been transferred in accordance with this subsection. The commissioner may approve a transfer of a permit if he finds that the proposed transferee is willing and able to comply with the terms and conditions of such permit, that any fees for such transfer required by any provision of the general statutes or regulations adopted thereunder have been paid, and that such transfer is not inconsistent with the Act.

(2) The proposed transferor and transferee shall submit to the commissioner a request for permit transfer on a form provided by the commissioner. A request for a permit transfer shall be accompanied by any fees required by any applicable provision of the general statutes or regulations adopted thereunder. The commissioner may also require the proposed transferee to submit with any such request:

(A) any information required by law to be submitted with an application for a Title V permit or an application for transfer of such permit; and

(B) any other information the commissioner deems necessary to process the transfer request in accordance with this subsection.

(3) Upon approving a request for transfer, the commissioner shall modify the subject permit to reflect such transfer, in accordance with subdivision (r)(2) of this section. After the commissioner transfers a permit in accordance with this subsection, the transferee shall be responsible for complying with all applicable law, and all applicable requirements, including the terms and conditions of the transferred permit.]

(s) TITLE V PERMIT REOPENINGS. THE COMMISSIONER SHALL COMPLY WITH THE APPLICABLE PROVISIONS OF 40 CFR 70.7(f) AND (g).

[(t) Revocations.

(1) The commissioner may revoke a Title V permit on his own initiative or on request of the permittee or any other person, in accordance with section 4-182(c) of the general statutes, subsection (d) of section 22a-3a-5 of the Regulations of Connecticut State Agencies, and any other applicable law. Any such request shall be in writing and contain facts and reasons supporting the request. A permittee requesting revocation of a Title V permit shall state the requested date of revocation and provide the commissioner with satisfactory evidence that the emissions authorized by such permit have been permanently eliminated.

(2) The Administrator pursuant to the Act, has the power to revoke and reissue a Title V permit if the Administrator has determined that the commissioner failed to act in a timely manner on a permit renewal application.]

STATEMENT OF PURPOSE: This amendment deletes several definitions that were moved to the general definition section of the regulations for the abatement of air pollution. (See, proposed amendment to section 22a-174-1, R.C.S.A.) This amendment also deletes several procedural requirements that were consolidated into one new section, 22a-174-2a R.C.S.A. Therefore, much of the contents of the following subsections were deleted and moved into sections 22a-174-1 and 22a-174-2a R.C.S.A.:(a) definitions, (b)signatory responsibilities, (l) notices, (m) public hearings, (r) modifications (except for operational flexibility and off permit changes), (s) transfers, and (t) revocations. This amendment also addresses a number of issues raised by EPA in "Clean Air Act Interim Approval of Operating Permits Program; Delegation of Section 111 and 112 Standards; State of Connecticut," Proposed Rule, 61 Fed. Reg. 64651 (December 6, 1996). The EPA issues not addressed herein are addressed in proposed amendments to sections 22a-174-1 and 22a-174-3a and the addition of section 22a-174-2a R.C.S.A.

IV. Statement of Principal Reasons in Support of the Department's Intended Action

A majority of those who submitted comments expressed their general support of the intended action. Many of those who commented commended the Department's Bureau of Air Management on its regulatory revision process and indicated that the process of stakeholder involvement should be used as a model for the rest of the Department.

The principal reasons in support of the proposed regulations are:

1. Sections 22a-174-1, 22a-174-2a, 22a-174-3a, 22a-174-3b, and 22a-174-3c represent a significant improvement over the Department's existing regulations for the permitting of new sources. Improvements relate to determinations of applicability, exemptions, activities authorized prior to permit issuance, and clarification of many terms used throughout the regulations made more consistent with those contained in the Code of Federal Regulations.

2. Sections 22a-174-2a, 22a-174-33 are necessary to convert Connecticut's interim approval of its Title V operating permit program to a full approval as required by 42 USC 7661a and 40 CFR 70 thereby avoiding the implementation of a federal operating permit program in Connecticut pursuant to 40 CFR 71.

V. Statement of Principal Considerations in Opposition to the Department's Intended Action as Urged in Written or Oral Comments and the Department's Reason for Rejecting Such Considerations

A. Principal Considerations Raised in Opposition to the Proposed Regulations

The Department received numerous comments on the proposed regulations. However none of the comments opposed the Department's intended actions in whole. Rather the comments opposed limited and specific portions of the proposed regulations. These comments and the Department's response thereto are addressed in Parts VI through IX of this report.

B. Reasons for Rejecting Considerations in Opposition to the Proposed Regulations

Based on all comments submitted to the Department, there is little disagreement over whether the proposed regulatory revisions represent an improvement over the existing permit requirements set forth in section 22a-174-3 of the Regulations of Connecticut State Agencies. Rather, the comments diverge on whether the proposed revisions sufficiently streamline the permit process or sufficiently adopt the federal regulations as a blueprint for the permitting of new sources of air pollution.

The current Connecticut air permits program recognizes that air quality in the State of Connecticut fails to meet the federal health-based standard for ground level ozone. As a result of this "non-attainment" status with respect to the federal air quality standard for ozone, the Department has found it necessary to impose requirements that are more stringent than those minimally necessary to comply with the federal Clean Air Act.

VI. General Comments on the Proposed Regulations

The Department received numerous comments on the proposed regulations. While not addressing specific provisions of the proposed regulations, many comments were directed at larger policy issues and implications raised by the proposed regulations. As such, this report will address general comments separate from comments that were directed at specific provisions of the proposed regulations.

The Department received the following six general comments regarding: the proposed definition of "actual emissions"; the identification of minor typographical errors in the public notice; whether federal sanctions are imposed on Connecticut under 40 CFR 70; the need to further clarify certain definitions used throughout the proposed regulations; the treatment of "combined heat and power" sources in the proposed regulations; and whether the installation of pollution control equipment should trigger applicability of section 22a-174-3a of the R.C.S.A.

A. Summary of General Comments:

1. Several commentors were critical of the Department's failure to adopt applicability criteria applicable only to electric generating plants. This applicability test is known as the WEPCO applicability test for electric generating facilities (57 Fed. Reg. 32314 (July 21, 1992) and is implemented within the EPA's definition of "actual emissions". The WEPCO

applicability test was adopted by EPA to ensure that electric generating companies could upgrade and improve the efficiency of their plants without triggering new source review. It accomplishes this by allowing the use of the "actual" to "representative actual" annual emissions when determining whether a physical or operational change will result in a significant emissions increase at an electric generating plant.

Several commentors believe the Department should include the WEPCO applicability test in the proposed definition of "actual emissions" because it will ensure that the time-consuming and costly process of new source review is not performed unnecessarily. Under section 22a-174-3a, as proposed, many physical or operational changes proposed by an electric generating company - even if the changes will result in cleaner, more efficient units and no actual air emissions increase - could be construed to trigger new source review.

Several commentors urge the Department to adopt the WEPCO applicability test by changing the Department's proposed definition of "actual emissions" to incorporate a reference to 40 CFR Part 51.165(a)(1)(xii)(E). Currently, the definition of "actual emissions" is as follows:

> "Actual emissions" has the same meaning as in 40 CFR 51.165(a)(1)(xii)(A) through (D), inclusive, provided that actual emissions shall include fugitive emissions to the extent quantifiable.

This definition does not include 40 CFR 51.165(a)(1)(xii)(E) which reads:

> (E) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the reviewing authority, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the reviewing authority if it determines such a period to be more representative of normal source post-change operations.

In addition to discouraging changes at electric generating facilities which improve efficiency and reduce air emissions, the proposed "actual emissions" definition, without the inclusion of 51.165(a)(1)(xii)(E), does not make sense. In particular, 40 CFR 51.165(a)(1)(xii)(D) reads as follows:

> For any emissions unit (other than an electric utility steam generating unit specified in paragraph (a)(1)(xii)(E) of this section) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

A physical change or change in the method of operation of a stationary source is considered a modification if it results in increases in the emissions of any individual air pollutant. Determining whether there has been an increase in emissions requires a comparison between

actual emissions before and after the change. Under 51.165(a)(1)(xii)(D), actual emissions are equal to the potential to emit of the unit if the unit has not "begun normal operations". However, subsection (D) also specifically exempts electric steam generating units specified in subsection (E) from this analysis. Without the inclusion of subsection (E) in the definition of "actual emissions", this exclusion does not make sense.

Furthermore, 51.165(a)(1)(xii)(E) should be included in the definition of "actual emissions" because it was adopted by the EPA to ensure that electric generating facilities could upgrade and improve the efficiency of their plants without triggering new source review when these changes do not result in actual increases in emissions. This provision was added to the federal NSR regulations following the Seventh Circuit Court of Appeals decision in 1990 (Wisconsin Electric Power Company v. Reilly, 893 F.2d 901 (7th Cir. 1990)) in which renovations were proposed for several older coal-fired electric generating boilers. The physical changes involved repair and replacement of turbine-generators, steam drums and other major components. The EPA had argued that these changes went beyond "normal operations" and therefore warranted use of future potential emissions as the test for an emissions increase over past actual emissions. The court disagreed with EPA's interpretation that "normal operations" had not begun and determined that a "realistic assessment of the impact of the change on the ambient air quality levels is possible" because these were "like-kind replacements" Id. at 917 quoting Alabama Power Co. v. Costle, 636 F.2d 323, 379 (D.C. Cir. 1979). In response to this case, EPA noted that the "begun normal operations" criterion is highly fact-dependent and its application is inherently case-by-case, therefore it would be an uncertain indicator of what emissions test would apply in any given instance. 57 Fed. Reg. 32314 (July 21, 1992). EPA further noted that it has extensive experience with electric generating facilities and the generally similar nature of operations within this source category, which provided them with an adequate basis on which to predict future actual emissions from such units. Id. Therefore, EPA added Section 51.165(a)(1)(xii)(E) which allows any increase in emissions resulting from a physical or operational change in the method of operation at an electric generating plant to be assessed using the actual to representative actual annual emissions comparison.

As the court in Wisconsin Electric Power Company ("WEPCO") noted, it is not fair to use potential emissions to determine if emissions increase following physical or operational changes because it requires calculation of emissions based on round-the-clock operations, whether or not the plant has ever operated in that manner in the past. Wisconsin Electric Power Company, 893 F.2d at 916. The WEPCO court noted that it found no support for EPA's decisions to wholly disregard past operating conditions at a plant when determining emissions. Id. at 917. In addition, in promulgating the WEPCO rule, EPA agreed that a better estimate of the impact of physical or operational changes at electric generating plants was to predict future actual emissions using knowledge of the plant's operations rather than calculating potential emissions based on continuous operation. See 56 Fed. Reg. 27630, note 18, (June 14, 1991) and 40 CFR 51.165(a)(1)(xxi)(A). As a result of this change to the calculation of emissions increase, electric generating sources are able to make upgrades and increase efficiency at their plants without triggering new source review.

This commentor urges the Department to include the WEPCO applicability test in Connecticut's definition of "actual emissions" to ensure that physical and operational changes,

which will result in cleaner, more efficient units at electric generating facilities and no increase in actual air emissions, do not trigger new source review. This commentor also requested that the Department make it clear that the WEPCO applicability test applies to "electric steam generating units" which can be defined by referring to 40 CFR Part 51.165(a)(1)(xx). Furthermore, this commentor urges the Department to adopt the federal definition of "representative actual annual emissions" found at 40 CFR Part 51.165(a)(1)(xxi) which allows the use of all relevant information, including historical operational data and emissions statements, to project future emissions.

2. 1A commentor noted two confusing typographical errors in the public notice for the proposed regulations. On page 1, the Federal Register citation for the final EPA Title V Interim Approval (March 24, 1997) should have been 62 Fed. Reg. 13830 (not 3830). On page 4 there is an incorrect comment deadline of August 10, 2001 whereas the comment deadline earlier in the notice stated September 7, 2001 and the public hearing on the proposed regulations was held on September 5, 2001. This commentor noted that astute attention to detail in future public notices would be appreciated and would save hours of searching incorrect Federal Register citations.

3. In the Federal Register notice finalizing interim approval of the Connecticut Title V operating permit program by EPA at 62 Fed. Reg. 13830 (March 24, 1997), Section III, EPA states that if Connecticut fails to submit a complete corrective [Title V] program for full approval by October 26, 1998 EPA will start an 18-month sanction clock leading to mandatory sanctions under section 179 of the Clean Air Act. The commentor asks whether any sanctions have been applied by EPA on the State of Connecticut for failure to submit a complete Title V program, what sanctions were implemented and when they were posted in the Federal Register. If an extension was granted in lieu of sanctions, was the extension publicly announced?

4. There is a general – and commendable – thrust in the proposed regulations towards greater clarity in definitions and overall structure. However, several key features of the proposed regulations are inconsistent with this effort. For example, several key terms have different meanings depending on the context:

- "Minor" can refer to any or all of a source, a modification to a source, or a modification to a permit. This creates seeming oxymoronic concepts such as a "non-minor permit modification" to a "minor source", and a "minor modification" triggering a "non-minor permit modification". Such disarray promotes regulatory confusion and non-compliance.

- "Modification" itself can refer to either a source, or a permit.

- Section 2a (and other sections) use the generic label "permit revision" to refer to what is actually a very limited subset of the "plain English" meaning of this phrase. As a result, under this idiosyncratic usage, most permit revisions will counter-intuitively not be considered "permit revisions" as defined by the regulations.

This confusion is readily avoidable, and compliance assistance would be greatly advanced, as follows:

- Sources are referred as either "minor" or "major". This is consistent with the decades-old federal scheme.

- "Modifications" should refer to physical changes at the source, and not changes to permit terms.

- All changes to permit terms could be referred to generically as "permit revisions." Alternatively, the more significant permit changes (i.e. currently defined as non-minor modifications or modifications) could be called "permit amendments." Yet another alternative would be to adopt various gradations of permit revisions, referred to, for example as "Tier I revisions", "Tier II revisions", or "Tier III revisions", or labeled as "significant", "non-significant" or "administrative" revisions.

5. A comment noted disappointment that the proposed regulations do not address combined heat and power (CHP). CHP is the sequential generation of electric and thermal energy from a single energy source. CHP can generate electric and thermal energy at efficiencies of 80 to 90 percent and is the most readily available and widely applicable technology for reducing emissions through efficiency improvement.

Although CHP is widely acknowledged to have environmental benefits, these benefits are not recognized by conventional new source permitting. There are several issues:

- Although the overall energy use for CHP is lower than with conventional separate generation, all of the energy use takes place at the thermal user site rather than being split between the thermal user and a central power plant. This can create an apparent emissions increase at the host site, though the total emissions are reduced. It is difficult to address this in the normal NSR process.
- Similarly, it can be difficult for a CHP source to get credit for emissions reductions that take place offsite.
- The BACT/LAER process does not typically take into account the higher emissions and lower per unit emission rate when addressing the appropriate level of control for new CHP facilities.
- In some cases, a CHP facility may be inappropriately grouped with the thermal user facility in the permitting process.

CHP can make a significant contribution to reducing energy use and emissions. However, the environmental permitting rules must allow this valuable technology to be applied. I urge you to include improved treatment of CHP in your new source permitting process.

6. A commentor stated that the installation of pollution control equipment for compliance purposes should not require the owner or operator of a facility to obtain a permit under section 22a-174-3a.

B. Department's Response to General Comments on the Proposed Regulations

Based on all comments submitted to the Department, there is little disagreement over whether the proposed regulations will improve and streamline the Department's air permitting process. Rather the comments diverge on whether the Department's efforts go far enough to ensure that the requirements proposed by the Department are not more stringent than those that EPA would have Connecticut adopt under the requirements of the federal Clean Air Act.

Response to Comment VI. A. 1.

The Department should be more consistent with the federal definition of "actual emissions." Therefore the definition of "actual emissions" should be revised as follows:

> "ACTUAL EMISSIONS" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xii)(A) THROUGH ~~(D)~~(E), INCLUSIVE~~, PROVIDED THAT ACTUAL EMISSIONS SHALL INCLUDE FUGITIVE EMISSIONS TO THE EXTENT QUANTIFIABLE~~

Response to Comment VI. A. 2.

The Department appreciates when minor typographical errors are called to its attention.

Response to Comment VI. A. 3.

The EPA has not, to date, applied sanctions on the State of Connecticut for failure to submit a complete Title V program. Since 1997, the Connecticut Title V program has operated under an interim approval issued by EPA and twice-renewed by notice and comment rule making in the Federal Register, see 62 Fed. Reg. 13830 (March 24, 1997), 63 Fed. Reg. 40054 (July 27, 1998) and 65 Fed. Reg. 32035 (May 22, 2000).

Response to Comment VI. A. 4.

The Department appreciates that some commentors recognize that the proposed regulations bring greater clarity in definition and overall structure to the effected permit programs. The Department selected the terms in the proposal in an effort to enhance clarity and avoid confusion. While it is true that terms such as "minor" may refer to more than one type of permit or permit modification, it is important that a reader of the proposed regulations, as well as any regulation, read regulatory text carefully so as to better understand the context in which certain terms are used. The Department has gone to great efforts to make the context of the terminology as clear as possible while noting the use of certain terms and phrases have ramifications throughout our regulations.

Response to Comment VI. A. 5.

The Department recognizes the environmental benefits associated with Combined heat and power (CHP). While the proposed regulations are primarily intended to meet the requirements imposed on the Department by 40 CFR 51.165 and 51.166 and must be implemented within the constraints of the federal new source review program; the Department should attempt to provide a greater incentive for CHP. To provide for CHP to the extent its use is not otherwise precluded by existing state or federal law, the Department should revise proposed section 22a-174-3a(j)(6)(D) as follows:

(6) In determining whether to approve BACT, the commissioner shall:

(A) Take into account any emission limitation, including any visible emission standard, which is achievable under any permit limitation or any stack test demonstration acceptable to the commissioner;

(B) Consider a previous BACT approval for a similar or a representative type of source; ~~and~~

(C) If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, the commissioner may prescribe a design, equipment, work practice or operational standard, or combination thereof, to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results; and

(D) Not preclude the establishment of an output based emission limitation as BACT provided such application of BACT improves the overall thermal efficiency of the subject source or modification.

and

To implement CHP into LAER reviews, the Department should revise proposed section by adding 22a-174-3a(*l*)(3)(C) as follows:

(3) Control Technology Review and Approval.

(A) An owner or operator of the subject source or modification shall submit, for approval in writing:

(i) a LAER determination for each non-attainment air pollutant with allowable emissions in excess of the amount listed in Table 3a(k)-1, and

(ii) an evaluation of secondary impacts or cumulative impacts for each non-attainment air pollutant with potential emissions in excess of the amount listed in Table 3a(k)-1of subsection (k);

(B) In determining whether to approve LAER, the commissioner may take into account any emission limitation, including a visible emission limit. The commissioner may disregard any emissions test on a pilot plant or prototype equipment which does not have reasonable operating experience or which may not be generally available for industry use;

(C) In determining whether to approve LAER, the commissioner may take into account an output based emission limitation as LAER provided such application of LAER improves the overall thermal efficiency of the subject source or modification;

(D) The owner or operator of the subject source or modification shall not be granted a permit under this section unless and until the commissioner determines that such owner or operator will install air pollution control technology which complies with the commissioner's approval of LAER for each non-attainment air pollutant;

(E) If the owner or operator of the subject source or modification has made modifications to the subject source or modification and any of these modifications are subject to but have not previously been evaluated under this subsection, the commissioner shall conduct a LAER review under this subsection and require implementation of LAER for such modifications; and

(F) In no event shall the application of LAER result in an emission limit or rate of emissions that is less stringent or environmentally protective than an emission limitation approved by the commissioner as BACT, an emission limitation demonstrated or established in any State Implementation Plan or any applicable limitation or standard under 40 CFR Parts 60, 61, 62 or 63.

See also the Department's response to comment 36 in Part IX. of this report.

Response to Comment VI. A. 6.

The Department has substantially streamlined the applicability provisions of section 22a-174-3a of the R.C.S.A. Applicability is now based on the emissions of a source without regard to the type or category of such source. Air pollution control equipment, while designed and operated to reduce emissions, may in some instances emit additional pollutants that would not have otherwise been released. Where the level of new emissions from air pollution control equipment rises to the level to independently trigger permit requirements, the Department should evaluate the new emissions to ensure that such emissions are minimized. This review should be contained in a permit process. Therefore, the Department should maintain the

current applicability framework that would require the permitting of air pollution control equipment when such equipment would increase potential emissions by 15 tons per year or more (10 TPY for a Federal HAP. Regardless of the need to obtain a permit, the owner or operator of the air pollution control equipment will still need to comply with sections 182(c)(6) and 182(f) of the Clean Air Act with respect to any emissions of volatile organic compounds or nitrogen oxides that may be emitted as a result of the installation of air pollution control equipment. See related comment from EPA. It would be poor public policy for the Department to allow a source to construct and operate air pollution control equipment that also increases unrelated air pollutants. Therefore the Department should continue to require the permitting of any air pollution control equipment that increases new pollutants to a level that would trigger applicability.

VII. Summary of Specific Comments on Proposed RCSA Section 22a-174-1

1. Comments of the definition of "Actual Emissions"

A. Comment on the definition of "Actual Emissions": The definition of actual emissions is used throughout the regulations. Therefore, it is important to define it consistent with the federal rules and in a way that does not create unnecessary complications in implementing the regulations. There are two concerns about this definition. First, it does not include the WEPCO Rule for electric generating facilities. By not including that rule, Connecticut will discourage changes at electric generating facilities that improve efficiency and air emissions. This can be corrected by incorporating by reference 40 CFR 51.165(a)(1)(xii)(E), as shown below. Second, since fugitive emissions are very difficult to quantify, CRRA suggests eliminating the reference to fugitive emissions in the actual emissions definition, and instead including them only as required by federal law, as for example, for federally regulated hazardous air pollutants or specifically identified federal major sources. While the qualification "to the extent quantifiable" helps, the inclusion of fugitive emissions in this definition may create recordkeeping and other regulatory complications. For example, "actual emissions" is used in the definition of "net emissions increase." It is very difficult and potentially expensive to estimate new fugitive emissions in applying this definition. The proposed revised definition is as follows:

> (2) "ACTUAL EMISSIONS" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xii)(A) THROUGH (E), INCLUSIVE.

Response: See the Department's response to comment 1(C) below.

B. Comment on the definition of "actual emissions": See also Section VI., General Comments on the Proposed Regulations. As stated in part in comment 2 of the general comments, several commentors believe the Department should adopt applicability criteria specific to electric generating plants. This applicability test is known as the WEPCO applicability test for electric generating facilities (57 Fed. Reg. 32314 (July 21, 1992) and is implemented within the EPA's definition of "actual emissions".

Response: See the Department's response to comment 1(C) below.

C. Comment on the definition of "actual emissions": The definition of actual emissions is used throughout the regulations. Therefore, it is important to define it consistent with the federal rules and in a way that does not create unnecessary complications in implementing the regulations. Although the proposed definition of actual emissions incorporates by reference part of the federal definition of the same term, the proposed state definition differs in some respects. Adding a Connecticut-specific proviso to the federal definition is inconsistent with the progress represented by the proposed regulations in incorporating federal definition without "tweaks" that lead to more stringent Connecticut requirements. Such "tweaks" produce considerable confusion in an already complex program. (For example, the proposed regulations would incorporate the federal definition for the term "construction" (proposed subsection 1(24)). However, this federal definition refers to "actual emissions". This creates uncertainty as to whether the state or the federal definition of "actual emissions" would apply to the definition of "construction".)

(i.) There are two additional concerns about this definition. First, it does not include the WEPCO Rule for electric generating facilities. By not including that rule, Connecticut will discourage changes at electric generating facilities which improve efficiency and reduce air emissions. This can be corrected by incorporating by reference 40 CFR 51.165(a)(1)(xii)(E), as shown below. The definitions inclusion of fugitive emissions is also problematic. Fugitive emissions are very difficult to quantify. Moreover, from a policy perspective, it does not seem that fugitives are a universally significant issue such that every source should be required to assess them, potentially at great cost. For operations where DEP believes that fugitives are a significant issue, operation-specific regulations (e.g., RACT-style regulations, or site-specific orders) would be a more targeted and cost-effective tool for DEP to address the situation.

(ii.) The commentor suggests eliminating the reference to fugitive emissions in the actual emissions definition, and instead including them only as required by federal law, as for example, for federally regulated hazardous air pollutants or specifically identified federal major sources. While the qualification "to the extent quantifiable" helps, the inclusion of fugitive emissions in this definition may create recordkeeping and other regulatory complications. For example, "actual emissions" is used in the definition of "net emissions increase." How is a facility supposed to estimate new fugitive emissions in applying this definition? The proposed revised definition is as follows:

> (2) "ACTUAL EMISSIONS" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xii)(A) THROUGH (E), INCLUSIVE.

Response to comments VII.1.A., 1.B., 1.C., 1.C.(i.) and 1.C.(ii):

WEPCO Rule:

The Department intended to be more consistent with the federal definition of Actual Emissions. The amended definition of "actual emissions" proposed by the commentors better reflects the Department's intent to promote consistency with critical federal definitions.

Therefore the Department should make the requested change to the definition of "actual emissions" as follows:

> "ACTUAL EMISSIONS" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xii)(A) THROUGH ~~(D)~~(E), INCLUSIVE~~, PROVIDED THAT ACTUAL EMISSIONS SHALL INCLUDE FUGITIVE EMISSIONS TO THE EXTENT QUANTIFIABLE~~

Fugitive emissions:

See the proposed deletion of consideration of fugitive emissions from the definition of actual emissions noted above.

Embedded definitions:

By incorporating federal definitions by reference in the proposed regulations the Department intended the reader to infer that embedded terms (e.g., defined terms used with definitions incorporated by reference) are as defined in the CFR unless indicated otherwise.

2. **Comment on the definition of "actual emissions" and "potential emissions":** As an initial matter, this commentor supports the Department's efforts to promote consistency with the federal program by incorporating, in large part, the federal definition for "actual emissions" and a much-improved definition for "potential emissions" and "potential to emit". However, proposed section 22a-174-1(2) and 22a-174-1(86) would require the inclusion of fugitive emissions "to the extent quantifiable". The phrase "to the extent quantifiable" is extremely vague, and DEP could construe the term broadly or narrowly on a case-by case basis. To ensure compliance, facilities would be forced to take the extreme position that all fugitive emissions are quantifiable (even though, as a practical matter, certain fugitive emissions are not quantifiable) and assign arbitrary emission estimates. For example, the proposed definition for "potential to emit" would include the maximum capacity of a stationary source to emit fugitive emissions. Moreover, a process source attempting to calculate actual emissions will have the very difficult task of trying to determine whether DEP (or EPA for that matter) would consider certain fugitive emissions "quantifiable".

Numerous federal and state requirements derive their applicability from the terms "actual emissions" and "potential emissions". Therefore, it is vital that these definitions be clear. For example, DEP's definition for "net emissions increase" in section 22a-174-1(70) emphasizes the need to clarify the treatment of fugitive emissions in the definition of "actual emissions" in section 22a-174-1(2). By incorporating 40 C.F.R. 51.165(a)(1)(vi) by reference, the proposed new definition of "net emission increase" uses the term "actual emissions". Although this definition generally works well and is consistent with federal law, the inclusion of "fugitive emissions" in the proposed state definition of "actual emissions" complicates the determination of a "net emissions increase". The incorporated federal definition of "net emissions increase" itself relies on the term "actual emissions", as that term is defined in the federal regulations, in which fugitive emissions are considered only for specified categories of sources. Such a scheme creates confusion, in an already highly complex program. If the DEP were to claim that sources must follow the proposed state definition of "actual emissions",

notwithstanding the inconsistency with the federal definition of "net emissions", "major stationary sources", "net emissions increase", etc., what would be the justification for making the state program more stringent and more complex than the federal program? Also, please explain how a source should determine fugitive emissions increases and decreases over a five-year period. As a practical matter, such a determination would be extremely difficult, if not impossible.

The current definitions for "actual emissions" and "potential emissions" include the phrase "including fugitive emissions to the extent quantified by permit, order or by registration information". This commentor believes this language sets forth a clear standard for the regulated community as to when fugitives must be considered when calculating "potential to emit" or "actual emissions" for the purpose of both state and federal requirements. This commentor recommends that DEP revise the definition for "actual emissions" in section 22a-174-1(2) and "potential emissions" or "potential to emit" in section 22a-174-1(86) to read:

> (2) "ACTUAL EMISSIONS" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xii)(A) THROUGH (D), INCLUSIVE, PROVIDED THAT ACTUAL EMISSIONS SHALL INCLUDE FUGITIVE EMISSIONS TO THE EXTENT ~~QUANTIFIABLE~~ **QUANTIFIED BY PERMIT, ORDER OR REGISTRATION INFORMATION**.
>
> (86) "POTENTIAL EMISSIONS" OR "POTENTIAL TO EMIT" MEANS THE MAXIMUM CAPACITY OF A STATIONARY SOURCE, INCLUDING ALL PHYSICAL AND OPERATIONAL LIMITATIONS, TO EMIT ANY AIR POLLUTANT, INCLUDING FUGITIVE EMISSIONS TO THE EXTENT ~~QUANTIFIABLE~~ **QUANTIFIED BY PERMIT, ORDER OR REGISTRATION INFORMATION**.

Response to comment VII.2.:

Actual emissions:

See the Department's response to comments in Part VII.1.A, B, and C (i) and (ii) of this report.

Potential emissions:

See the Department's response to comments in Part VII. 44 through 46, inclusive, of this report.

3. Comment on the definition of "Affected State or States"

(A) Comment on the definition of "Affected State or States": The Department should include the States of Vermont, New Hampshire and New Jersey in the definition of "affected States" and remove the geographically limiting factor of "and any other state within 50 miles of a Connecticut Title V source."

(B) Comment on the definition of "Affected State or States." This proposed definition refers not only to New York, Rhode Island, and Massachusetts, but also to any state within 50 miles of a Connecticut Title V source. The commentor requests clarification as to what other states would be considered an "Affected State." The commentor also requested clarification as to whether "Affected State" status depends upon a state's distance from a particular Title V source or whether such status depends on a state's distance from any Title V source. Stated another way, this commentor is unsure whether the definition of "affected state" will vary for each Title V permit application.

Response to comments 3(A) and (B): First, the Department should not make the requested change set forth in comment 3.A. as it is overly broad and would impose needless administrative requirements on the State of Connecticut and other non-impacted states beyond the boundaries recognized by EPA as necessary to ensure that affected states are notified of Title V permit applications or modifications thereto. Second, for purposes of section 22a-174-33, affected state status may vary between Title V permit applications. An 'affected state' ***will always be*** New York, Massachusetts and Rhode Island, but may also include either New Jersey, Vermont or New Hampshire depending on the location of a particular Title V source. The Department recognizes that this definition is different than that in 40 CFR 70.2 due to the close proximity of states in New England.

4. Comment on the definition of "Air Pollutant": The current proposed definition of Air Pollutant excludes "carbon dioxide, uncombined water vapor or water droplets . . . molecular oxygen expressed as O_2 [and] nitrogen." In order to take advantage of the low emissions nature of fuel cells, this commentor suggests the following revision: In addition to excluding molecular oxygen and nitrogen, add exclusions for Hydrogen, Argon, and Helium. These naturally occurring elements are emitted from fuel cells, but should not be considered air pollutants.

Response to Comment 4: The Department should not make the suggested change until such time that the Department has determined whether the exemption of the above listed elements is necessary.

5. Comment on the definition of "Best Available Control Technology." At the end of the first sentence following "determines is achievable" add the following: "AND MEETS THE CRITERIA SET FORTH IN SECTION 22a-174-3a(j) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES." As written the definition simply states that BACT is anything that the Department determines is achievable. The suggested additional language makes clear that the determination of what is achievable requires consideration of the factors set forth in section 22a-174-3a. If this is the intent of the regulations, please clarify this intent in the final report on the regulations.

Response to Comment 5: The Department, while developing the proposed regulations, intended to avoid including substantive requirements within the definitions. The Department believes that the language suggested by the commentors provides clarity without actually incorporating substantive requirements into the definition and is consistent with the

Department's intent. There are, however, substantive requirements governing BACT determinations provided in sections 22a-174-3a(c), 22a-174-3a(d), and 22a-174-3a(k) as well as 22a-174-3a(j). So as not to interject substantive requirements into the definition of "BACT", the Department should revise the proposed definition of "BACT" as:

> "Best Available Control Technology" or "BACT" means an emission limitation, including a [visible emission standard,] LIMITATION ON VISIBLE EMISSIONS, based upon the maximum degree of reduction for each applicable air pollutant emitted from any proposed stationary source or modification which the [Commissioner] COMMISSIONER, on a case-by-case basis, determines is achievable IN ACCORDANCE WITH SECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. [for a similar or representative type of source or modification through] BACT MAY INCLUDE, WITHOUT LIMITATION, THE application of production processes, WORK PRACTICE STANDARDS or available methods, systems, and techniques, including fuel cleaning or treatment, THE USE OF clean fuels, or innovative [fuel combustion] techniques for THE control of such air pollutant."

6. Comment on the definition of "commence construction": The proposed revised language, "to undertake actual construction of the source within a reasonable time" seems vague. The Department should specify a time frame of eighteen months in paragraph (A) of this section.

Response to comment 6: See the Department's response to comment 7 below.

7. Comment on the definition of "Commence" or "Commencement": The commentor noted that this definition contains a reference to the "federal air quality control laws." Since the regulations define "Act", the commentor suggests that the regulations use the defined term. The commentor did not understand the need for the proposed change in subparagraph (A) of the definition, which requires a schedule approved by the Commissioner, rather than construction "to be completed in a reasonable time." Permits typically do not contain construction schedules and the "reasonable time" language is from the federal rule, 40 CFR 51.165(a)(xvi). The commentor also believes this definition inappropriately embeds a regulatory requirement within a definition. Various other proposed revisions to section 22a-174-1 represent a welcome shift away from such formats, but the "commence construction" definition, as proposed, would be run counter to this progress. Finally, this commentor believes that such an addition is unnecessary because section 22a-174-3a already provides that the commissioner "may modify, revise or revoke any permit if the owner or operator ... (A) Has not ***commenced*** construction authorized by the permit within eighteen (18) months from the date of issuance, or such other period, as the permit provides, whichever is later; [or] (B) Has discontinued construction for eighteen (18) months or more after actual construction authorized by the permit has begun ..." See: proposed section 22a-174-3a(f)(2).

The commentor requests the Department explain the proposed change and the justification for a requirement more stringent than the federal regulations. The commentor suggests this definition be amended as follows:

> [(17)](22) "Commence[" or "Commencement" as applied to construction of a stationary source or modification] CONSTRUCTION" means that the owner or operator OF THE PROPOSED STATIONARY SOURCE OR PROPOSED MODIFICATION TO A STATIONARY SOURCE has all necessary permits or approvals required under **THE ACT** ~~federal air quality control laws~~ and [these regulations,] SUBSECTION 22a-174-1, ET SEQ. OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, and has either:
>
> (A) Begun, or caused to begin, a CONTINUOUS program of physical on-site construction of the source TO BE COMPLETED IN A REASONABLE TIME[:], ~~[:],SUBJECT TO A SCHEDULE APPROVED BY THE COMMISSIONER, WITHOUT ANY BREAKS IN SUCH CONSTRUCTION OF MORE THAN EIGHTEEN MONTHS;~~ OR
>
> (B) Entered into [site specific] binding agreements or contractual obligations TO UNDERTAKE ACTUAL CONSTRUCTION OF THE SOURCE WITHIN A REASONABLE TIME, which cannot be [cancelled] CANCELED or modified without substantial ECONOMIC loss to the owner or operator[, to undertake a program of construction of the source to be completed within a reasonable time.];

Response to comment 7: With respect to the definition of "commence construction", the Department should:

- Make the suggested change to strike the phrase "federal air quality control laws" and replace such phrase with "THE ACT, ANY FEDERAL REGULATIONS ADOPTED THEREUNDER AND"

- Not make the suggested change with respect to subparagraph (B) concerning breaks in construction of more than eighteen months. First, this provision is in the existing definition of "commence construction" and is merely re-positioned in the revised definition as proposed. Second, this provision is consistent with the restriction set for in section 22a-174-3a(f)(2)(B) of the proposed regulations and is not a substantive requirement, but a clarification of the preceding phrase "reasonable time."

- The Department should revise the proposed definition of "commence construction" as follows:

> [17](22) "Commence[" or "Commencement" as applied to construction of a stationary source or modification] CONSTRUCTION" means that the owner or operator OF THE PROPOSED STATIONARY SOURCE OR PROPOSED MODIFICATION TO A STATIONARY SOURCE has all necessary permits or approvals required under

[federal air quality control laws and these regulations,] THE ACT, ANY FEDERAL REGULATIONS ADOPTED THEREUNDER, SECTION 22a-174, ET. SEQ. OF THE CONNECTICUT GENERAL STATUTES, AND SECTION 22a-174-1, ET SEQ. OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, and has either:

(A) Begun, or caused to begin, a CONTINUOUS program of physical on-site construction of the source [:], SUBJECT TO THE PERMIT ISSUED BY THE COMMISSIONER, WITHOUT ANY BREAKS IN SUCH CONSTRUCTION OF MORE THAN EIGHTEEN MONTHS; OR

[(i) subject to a schedule which will lead to completion in a reasonable time; and

(ii) without any breaks in such construction of more than 18 months; or]

(B) Entered into [site specific] binding agreements or contractual obligations TO UNDERTAKE ACTUAL CONSTRUCTION OF THE SOURCE WITHIN A REASONABLE TIME, which cannot be [cancelled] CANCELLED or modified without substantial ECONOMIC loss to the owner or operator[, to undertake a program of construction of the source to be completed within a reasonable time].

8. Comment on the definition of "Commence" or "Commencement": One commentor notes that the definition of Commence Construction as qualified in section 22a-174-1(22)(B) suggests that all modifications require approved schedules, not only those defined in section 22a-174-1(67). While the applicant should provide planned activities that are part of a minor modification to the Department, schedule approval should not be required for minor modifications.

Response to comment 8: The provisions discussed by this commentor do not automatically require that minor permit modifications (NSR or Title V) must contain approved schedules for the completion of construction. However, based on each proposed modification, the Department should make a case by case determination as to whether such a schedule should be included within the proposed permit modification. The Department's determination should be based on the proposed activity and applicable state and federal requirements.

9. Comment on the definition of "CEM" or "continuous emissions monitoring": One commentor noted that the definition of "CEM" proposed in section 22a-174-1 differs, albeit slightly, from that established in section 22a-174-38 as follows:

Section 22a-174-38(a)(5) "Continuous emission monitoring system" or "CEM system" means a monitoring system for continuously measuring the emissions of any pollutant from a MWC unit.

Section 22a-174-1(25) "CEM" OR "CONTINUOUS EMISSION MONITORING" MEANS A SYSTEM FOR CONTINUOUSLY

MEASURING THE EMISSIONS OF ANY POLLUTANT FROM A STATIONARY SOURCE.

This commentor requests clarification as to whether the differences in language should be of any concern to affected facilities.

Response to comment 9: The definitions set forth in proposed section 22a-174-1 will apply to all sources, unless stated otherwise in subsequent sections of the Regulations of Connecticut State Agencies for the abatement of air pollution. Department is continually in the process of updating its air management regulation as new federal requirements and guidance emerge, regulatory language is refined. Due to the overwhelming number of federal mandates and limited state resources to amend every impacted state regulation, slight inconsistencies in regulatory text do occur. Any inconsistencies that may exist are generally inconsequential and are program specific. Therefore, it is critical to review and understand the relevant regulatory requirements for each program.

10. **Comment on the definition of "DERC" or "discrete emission reduction credit":** The commentor does not understand this definition and requests the Department clarify the intent of this definition.

Response to comment 10: A "DERC" is a discrete emission reduction credit which represents a credit received by a source for overcontrolling air pollution levels beyond all applicable requirements. The Department retires 10% of all created DERCs to ensure a net environmental benefit from the creation and use of DERCs. The intent of the definition is to explain to the reader the various requirements of which DERCs are comprised. It is the Department's experience that there is a great deal of misunderstanding surrounding the creation and use of DERCs - much of it due to misinformation published over the last several years. Department staff are always available to further discuss and explain the Department's various market-based programs designed to further reduce local and regional air pollution using the most cost-effective means possible. The Department should not make a change based upon this comment.

11. **Comment on the definition of "DERC" or "discrete emission reduction credit":** One commentor noted that the definition of "DERC" proposed in section 22a-174-1 differs, albeit slightly, from that established in section 22a-174-38 for "ERC" as follows:

> Section 22a-174-38(a) (21) "NOx Emissions Reductions Credit" or "ERC" means an air pollutant reduction created in the nitrogen oxides emissions trading program described by this section.
>
> Section 22a-174-1 (32) "DERC" OR "DISCRETE EMISSION REDUCTION CREDIT" MEANS THE REAL, QUANTIFIABLE, SURPLUS, PERMANENT, AND ENFORCEABLE REDUCTION OF AN AIR POLLUTANT AT A SOURCE, WHICH IS:

(A) CERTIFIED BY THE COMMISSIONER THROUGH A SIP APPROVED PLAN; AND

(B) GENERATED DURING A SPECIFIED PERIOD OF TIME.

This commentor requests clarification as to whether the differences in language should be of any concern to affected facilities.

Response to comment 11: See the Department's response to comment 9 above.

12. Comment on the definition of "Discharge Point." This provision apparently applies only to section 22a-174-29 of the regulations (section 29). The proposed revisions improve the definition. However, it is not clear what an "area" means with respect to releasing pollutants to the ambient air. The section 29 hazardous air pollutant regulations contain dispersion equations that apply only to discrete discharge points, not areas. Therefore, this commentor suggests that the regulations be revised as shown below. Please confirm that the proposed language is not intended to expand the section 29 hazardous air pollutant regulations to areas on a site that would typically be considered area or fugitive sources.

> [(23)](30) "Discharge point" means any stack [and shall also include any] OR ~~area~~ **OTHER DISCRETE CONVEYANCE** from which [a hazardous] AN air pollutant IS RELEASED INTO THE AMBIENT AIR [emanates by evaporation, diffusion, or wind entrainment into the ambient air.];

Response to comment 12: See the Department's response to comment 13 below.

13. Comment on the definition of "discharge point": One commentor notes that this term relates only to the state's independently developed hazardous air pollutant program at R.C.S.A. section 22a-174-29. This program is essentially unrelated to any other provision of this regulatory proposal, or any federal programs or requirements implemented by DEP. As noted below, the intent of the proposed revisions to these terms is unclear, but could be claimed to expand DEP's authority under the Section 29 program. Such a change would be procedurally improper, for lack of public notice. The public notice in this rulemaking states only that the package of proposed revisions to R.C.S.A. section 22a-174-1 definitions "consolidates into one section the definition of terms that are used in multiple sections of the regulations ... [and] also clarifies and streamlines existing definitions pertaining to federal programs and requirements implemented by the DEP". Conn. L.J. at 1B-2B (July 17, 2001). The proposed revisions to the Section 29 terms relate to neither of these purposes. Accordingly, unless the DEP makes clear that the proposed revisions do not substantively change the scope of the state hazardous air pollutant program, no revisions should be made to these definition in this proceeding.

The proposed revisions to the definition of "discharge point" raise similar concerns. The intent of the proposed revisions is unclear, but could be construed to claim that the

"Maximum Allowable Stack Concentrations" (MASCs) derived from the Section 29 program to apply to emissions from a "stack" or an "area" alike. It is not clear what an "area" means with respect to releasing pollutants to the ambient air. The Section 29 regulations contain dispersion equations which apply only to discrete conveyance points, not areas. While the present definition of "discharge point" uses the term "area", the proposed revision would compound the uncertainty by seeming to further delineate "area" separately from "stack". We therefore request that, if the definition of "discharge point" is to be revised in this proceeding, it should be revised as follows:

> [(23)](30) "Discharge point" means any stack [and shall also include any] OR ~~area~~ **OTHER DISCRETE CONVEYANCE** from which [a hazardous] AN air pollutant IS RELEASED INTO THE AMBIENT AIR [emanates by evaporation, diffusion, or wind entrainment into the ambient air.];

In addition, or at least in the alternative, please confirm that any change to the definition of this term is only a clarification, and is not intended to expand the Section 29 regulations to areas on a site that would typically be considered area sources or fugitive sources.

Response to comment 13: The plain language of the proposed changes to the definition of "discharge point" indicates the definition is being expanded rather than clarified. The Department did not intend to expand the applicability of section 22a-174-29, the state's hazardous air pollutant program, through the present regulatory proposal. As such, the Department should clarify the definition of "discharge point" as follows:

> [(23)](30) "Discharge point" means any stack and [shall also include] any area from which a hazardous air pollutant IS RELEASED INTO THE AMBIENT AIR [emanates by evaporation, diffusion, or wind entrainment into the ambient air.];

It should also be noted that the definition of "discharge point" is not intended to expand what the Department considers an "area" from which hazardous air pollutants may be released. The use of the term "area" in this definition indicates that a "discharge point" may be a non-point source.

14. **Comment on the need to define "emissions rate":** One commentor notes that there is no definition of "emission rate" in the Regulations. The phrase "increases the emission rate" could refer to any number of changes at a facility, which may or may not relate to a physical change. As such the Department should clarify whether "emission rate" refers to specific measured pollutants over a specific interval, and whether intermittent, instantaneous increases would constitute a change to the emission rate, or otherwise be deemed a "Modification" or "modified source". The term "emission rate" also is an important element of the definition of "Allowable emissions". The commentor requests the Department clarify whether the thresholds found in section 22a-174-3a apply for purposes of determining whether or not "any physical change or change in the method of operation of, a stationary source which increases the emission rate" has occurred.

Response to comment 14: Emission rates, such as the source's maximum rated capacity, are generally a value established by the manufacturer or by the Department during a permit review. The Department need not define the term "emission rate" to effectuate the regulatory provisions regarding major or minor modifications to a stationary source. Any further concerns surrounding the elements that constitute a source modification may be addressed by reviewing the portion of this report concerning source modifications and the criteria by which such modification would trigger permit applicability provisions under proposed sections 22a-174-2a and 22a-174-3a.

15. Comment on the definition of "Emission Unit." The incorporation by reference of the federal definition of emission unit is a good approach to clarifying the meaning of the State's regulations.

Response to comment 15: The Department agrees with this comment and should provide for incorporation by reference where appropriate.

16. Comment on the term "federally enforceable": The Department should clarify its definition for "federally enforceable."

Over the years, there has been continuing uncertainty as to whether permits to operate issued by the Department under existing section 22a-174-3 are "federally enforceable". Since all state permits to operate are issued only after the opportunity for public participation, and such permits are required by regulations that are a part of the State Implementation Plan ("SIP"), those permits should be considered federally enforceable. Please confirm that state permits to operate are considered federally enforceable. In addition, please confirm that all of the state air regulations that are part of the SIP are federally enforceable.

Further, proposed section 22a-174-1(38) provides that the term "federally enforceable" would have "the same meaning as in 40 C.F.R. 51.165(a)(1)(xiv)". However, this federal definition was vacated and remanded several years ago by the U. S. Court of Appeals for the District of Columbia Circuit in National Mining Ass'n v. EPA, 59 F.3d 1351 (D.C.Cir. 1995), Clean Air Act Implementation Project v. EPA, 1996 U.S. App. LEXIS 18402 (D.C.Cir. 1996), and related cases. EPA has not yet developed a revised definition, and has announced that "federally enforceable" will be co-extensive with "practicably enforceable" in the interim. See "EPA Interim Policy On Federal Enforceability Requirement For Limitations On Potential To Emit" (Jan. 1996). As a result, the proposal to incorporate the federal definition by reference creates uncertainty as to whether the incorporated definition in the Connecticut regulations would be deemed to be subject to the judicial vacator and remand (as would be appropriate), or whether the incorporated definition would disregard this decision, and lock Connecticut air regulations into an obsolete and overly stringent concept. (While certain features of the proposed regulations would allow for either federal enforceability or practicable enforceability (see, e.g., proposed section 22a-174-1(86), "potential emissions"), other features would not (see, e.g., proposed section 22a-174-1(53), "internal offset")). Accordingly, please confirm in the hearing report that the reference in proposed section 22a-174-1(38) to the "meaning" of the term in the federal regulations incorporates the actual meaning (or lack thereof) of that term as spelled out by relevant judicial decisions and EPA

pronouncements, and not merely the words of the cited passage in 40 C.F.R. 51.165(a)(1)(xiv). If this is not the case, please explain why DEP believes that Connecticut must be more stringent than the federal program on this fundamental concept.

Response to comment 16: See the Department's response to comment 17 below.

17. **Comment on the definition of "Federally enforceable":** Over the years, there has been confusion concerning whether state "permits to operate" issued under R.C.S.A. section 22a-174-3 are federally enforceable. Since all state permits are issued only after the opportunity for public participation, and the state permits to operate are required by regulations that are a part of the State Implementation Plan (SIP), those permits should be considered federally enforceable. Please confirm whether or not state-issued "permits to operate" issued under R.C.S.A. section 22a-174-3 are considered to be federally enforceable. In addition, please confirm that all of the state air regulations and administrative orders that are part of the SIP are federally enforceable.

Also, the proposed regulations would include the "practicably enforceable" as a co-equal alternative to "federally enforceable" in the state's air permit programs. Subject to resolving concerns as to how "practicably enforceable" is defined (as discussed below), this would be a welcome step to provide flexibility and realism in state's air programs. This would also be consistent with a string of federal court decisions in recent years, by which EPA's definition of "federally enforceable" was vacated and remanded. See, e.g., National Mining Association v. EPA, 59 F.3d 1351 (D.C.Cir. 1995). To date, EPA has not developed a revised definition, and has announced that "federally enforceable" will be co-extensive with "practicably enforceable" in the interim.

However, it appears that due an oversight, the proposed regulations in R.C.S.A. § 22a-174-1 would, in at least one instance, retain the use of "federally enforceable", without alternatively referencing "practicably enforceable" (see the proposed revised definition of "internal offset" --proposed R.C.S.A. § 22a-174-1(53)). We request that DEP add "or practicably enforceable" into this definition, and confirm that there are no other potentially misleading references to "federally enforceable" alone. We also request that DEP confirm its intent that "federally enforceable" should in all cases be understood to incorporate the concept of "practicably enforceable", consistent with EPA's present position.

If DEP declines to do so, then we request that DEP explain why it believes that Connecticut air programs need to be more stringent than federal standards on this fundamental concept, and to hold to a definition that federal courts have rejected for EPA use.

Response to comments 16 and 17:

Federal enforceability of state operating permits, regulations and administrative orders

It is true that all permits issued pursuant to programs that are approved as part of Connecticut's SIP as well as any regulation or administrative order that is approved as part of Connecticut's SIP are federally enforceable. The Department should not, as part of this

report, make a determination on whether any particular permit, administrative order or regulation is federally enforceable, as each must be independently evaluated to ascertain its approval status. Such an effort is beyond the scope of this report.

Incorporation by reference of the definition of "federally enforceable"

The Department disagrees that incorporation by reference of the term "federally enforceable" from 40 CFR 51.165(a)(1)(xiv) into section 22a-174-1 creates uncertainty as to whether the incorporated term in the Connecticut regulation would be subject to the judicial vacatur and remand issued by the U.S. Court of Appeals for the District of Columbia Circuit against EPA in the Clean Air Implementation Project (CAIP) case cited by the commentor. First, incorporation by reference of a term into state regulation is merely regulatory shorthand. If the Department were to copy the federal definition word by word, the state definition certainly would not be subject to the federal vacatur. Second, although the current vacatur of the definition of "federally enforceable" in the federal NSR regulations may prevent EPA from requiring a state to make any limit federally enforceable, it is a well established principal of environmental regulation that states may be more stringent than required by EPA. The ability to hold out the concept of federal enforceability as an independent term could serve to enhance compliance in certain situations. Finally, EPA has issued (and re-issued) guidance documents indicating that the vacatur and remand in CAIP do not affect the definition of "federally enforceable" contained in any SIP approved state program. See "EPA Interim Policy On Federal Enforceability Requirement For Limitations On Potential To Emit" (Jan. 1996) and "EPA Second Extension of January 25, 1995 Potential to Emit Transition Policy and Clarification of Interim Policy" (July 10, 1998).

Amendment of the definition of "internal offset" to include the term "practicably enforceable"

It is not an oversight that the definition of "internal offset" does not include a reference to the term "practicably enforceable." In addressing the requirement that a new major stationary source or a major modification to an existing major stationary source offset the new emissions within the nonattainment area in accordance with the applicable new source review (NSR) regulations, the Clean Air Act specifically mandates that "[a]ny emission reductions required as a precondition of the issuance of a permit under [the nonattainment NSR offset requirement] shall be federally enforceable before such permit may be issued." CAA sec. 173(a), 42 U.S.C. § 7503(a). This statutory mandate is not affected by the holding in the National Mining Ass'n case. Connecticut is required by EPA and the CAA to continue the practice of ensuring that offsets are federally enforceable for nonattainment NSR. Therefore, Department should not make the suggested change to the definition of "internal offset."

18. Comment on the definition of "Federally enforceable." Over the years, there has been confusion concerning whether state operating permits are federally enforceable. Since all state permits are issued only after the opportunity for public participation, and the state operating permits are required by regulations that are a part of the State Implementation Plan ("SIP"), those permits should be considered federally enforceable. Please confirm whether or not state operating permits are considered to be federally enforceable. In addition, please confirm that state regulatory requirements and administrative orders, adopted as part of the

SIP, are federally enforceable. For example, VOC and NO_x RACT requirements often apply to sources that do not have permits, since such regulatory requirements are part of the SIP, they should be considered federally enforceable.

Response to comment 18: See the Department's response to comments 16 and 17 above.

19. **Comment on the definitions of "flare" and "stack":** The proposed definition of "stack" adopts the federal definition, but adds that a flare is also a stack. "Flare" is defined to "mean an apparatus, DEVICE, PROCESS, OR PROCEDURE for the burning of flammable gases or vapors at or near the exit of a stack, flue or vent." The use of the word stack in the definition of flare makes the definition circular. The commentor does not understand the need to include "flares" in the definition of stack, and suggests eliminating the phrase "PROVIDED THAT STACK SHALL ALSO INCLUDE A FLARE," from the definition. Furthermore, the definition of "flare" now refers to a "device, process or procedure." The commentor also requests that the Department either eliminate the terms "process or procedure" or explain the intent of these terms.

Response to comment 19: The Department should not make the requested change. The amended definition of "flare" is intended to clarify the Department's intent that any emissions from a flare will be deemed to be emissions from a stack. The inclusion of the phrase "process or procedure" is intended to recognize that flares are also referred to as a process or procedure for eliminating landfill emissions.

20. **Comment on the definition of "Fugitive emissions."** The proposed change, shown below, uses language different from the federal definition of fugitive emissions. Please explain whether this change is intended to change the meaning of the federal definition.

> [(32)](42) "Fugitive emissions" means fugitive dust or those emissions [which could not] THAT CANNOT reasonably pass through a stack, chimney, vent, or other functionally equivalent opening[.]

Response to comment 20: The Department does not intend to alter or expand the meaning of "fugitive emissions" by the proposed changes. The proposed change is only intended to shift the tense of the verb into the present tense.

21. **Comment on the definition of "hazard limiting value" or "HLV" and "maximum allowable stack concentration" or "MASC":** First, these terms relate only to the state's independently developed hazardous air pollutant program at R.C.S.A. § 22a-174-29. This program is essentially unrelated to any other provision of this regulatory proposal, or any federal programs or requirements implemented by DEP. As noted below, the intent of the proposed revisions to these terms is unclear, but could be claimed to expand DEP's authority under the Section 29 program. Such a change would be procedurally improper, for lack of public notice. The public notice in this rulemaking states only that the package of proposed revisions to R.C.S.A. § 22a-174-1 definitions "consolidates into one section the definition of terms that are used in multiple sections of the regulations ... [and] also clarifies and streamlines existing definitions pertaining to federal programs and requirements implemented

by the DEP". Conn. L.J. at 1B-2B (July 17, 2001). The proposed revisions to the Section 29 terms relate to neither of these purposes. Accordingly, unless the DEP makes clear that the proposed revisions do not substantively change the scope of the state hazardous air pollutant program, no revisions should be made to these definition in this proceeding.

Second, as noted above, the intent and meaning of the proposed revisions is unclear, and susceptible to being interpreted in a manner that would increase DEP's regulatory authority under Section 29. For example, the current definition of "hazard limiting value" or "HLV" (at R.C.S.A. § 22a-174-1(36)) defines the HLV as setting the "highest acceptable" concentration of a state-designated hazardous air pollutant (HAP) in the ambient air, and recognizes that "the primary use" of the HLV is to derive a MASC. Consistent with this definition, a Connecticut court has recently held that only MASC limits, and not HLVs, are enforceable. DEP v. Birken Mfg. Co., 2000 WL 1196498 (Conn. Super. 2001). Yet the proposed revised definition of HLV would provide that it sets the "highest allowable" concentration of a HAP. Proposed R.C.S.A. § 22a-174-1(45) (emphasis supplied). We are concerned that the proposed revised definition of HLV could be claimed to circumvent this decision, and to significantly alter the state's hazardous air pollutant program at Section 29. If, notwithstanding the prior comments, the proposed revisions to this term will be retained in the final regulations, we suggest that the proposed regulations be revised as follows:

> [(36)](45) "Hazard limiting value" or "HLV"[,] means the highest-~~[acceptable]~~ ~~**ALLOWABLE**~~ concentration [in the ambient air] of a hazardous air pollutant IN THE AMBIENT AIR, [as shown in Table 29-1, 29-2, or 29-3 of] PURSUANT TO section 22a-174-29 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. [as determined by the Commissioner.] The primary use of this term is in the derivation of the maximum allowable stack concentration for a source.~~]~~

In addition, or at least in the alternative, please confirm that any change to the definition of this term is only a clarification, and is not intended to expand the application of the Section 29 regulations.

Response to comment 21: The plain language of the proposed changes to the definition of "hazard limiting value" indicates the definition is being expanded rather than clarified. The Department did not intend to expand the applicability of section 22a-174-29, the state's hazardous air pollutant program, through the present regulatory proposal. As such, the Department should clarify the definition of "hazard limiting value" as follows:

> [(36)](45) "Hazard limiting value" or "HLV"[,] means the highest-acceptable concentration [in the ambient air] of a hazardous air pollutant IN THE AMBIENT AIR, [as shown in Table 29-1, 29-2, or 29-3 of] PURSUANT TO section 22a-174-29 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. [as determined by the Commissioner.] The primary use of this term is in the derivation of the maximum allowable stack concentration for a source.

22(A) – (D). Comments on the definition of "incinerator"

(A) Comment on the definition of "incinerator": The commentor requests the Department clarify or define the term "slab" and questions whether a slab is a device for "destroying, reducing or salvaging, by fire or heat any waste"?

Response to comment 22(A): The Department intended readers to define the term "slab" as in Webster's Dictionary. (e.g., a broad, flat, rather thick piece of stone or concrete.)

(B) Comment on the definition of "Incinerator": The proposed definition of "Incinerator," in part, provides as follows:

> "[(38)](47) "Incinerator" means any device, apparatus, equipment, SLAB, or structure used for destroying, reducing, or salvaging, by fire OR HEAT, any WASTE [material or substance including, but not limited to, refuse, rubbish, garbage, trade waste, debris or scrap; or facilities for cremating] OR human or animal remains[. For further definitions related to incineration, see subdivision 22a-174-18(c)(1).] PROVIDED THAT, FOR THE PURPOSES OF THIS DEFINITION, WASTE DOES NOT INCLUDE. . . ."

Please explain the intent of the changes. The addition of "or heat" to "by fire", for example, could be interpreted to mean that ovens which use heat to remove paint from painting racks will be considered "incinerators." In addition, is the term "incinerator" intended to include a thermal oxidizer used for control of VOCs? In the current NSR regulations, section 22a-174-3(a)(1)(H), suggested that afterburners (thermal oxidizers) were treated as incinerators. If thermal oxidizers are not intended to be considered incinerators under the new rules, please clarify this. The ambiguity in the definition is caused in part by the fact that the term "waste" is not defined in the regulations. In addition to thermal oxidizers, are flares used to control landfill gas considered to be incinerators? If so, what is the significance of this from a permitting standpoint? Finally, this definition would appear to treat as incinerators, boilers burning off specification oil. Please confirm whether or not this is the intent, and explain how the treatment of such boilers as incinerators would affect the DEP's processing of air permits for such units.

Response to comment 22(B): See the Department's response to comment 22(D) below.

(C) Comment on the definition of "Incinerator." The proposed definition of "Incinerator," in part, provides as follows:

> "[(38)](47) "Incinerator" means any device, apparatus, equipment, SLAB, or structure used for destroying, reducing, or salvaging, by fire OR HEAT, any WASTE [material or substance including, but not limited to, refuse, rubbish, garbage, trade waste, debris or scrap; or facilities for cremating] OR human or animal remains[. For further definitions related to incineration, see subdivision 22a-174-18(c)(1).] PROVIDED THAT, FOR THE PURPOSES OF THIS DEFINITION, WASTE DOES NOT INCLUDE. . . ."

Please explain the intent of the changes. For example, is the term "incinerator" intended to include a thermal oxidizer used for control of VOCs? In the current NSR regulations, section 22a-174-3(a)(1)(H), suggested that afterburners (thermal oxidizers) were treated as incinerators. If thermal oxidizers are not intended to be considered incinerators under the new rules, please clarify this. The ambiguity in the definition is caused in part by the fact that the term "waste" is not defined in the regulations. In addition to thermal oxidizers, are flares used to control landfill gas considered to be incinerators? If so, what is the significance of this from a permitting standpoint?

Response to comment 22(C): See the Department's response to comment 22(D) below.

(D) Comment on the definition of "Incinerator." The proposed definition of "Incinerator" should clearly distinguish between devices used for commercial purposes and air pollution control equipment.

The proposed definition of "incinerator" would, as drafted, appear to extend to flame and flameless oxidizers and other such devices used for air pollution control. However, such equipment is also covered by the definition of "air pollution control device" in proposed section 22a-174-1(7). Oxidizers and other air pollution control devices employing combustion clearly do not present the same health and environmental risks as incinerators that burn solid waste. Because "incinerators" are subject to particularly stringent regulation under a variety of DEP programs (e.g., proposed section 22a-174-3a(f)(3) and current section 22a-174-38, as well as the Department's regulations regarding waste management), it is critical to ensure that the definition of "incinerator" does not include air pollution control equipment. Therefore we request that the definition of "incinerator" be revised as follows:

> [(38)](47) "Incinerator" means any device, apparatus, equipment, SLAB, or structure used for destroying, reducing, or salvaging, by fire OR HEAT, any WASTE [material or substance including, but not limited to, refuse, rubbish, garbage, trade waste, debris or scrap; or facilities for cremating] OR human or animal remains[. For further definitions related to incineration, see subdivision 22a-174-18(c)(1).] PROVIDED THAT, FOR THE PURPOSES OF THIS DEFINITION, WASTE DOES NOT INCLUDE:
>
> (A) USED OIL MEETING THE SPECIFICATIONS OF 40 CFR 279.11; OR
>
> (B) USED OIL BURNED IN SPACE HEATERS MEETING THE REQUIREMENTS OF 40 CFR 279.23;
>
> AND FURTHER PROVIDED THAT "INCINERATOR" SHALL NOT INCLUDE AIR POLLUTION CONTROL EQUIPMENT, AS DEFINED IN THIS SECTION.

Response to comments 22(B) through (D), inclusive:

- The addition of the "or heat" to "by fire" in the proposed definition of "incinerator" is intended to capture burn-off ovens some of which use non-combustion derived heat that may cause substantial air emissions. Thermal oxidizers would continue to be considered "incinerators" within the context of the proposed definition.

- The term "waste" within the definition of "incinerator" may be construed as vague. The Department should revise the definition of "incinerator" to strike the proposed addition of the term "waste" and reinstate the previous terminology.

- A flare is sometimes referred to as a process or procedure for eliminating landfill emissions. As such, a flare would be considered an "incinerator" under the proposed definition.

- With respect to the permitting implications associated with the proposed definition of "incinerator", the commentors should first review the Department's responses to comments in Part IX of this report. Briefly, the Department is proposing to remove regulatory provisions in section 22a-174-3a(f) of the proposed regulations concerning commissioner's authority to modify or renew incinerator permits on his own initiative. This does not, however, limit the commissioner's authority to modify or renew incinerator permits under other statutory or regulatory provisions.

- A boiler that combusts used oil would not be considered an "incinerator" provided such oil falls with the exclusions set forth in subparagraphs (A) and (B) of the definition of "incinerator".

- The commentor should understand that the proposed regulations (especially section 22a-174-3a) are primarily emissions-based. As such, "incinerators" be they emission units or air pollution control equipment, may be subject to additional regulation based on the type and amount of emissions released into the ambient air. Therefore, the Department should not make the proposed change to specifically exclude air pollution control equipment.

- The Department should revise the definition of "incinerator" as follows:

> [(38)](47) "Incinerator" means any device, apparatus, equipment, SLAB, or structure used for destroying, reducing, or salvaging, by fire OR HEAT, any ~~WASTE~~ [material or substance including, but not limited to, refuse, rubbish, garbage, trade waste, debris or scrap; or facilities for cremating] ~~OR~~ human or animal remains[. For further definitions related to incineration, see subdivision 22a-174-18(c)(1).] PROVIDED THAT, FOR THE PURPOSES OF THIS DEFINITION, ~~WASTE DOES NOT INCLUDE:~~ SOURCES COMBUSTING THE FOLLOWING USED OIL TYPES ARE NOT INCINERATORS:
>
> (A) USED OIL MEETING THE SPECIFICATIONS OF 40 CFR 279.11; OR
>
> (B) USED OIL BURNED IN SPACE HEATERS MEETING THE REQUIREMENTS OF 40 CFR 279.23.

23. Comment on the definition of "Internal Offset." The proposed definition provides as follows:

> [(43)](53) "Internal offset" means any federally enforceable reduction of actual emissions from one or more stationary sources on [a premise] THE SAME PREMISES which [can be] ARE used to offset [allowable] POTENTIAL emissions increases from a proposed [new] stationary source or [modification] PROPOSED CHANGE TO A STATIONARY SOURCE on such [premise] PREMISES.

This definition uses the phrase "Proposed change to a stationary source" instead of the defined term "modification." The commentor suggests that the term "modification" be used. If this revision is not made, please explain the meaning of the "proposed change" phrase.

Response to comment 23: See the Department's response to comment 24 below.

24. Comment on the definition of "Internal Offset": The proposed definition provides as follows:

> [(43)](53) "Internal offset" means any federally enforceable reduction of actual emissions from one or more stationary sources on [a premise] THE SAME PREMISES which [can be] ARE used to offset [allowable] POTENTIAL emissions increases from a proposed [new] stationary source or [modification] PROPOSED CHANGE TO A STATIONARY SOURCE on such [premise] PREMISES.

This definition uses the phrase "Proposed change to a stationary source" instead of the defined term "modification." This commentor suggests that the term modification be used. If this revision is not made, please explain the meaning of the "proposed change" phrase. In addition, for reasons discussed above with respect to the definition of "federally enforceable", the above definition should be revised to refer to "any federally enforceable OR PRACTICABLY ENFORCEABLE reduction of actual emissions. . . ."

Response to comments 23 and 24: The Department intended the phrase "proposed change" be taken to mean any type of modification to a stationary source that could trigger the applicability of the nonattainment new source review provisions set forth in section 22a-174-3a(l) of the proposed regulations. So as to avoid issues concerning the interpretation of this definition, the Department should define the term "internal offset" without using the phrase "proposed change" and provide a cross reference to the relevant nonattainment new source review provisions. The Department should revise the definition of "internal offset" as follows:

> [(43)](53) "Internal offset" means any federally enforceable reduction of actual emissions from one or more stationary sources on [a premise] THE SAME PREMISES which [can be] ARE used to offset [allowable] POTENTIAL emissions increases from a proposed [new] stationary source [or ~~[~~modification~~]~~ ~~PROPOSED CHANGE TO A STATIONARY SOURCE~~ on such ~~[~~premise] ~~PREMISES~~ ON SUCH

PREMISES IN ACCORDANCE WITH THE PROVISIONS OF SECTION 22a-174-3a(*l*) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

With respect to comment 24 the definition of internal offset should not be revised to refer to any practicably enforceable reduction as explained in the response to comments 16 and 17 above.

25. Comments on the definition of "Major Modification"

25(A) Comments on the definition of "Major Modification": This definition incorporates by reference (IBR) the federal definition of "major modification" from 40 CFR 51.165(a)(1)(v). This definition refers to the federal definition of "Significant" to provide the federal significance levels that define a major modification under the federal permitting rules. In previous drafts of this rule, the Department's proposed definition included a table that specified the significance emission threshold levels for a major modification. This table is now found in section 22a-173-3 of the Regulations of Connecticut State Agencies. Without a reference to this table or to the federal definition of significance, the Department's definition of "major modification" does not clearly define the federal major modification threshold levels. In addition, the federal significance definition contains threshold levels for pollutants that impact class I areas and for pollutants not specifically listed in the table but are nevertheless regulated under the CAA. Also, the Clean Air Act Amendments of 1990 (CAAA) revised the federal definition of significance to remove the obligation to review pollutants regulated under Title III of the CAA[1].

The Department should revise its definition to clearly define all the threshold levels for major modification and to reflect the additional elements of the federal definition. To do this, EPA recommends the Department either includes a reference in the definition that refers to the threshold levels in table 3a(k)-1 located in section 22a-174-3(k) of the R.C.S.A. or simply adopt the federal definition of "significant." If the Department decides to reference the table, it should also revise table 3a(k)-1 to include the additional federal requirements for significance found in 40 CFR 51.166(b)(23) (ii) & (iii). If the Department IBRs the federal definition of significance, it should modify the federal definition to ensure consistency with the Department's proposed regulations and with the CAAA of 1990. EPA recommends the following language:

> "Significant" has the same meaning as in 40 CFR 51.166(b)(23) except that: 1) Nitrogen Oxide as a ozone precursor and Volatile Organic Compounds are 25 tpy as ozone precursors, 2) Asbestos, Beryllium and Vinyl Chloride are exempt from the list in (b)(23)(i) and, 3) (b)(23)(ii) means, in reference to a net emission increase or the potential of a source to emit a pollutant subject to regulation under the act and is not listed under paragraph (b)(23)(i) of this section and not regulated under Title III of the CAA, any emission rate."

[1] See 61 FR 38309 (July 23, 1996)

Response to comment 25(A): To address the concerns identified by EPA, the Department should amend the definition of "major modification" as follows:

> [(45)](55) "Major modification" HAS THE SAME MEANING AS IN 40 CFR 51.165 (a)(1)(v). PROVIDED THAT, FOR THE PURPOSES OF THIS DEFINITION, THE TERM "SIGNIFICANT" HAS THE SAME MEANING AS IN 40 CFR 51.166(b)(23)(i) AND:
>
> (A) THE VALUES FOR NITROGEN OXIDES AS AN OZONE PRECURSOR, AND VOLATILE ORGANIC COMPOUNDS ARE EACH TWENTY-FIVE (25) TONS PER YEAR, AND
>
> (B) ASBESTOS, BERYLLIUM AND VINYL CHLORIDE ARE EXCLUDED.

25(B) Comment on the definition of "major modification": Section 22a-174-1(55) incorporates the federal definition of Major Modification from 40 CFR 51.165(a)(1)(v), which describes a "significant net emissions increase." Please confirm that "significant" in this term refers to emission levels described in Table 3a(k)-1 and not the federal definition of "Significant" stated in 40 CFR 51.165(a)(1)(x).

Response to comment 25(B): The Department intends that the term 'significant' used in proposed Table 3a(k)-1 refer to the federal definition of "significant" with several caveats necessary to address Connecticut's ozone nonattainment status and other requirements set forth in Title III of the 1990 Clean Air Act Amendments. For further information, also see the comment 25(A) and the Department's response thereto.

26. Comment on the definition of "Major Stationary Source": The federal definition of "major stationary source" at 40 CFR 51.165(a)(1)(iv) does not contain the lower major source threshold levels mandated by the CAA for ozone nonattainment areas, such as those in Connecticut. Previous drafts of this definition included these threshold levels, however the final proposed definition did not. To comply with federal requirements including the lower major source threshold levels, EPA recommends the Department include the following language:

> "Major Stationary Source" has the same meaning as in 40 CFR 51.165(a)(1)(iv) except that major source definition also applies to a stationary source that emits or has the potential to emit:
>
> 1) 50 tons per year of volatile organic compounds or nitrogen oxides as a precursor to ozone in any serious nonattainment area for ozone and;
>
> 2) twenty five tons per year of volatile organic compounds or nitrogen oxides as a precursor to ozone in any severe nonattainment area."

Response to comment 26: The Department should revise the proposed definition of "major stationary source" as follows:

> (57) "Major stationary source" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(iv), PROVIDED THAT:
>
> (A) A STATIONARY SOURCE THAT EMITS OR HAS THE POTENTIAL TO EMIT TWENTY-FIVE (25) TONS PER YEAR OF VOLATILE ORGANIC COMPOUNDS OR NITROGEN OXIDES AS AN OZONE PRECURSOR IN ANY SEVERE OZONE NONATTAINMENT AREA IS A MAJOR STATIONARY SOURCE, AND
>
> (B) A STATONARY SOURCE THAT EMITS OR HAS THE POTENTIAL TO EMIT FIFTY (50) TONS PER YEAR OF VOLATILE ORGANIC COMPOUNDS OR NITROGEN OXIDES AS AN OZONE PRECURSOR IN ANY SERIOUS OZONE NONATTAINMENT AREA IS A MAJOR STATIONARY SOURCE.

27. **Comment on the definition of "major stationary source":** DEP should retain the existing definition for "major stationary source"

Currently in section 22a-174-1(46) it is clear that a "major source" permit is required for stationary sources located at a premise (i.e., at one location). While we generally believe that directly incorporating federal definitions and concepts promotes clarity and compliance, in this instance it does not. The federal definitions in this particular matter do not use the "premise" concept, and include ambiguous language in the definition of "stationary source" at 40 CFR 51.165(a)(1)(i) and the related definition of "building, structure, facility or installation" at 40 CFR 51.165(a)(1)(ii). In particular, the word "adjacent" in the federal definition of "building, structure, facility or installation" has sometimes been construed by EPA contrary to plain-English usage to include, e.g., facilities on separate, non-contiguous properties. These uncertain and counter-intuitive interpretations, in turn, are introduced into the federal definition of "major stationary source". See 40 C.F.R. 51.165(a)(1)(iv).

Incorporating the federal definition of "major stationary source" would modify the existing Connecticut rules and introduce the ambiguity of the federal rules. This commentor urges the Department to maintain the relative clarity of current section 22a-174-1(46), and request that the definition of "major stationary source" in proposed section 22a-174-1(57) include only buildings, structures, facilities or installations located at a premises.

Response to comment 27: One of goals of the proposed regulations is to promote consistency between the state permit programs and the permit programs EPA is authorized to implement. The definitions of key terms are a critical aspect of promoting such consistency so that Department staff, EPA staff and the regulated community will be using identical terms when discussing issues of concern to both agencies. Therefore, the Department should, where practical, include the federal definitions of key terms such as "major stationary source" to promote programmatic consistency between EPA and the Department. Since neither state nor

federal regulations are free of interpretative issues, similar to that discussed in comment 26, the Department should continue to work with both EPA and the regulated community to ensure that programs are implemented fairly, consistently and as intended by the federal Clean Air Act.

28. Comment on the definition of "Malfunction": The proposed definition reads:

> "MALFUNCTION" MEANS ANY SUDDEN, UNEXPECTED, INFREQUENT AND NOT REASONABLY PREVENTABLE FAILURE OF AIR POLLUTION CONTROL EQUIPMENT, PROCESS EQUIPMENT OR A PROCESS, TO OPERATE IN A NORMAL OR USUAL MANNER. A FAILURE THAT IS CAUSED IN WHOLE OR IN PART BY POOR MAINTENANCE OR NEGLIGENT OR CARELESS OPERATION SHALL NOT BE CONSIDERED A MALFUNCTION.

This proposed definition is different from the definition in 40 CFR 60.2, which is the same as the definition in the proposed Section 22a-174-18 regulations. It also differs from the definition of malfunction in Section 22a-174-38. The federal regulations, 40 CFR 60.2, define malfunction as:

> Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

The definition proposed in these regulations adds the term "unexpected" to the first sentence and "negligent" to the last sentence. Changing this definition may have unexpected and unintended consequences. Therefore, this commentor suggests the Department use the federal definition. If the Department does not change this definition to make it consistent with the federal definition, please explain the reasons for using different definitions of malfunction in different sections of the regulations. In addition, please explain whether the proposed definition is intended to cover the same or different equipment failures from those covered in 40 CFR 60.2 or section 22a-174-38 of the regulations. If the terms do not have the same meaning, please provide examples demonstrating the differences.

Response to comment 28: As stated in the Department's response to comment 27, one of goals of the proposed regulations is to promote consistency between the state permit programs and the permit programs EPA is authorized to implement. The definitions of key terms are a critical aspect of promoting such consistency so that Department staff, EPA staff and the regulated community will be using identical terms when discussing issues of concern to both agencies. Therefore, the Department should, where practical, include the federal definitions of key terms such as "malfunction". As a practical matter, the addition of the word "unexpected" may serve to limit an event that may otherwise be categorized as a malfunction. Use of the word "negligent" in the last sentence of the proposed definition does not add value since causation is already a required element in finding that either poor maintenance or careless operation contributed to an event that would otherwise be characterized as a

malfunction. Therefore, the Department should revise the proposed definition of "malfunction" as:

(58) "MALFUNCTION" HAS THE SAME MEANING AS IN 40 CFR 60.2.

29. Comment on "Malfunction": Section 22a-174-38(a) (11) "Malfunction" means any sudden, infrequent and not reasonably preventable failure of air pollution control equipment, process equipment or a process to operate in a normal or usual manner. A failure that is caused in part by poor maintenance or negligent or careless operation shall not be considered a malfunction.

Whereas, under section 22a-174-1(58) "MALFUNCTION" MEANS ANY SUDDEN, UNEXPECTED, INFREQUENT AND NOT REASONABLY PREVENTABLE FAILURE OF AIR POLLUTION CONTROL EQUIPMENT, PROCESS EQUIPMENT OR A PROCESS, TO OPERATE IN A NORMAL OR USUAL MANNER. A FAILURE THAT IS CAUSED IN WHOLE OR IN PART BY POOR MAINTENANCE OR NEGLIGENT OR CARELESS OPERATION SHALL NOT BE CONSIDERED A MALFUNCTION.

Response to comment 29: See the Department's response to comments 9 and 28 above.

30. Comment on the definition of "maximum allowable stack concentration" or "MASC": See the Department's response to comment 21 above.

31. Comment on the definition of "Maximum capacity." This definition represents a great improvement over the current definition of maximum rated capacity, which requires the assumption that the equipment will run continuously for every hour of the year. It is this commentor's understanding that the Department will issue guidance documents explaining the circumstances in which a different time period may be accepted by the Department. Please explain the Department's intent concerning its determinations as to what time period may be accepted by the Commissioner.

Response to comment 31: The commentors are correct in their understanding that the Department intends to issue guidance on the alternative time periods that may be used for purposes of determining potential emissions. However, the circumstances under which such time periods may be acceptable have not yet been determined.

32. Comment on the definition of "Minor Permit Modification." The proposed definition, below, uses an "AND" in referring to sections 22a-174-2a(e)(1) and (2). In the context of this definition, several commentors believe the "AND" should be an "OR." See proposed revision below:

(63) "MINOR PERMIT MODIFICATION" MEANS A CHANGE TO A PERMIT THAT IS REQUIRED FOR THE PERMITTEE TO LAWFULLY ENGAGE IN ANY OF THE ACTIVITIES OR PROPOSED ACTIVITIES AT A STATIONARY SOURCE IDENTIFIED IN:

(A) SECTION 22a-174-2a(e)(1) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, FOR ANY NEW SOURCE REVIEW PERMIT; ~~AND~~ **OR**

(B) SECTION 22a-174-2a(e)(2) THE REGULATIONS OF CONNECTICUT STATE AGENCIES, FOR ANY TITLE V PERMIT.

Response to comment 32: The proposed change offered by the commentors does not clarify the definition and may imply that a change, which requires a minor permit modification, in one program will automatically require only a minor permit modification in another program. Given the significant differences between the Title V and NSR programs, such an assertion will not always the case. Based upon the potential for confusion surrounding the proposed definition, the Department should clarify the definition of "minor permit modification" as follows:

(63) "MINOR PERMIT MODIFICATION" MEANS A CHANGE TO A PERMIT THAT IS REQUIRED FOR THE PERMITTEE TO LAWFULLY ENGAGE IN ANY OF THE ACTIVITIES OR PROPOSED ACTIVITIES AT A STATIONARY SOURCE AS IDENTIFIED IN~~:~~

~~(A) SECTION 22a-174-2a(e)(1) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES,FOR ANY NEW SOURCE REVIEW PERMIT; AND~~

~~(B) SECTION 22a-174-2a(e)(2) THE REGULATIONS OF CONNECTICUT STATE AGENCIES, FOR ANY TITLE V PERMIT~~.

33. Comment on the need to develop a definition for the term "Minor Modification". Several commentors suggested that the Department adopt a definition for "minor modification" similar to that for a "minor source." In section 22a-174-3a(a)(3), and perhaps elsewhere, the regulations use the phrase "minor source or modification." The regulations, or at least the Department's response to comments on the regulations, should make clear that the same emissions threshold applies to modifications at sources that increase emissions below major source thresholds. The definition for "minor modification" should read as follows:

"MINOR MODIFICATION" MEANS ANY MODIFICATION THAT INCREASES POTENTIAL EMISSIONS AT RATES OR IN AMOUNTS LOWER THAN THOSE SPECIFIED IN SUBDIVISION (55) OF THIS SUBSECTION.

Response to comment 33: The Department should not make the requested change as it represents an over-simplification of the required elements of the minor permit modification process. These elements are set forth in proposed section 22a-174-2a.

34. Comment on the definition of "Modification". The definition of modification plays a central role in determining the applicability of the NSR permit regulations to activities at sources. Therefore, it is essential that the definition be as unambiguous as possible. The current proposed definition provides:

> [(52)] (67) ["Modify" or] "Modification" OR "MODIFIED SOURCE" means ANY PHYSICAL CHANGE OR CHANGE IN THE METHOD OF OPERATION OF, A STATIONARY SOURCE WHICH INCREASES THE EMISSION RATE OF ANY INDIVIDUAL AIR POLLUTANT OR WHICH RESULTS IN THE EMISSION OF ANY INDIVIDUAL AIR POLLUTANT NOT PREVIOUSLY EMITTED, EXCEPT THAT:
>
> (A) ROUTINE MAINTENANCE, REPAIR OR REPLACEMENT AT A STATIONARY SOURCE SHALL NOT BE CONSIDERED A PHYSICAL CHANGE; AND
>
> (B) [Notwithstanding the above, the] THE following [are not modifications] SHALL NOT BE CONSIDERED A CHANGE IN THE METHOD OF OPERATION unless the stationary source was previously limited by permit [conditions] or [other] order of the [Commissioner] COMMISSIONER:
>
> (i) any increase in the production rate, if such increase does not exceed the operating design capacity of the affected facility[;], or
>
> (ii) any increase in hours of operation.

Commentors expressed several comments on this definition and how it relates to section 22a-174-3a:

(A) First, the definition of "modification" as proposed, does not refer to any ton per year threshold, and it refers to an increase in "emission rate", which is not a defined term. The commentors are concerned that the proposed definition of "modification" could cause truly de minimis activities to trigger new source review. The current definition of "modification" in section 22a-174-1 of the R.C.S.A. contains a 5 ton per year potential emissions threshold. Therefore, it would be reasonable to revise the new definition of "modification" to incorporate the 5 ton per year limit. Alternatively, a 5 ton per year limit should be put in subsection 22a-174-2a to indicate that such small changes do not trigger new source review for modifications. The commentors suggest that the opening paragraph of the definition of "modification" be revised as follows:

> "Modification" OR "MODIFIED SOURCE" means ANY PHYSICAL CHANGE OR CHANGE IN THE METHOD OF OPERATION OF, A STATIONARY SOURCE WHICH INCREASES THE ~~EMISSION RATE~~ **POTENTIAL EMISSIONS** OF ANY INDIVIDUAL AIR POLLUTANT

BY FIVE (5) TONS PER YEAR OR MORE OR WHICH RESULTS IN THE **POTENTIAL** EMISSIONS OF **FIVE (5) TONS PER YEAR OR MORE OF**ANY INDIVIDUAL AIR POLLUTANT NOT PREVIOUSLY EMITTED, EXCEPT THAT:

(B) Second, subsection (B) of the definition, which contains additional exemptions from the definition of "modification," includes the following qualifying language "unless the stationary source was previously limited by permit or order of the COMMISSIONER." This language created confusion under the current regulations. It had been informally interpreted by DEP counsel to eliminate the application of the subsection (B) exemptions to any source which had ***any*** DEP permit or order, even if such permit or order did not address the specific pollutant affected by the "modification." In addition, subsection (B) formerly did not consider changes made to comply with law to be a "modification." The current proposal does not include that exemption. To avoid unnecessarily limiting the applicability of this exemption, and to allow for changes to be made at a source to comply with a regulatory requirement, the commentors suggest re-drafting the exclusion in subsection (B) as follows:

(B) THE following SHALL NOT BE CONSIDERED A CHANGE IN THE METHOD OF OPERATION:

(i) any increase in the production rate, if such increase does not exceed the operating design capacity of the affected facility AND SUCH INCREASE DOES NOT EXCEED THE MAXIMUM RATE AUTHORIZED BY A PERMIT OR ORDER FOR SUCH SOURCE [;], or

(ii) any increase in hours of operation, IF SUCH INCREASE DOES NOT EXCEED THE MAXIMUM HOURS OF OPERATION AUTHORIZED BY A PERMIT OR ORDER FOR SUCH SOURCE [; or].

(iii) ANY CHANGE, THE SOLE PURPOSE OF WHICH IS TO BRING AN EXISTING SOURCE INTO COMPLIANCE WITH REGULATIONS APPLICABLE TO SUCH SOURCE, UNLESS SUCH CHANGE IS A MAJOR MODIFICATION OR A MAJOR STATIONARY SOURCE.

(C) Currently, section 22a-174-3 of the R.C.S.A. requires any source subject to 40 CFR Parts 60 and 61 to apply for a permit. See, section 22a-174-3(a)(2). In addition, a change in the type of fuel used at a source was treated as a modification under this section. See, section 22a-174-1(52). The proposed regulations do not include either of these provisions. Several commentors support this change. Please confirm that the Department does not intend to require new source permits or permit modifications for Part 60 and 61 sources or fuel changes unless the new, emission-based, permit thresholds in the proposed regulations apply.

Response to comment 34(A): The Department should revise the proposed definition to better capture that it is an exceedance of allowable emission levels or the increase in a source's maximum capacity that matters, rather than emission rate, as the commentor indicates. However, the Department should focus on the allowable emissions rather than the potential emissions. With respect to the five (5) ton per year threshold, it is not appropriate because the proposed regulations are designed to have modification related threshold determinations made pursuant to Sections 22a-174-2a and 22a-174-3a of the regulations of this package See the Department's response to comment 34(C) below.

Response to comment 34(B): The Department should make it clear what types of conditions in permits would be considered a change in the method of operation such as increasing the hours of operation or the production rate, and therefore not excluded from the definition of a modification. However the Department should not include the suggestion of the commentor concerning an exclusion from the definition of modification for the changes to bring a source into compliance, as this does not address possible emissions of concern.

Response to comment 34(C): The commentors are correct in their understanding that the Department no longer intends to require permit applications for sources ***only because*** the sources are subject to the provisions of 40 CFR Parts 60 or 61. This is also true for fuel conversions that do not increase emissions. It is important to note that the Department is not abandoning its commitment to the NSPS and NESHAP programs set forth in 40 CFR Parts 60 and 61. The Department is authorized, pursuant to a delegation of authority from USEPA, to enforce the requirements of 40 CFR Parts 60 and 61 and will continue to enforce these provisions. The Department should revise the definition of "modification" or "modified source" as follows:

[(52)] (67) ["Modify" or] "Modification" OR "MODIFIED SOURCE" means **WITH RESPECT TO A STATIONARY SOURCE,** ANY PHYSICAL CHANGE OR CHANGE IN THE METHOD OF OPERATION ~~**OF A STATIONARY SOURCE**~~ **THAT WOULD RESULT IN AN EXCEEDANCE OF** ~~**WHICH INCREASES**~~ **THE** ~~**EMISSION RATE**~~ **ALLOWABLE EMISSIONS** OF ANY INDIVIDUAL AIR POLLUTANT**, ANY INCREASE IN THE MAXIMUM CAPACITY,** OR ANY ~~**WHICH RESULTS IN THE EMISSION**~~ **POTENTIAL EMISSIONS** OF ANY INDIVIDUAL AIR POLLUTANT NOT PREVIOUSLY EMITTED, EXCEPT THAT:

(A) ROUTINE MAINTENANCE, REPAIR OR REPLACEMENT AT A STATIONARY SOURCE SHALL NOT BE CONSIDERED A PHYSICAL CHANGE; AND

[(A) making any physical change in, change in the method of operation of, or addition to a stationary source which:

(i) increases the potential emissions of any individual air pollutant from a stationary source by five (5) tons per year or more; or

(ii) increases the maximum rated capacity of the stationary source unless the owner or operator of the stationary source demonstrates to the Commissioner's satisfaction that such increase is less than fifteen

percent (15%) and the change or addition does not cause an increase in the actual emissions or the potential emissions ; or

(iii) increases the potential emissions above the levels listed in Table 3(k)-1 of subsection 22a-174-3(k); or

(iv) increases maximum uncontrolled emissions from a stationary source by one hundred (100) tons per year or more.]

[In addition a change in the type fuel used in accordance with a permit or order, or the type of fuel for which the source has provided registration under section 22a-174-2 to the Commissioner shall be considered a modification unless such change is allowed under a permit or other order of the Commissioner either of which is federally enforceable.]

(B) [Notwithstanding the above, the] THE following [are not modifications] SHALL NOT BE CONSIDERED A CHANGE IN THE METHOD OF OPERATION ~~unless the stationary source was previously limited by permit [conditions] or [other] order of the [Commissioner] COMMISSIONER~~:

[(i) any routine maintenance, repair or replacement unless such replacement results in reconstruction as defined in this section; or

(ii) a change in the method of operation; or]

[(iii)](i) any increase in the production rate, if such increase does not exceed the operating design capacity of the affected facility[;] **AND SUCH INCREASE DOES NOT CAUSE OR ALLOW AN EXCEEDANCE OF THE RATES OR EMISSION LIMITS AUTHORIZED BY A PERMIT,ORDER, OR JUDGEMENT FOR SUCH SOURCE**, or

[(iv)](ii) any increase in hours of operation[; or]**AND SUCH INCREASE DOES NOT CAUSE OR ALLOW AN EXCEEDANCE OF THE RATES OR EMISSION LIMITS AUTHORIZED BY A PERMIT,ORDER, OR JUDGEMENT FOR SUCH SOURCE**.

[(v) any change, the sole purpose of which is to bring an existing source into compliance with regulations applicable to such source, unless such change is a major modification or a major stationary source; or

(vi) relocation of a portable rock crusher with potential emissions of less than fifteen (15) tons per year which has a permit or exemption letter issued by the Commissioner under section 22a-174-3 provided the owner or operator provides written notice to the Commissioner prior to the relocation; or

(vii) relocation of a portable stripping facility which has a general permit issued by the Commissioner pursuant to section 22a-174(l) of the Connecticut General Statutes, provided the owner or operator of such facility provides written notice to the Commissioner prior to the relocation.]

35. Comment on the definition of "Modification": One commentor noted conflicting definitions of the term "modification" in the air regulations. For example, the definition of *modification* in section 22a-174-1 varies slightly compared to the federal definition in 40 CFR 51.165 (a)(1)(v)(C): substitute "and" for "or."

> (67) (A) ROUTINE MAINTENANCE, REPAIR AND ~~OR~~ REPLACEMENT AT A STATIONARY SOURCE SHALL NOT BE CONSIDERED A PHYSICAL CHANGE;

Response to comment 35: The Department should not make the requested change. Inserting "and" in lieu of "or" could lead a reader to infer that routine maintenance and repair are precedent conditions to replacement; and that all three actions must occur in order for the activity to fall within the exclusion, i.e., not be considered a physical change. This is not the Department's intent, thus, the "or" between repair and replacement should be maintained.

36. Comment on the definition of "Modification": A commentor that operators a municipal waste combustor asked, if a "modification" as defined in section 22a-174-1 occurs at a municipal waste combustor, do the definitions set forth in section 1 apply to the original installation or only to the modification? In the event of a conflict not involving a "modification", do the definitions in section 22a-174-1 or section 22a-174-38 apply?

Response to comment 36: As stated earlier in this report, the definitions set forth in proposed section 22a-174-1 are of general applicability unless otherwise stated. Thus, the construction of a new source or the modification of an existing source will be subject to the provisions of proposed section 22a-174-3a whereas existing municipal waste combustor units are subject to the provisions of section 22a-174-38 of the R.C.S.A.

37. Comment on the definition of "net emissions increase": The Department should amend this definition to read, ". . .PROVIDED THAT ANY INCREASE OR DECREASE IN ACTUAL EMISSIONS AT A STATIONARY SOURCE ARE CREDITABLE ONLY IF SUCH INCREASES OR DECREASES OCCUR WITHIN **THE PREVIOUS** FIVE (5) YEARS OF THE PRESENT MODIFICATION.".

Response to comment 37: See the Department's response to comment 42 below.

38. Comment on the definition of "Net Emissions Increase": The federal definition exempts from net emission increase calculations any emission increase or decrease previously relied upon in a permit issued under "this section." To clarify what the phrase "this section" found in 40 CFR 51.165(a)(1)(vi)(C)(2) means in the context of Connecticut's permitting rules, the DEP should include the additional language:

> "For the purposes of this definition, the phrase "this section" found in 40 CFR 51.165(a)(1)(vi)(C)(2) refers to Section 22a-174-3a(k) & (l)."

Response to comment 38: See the Department's response to comment 42 below.

39. Comment on the definition of "net emissions increase": One commentor suggests the Department clarify "significant net emissions increase," the federal definition of Net Emissions Increase from 40 CFR 51.165(a)(1)(vi) is also incorporated at section 22a-174-1(70). Under 40 CFR 51.165(a)(1)(vi)(A)(2), a Net Emissions Increase includes "increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable." Please confirm the following:

- "Actual emissions" will be determined based on the average rate at which the unit actually emitted the pollutant during the two-year period that precedes the date of the determination, provided that period is representative of normal source operation.
- "Contemporaneous" and "otherwise creditable" refer to actual emissions that have occurred during the preceding five-year period, which includes the year in which the proposed emissions increase will occur.
- The "particular change" refers to the proposed increase in actual emissions to be permitted.

Response to comment 39: See the Department's response to comment 42 below.

40. Comment on the definition of the term "Net Emissions Increase." By incorporating by reference, 40 CFR 51.165(a)(1)(vi), this definition uses the term "actual emissions." Although this definition generally works well and is consistent with federal law, the proposed "actual emissions" definition's inclusion of "fugitive emissions" complicates the determination of a "net emissions increase." What is the justification for defining "actual emissions" and thus, "net emissions increase" more stringently than the federal definition that only includes fugitive emissions for specified categories of sources? Please explain how a source should determine fugitive emissions increases and decreases over a five-year period. Since such a determination would be very difficult and expensive, the commentor suggests that the definition of "actual emissions" be revised to eliminate reference to fugitive emissions.

Response to comment 40: See the Department's response to comment 42 below.

41. Comment on the definition of "Net Emissions Increase." By incorporating by reference, 40 CFR 51.165(a)(1)(vi), this definition uses the term "actual emissions." Although this definition generally works well and is consistent with federal law, the proposed "actual emissions" definition's inclusion of "fugitive emissions" complicates the determination of a "net emissions increase." What is the justification for defining "actual emissions" and thus, "net emissions increase" more stringently than the federal definition that only includes fugitive emissions for specified categories of sources. Please explain how a source should determine fugitive emissions increases and decreases over a five year period. Since such a determination would be very difficult, this commentor suggests that the definition of "actual emissions" be revised to eliminate reference to fugitive emissions. The federal rule for

including fugitive emissions should be used in Connecticut. Furthermore, to allow flexibility in cases where a five-year netting period is not appropriate, the commentor suggests the Department revise the definition as follows:

> " ... provided that any increases or decreases ... are creditable only if ... within five (5) years of the present modification, OR OTHER REASONABLE PERIOD BEYOND FIVE (5) YEARS AS MAY BE DETERMINED BY THE COMMISSIONER TO BE APPROPRIATE FOR A PARTICULAR SUBSTANCE."

Response to comment 41: See the Department's response to comment 42 below.

42. Comment on the definition of "net emissions increase": The Department should amend section 22a-174-1(70) to provide additional flexibility for netting to allow flexibility in cases where a five-year netting period is not appropriate. This commentor suggests that the Department revise the definition as follows:

> "...provided that any increases or decreases ... are creditable only if ... within five (5) years of the present modification, OR OTHER REASONABLE PERIOD BEYOND FIVE (5) YEARS AS MAY BE DETERMINED BY THE COMMISSIONER TO BE APPROPRIATE FOR A PARTICULAR SOURCE OR AIR POLLUTANT."

Response to comments 37 through 42, inclusive: The Department should revise the definition of "net emissions increase" as follows:

> (70) "NET EMISSIONS INCREASE" HAS THE SAME MEANING AS IN 40 CFR 51.165 (a)(1)(vi), PROVIDED THAT:
>
> (A) FOR THE PURPOSES OF THIS DEFINITION, THE PHRASE "THIS SECTION" FOUND IN 40 CFR 51.165(a)(1)(vi)(C)(2) REFERS TO SECTIONS 22a-174-3a(k) AND (l) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, AND
>
> (B) ANY INCREASES OR DECREASES IN ACTUAL EMISSIONS AT A STATIONARY SOURCE ARE CREDITABLE ONLY IF SUCH INCREASES OR DECREASES OCCURED WITHIN THE PREVIOUS FIVE (5) YEARS OF THE PRESENT MODIFICATION.

The proposed additional text to section 22a-174-1(70)(i) satisfies the concerns raised by EPA in comment 38, whereas the proposed additional text of section 22a-174-1(70)(ii) addresses the concerns raised by CFE in comment 37. With respect to concerns raised in comment 40 regarding the treatment of "fugitive emissions" within the context of the definition of "actual emissions", the reader should refer to the Department's response to comment VII.1. whereby the Department proposed to adopt the federal definition of "actual emissions". With respect to concerns raised in comments 41 and 42 in which the commentors requested that the

Department include additional flexibility in cases where a five year netting period is not appropriate, the Department should not make the requested change. The commentors did not provide any specific examples indicating that the current period is unreasonable, unworkable or otherwise inappropriate. In addition, the time frame established within the proposed definition of "net emissions increase" is consistent with current EPA practices. With respect to the remainder of the issues raised in comment 39, the Department confirms that the commentor's understanding is correct.

43. Comment on the definition of the term "Non-Minor Permit Modification." The proposed definition (like that of "Minor Permit Modification"), uses an "AND" in referring to sections 22a-174-2a(d)(3) and (4). In the context of this definition, CRRA believes the "AND" should be an "OR." See proposed revision below:

(75) "NON-MINOR PERMIT MODIFICATION" MEANS A CHANGE TO A PERMIT THAT IS REQUIRED FOR THE PERMITTEE TO LAWFULLY ENGAGE IN ANY OF THE ACTIVITIES OR PROPOSED ACTIVITIES AT A STATIONARY SOURCE IDENTIFIED IN:

(A) SECTION 22a-174-2a(d)(3) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, FOR ANY NEW SOURCE REVIEW PERMIT; ~~AND~~ **OR**

(B) SECTION 22a-174-2a(d)(4) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, FOR ANY TITLE V PERMIT.

Response to comment 43: The Department should not make the requested change. The conjunction "and" is used because the provisions of section 22a-174-2a(d)(3) and (4), while independently applicable may, in some instances, both apply to the same proposed non-minor permit modification. In order to further clarify the Department's intent, the proposed definition of "non-minor permit modification" should be revised as follows:

(75) "NON-MINOR PERMIT MODIFICATION" MEANS A CHANGE TO A PERMIT THAT IS REQUIRED FOR THE PERMITTEE TO LAWFULLY ENGAGE IN ANY OF THE ACTIVITIES OR PROPOSED ACTIVITIES AT A STATIONARY SOURCE AS IDENTIFIED IN~~:~~

~~(A)~~ SECTION 22a-174-2a(d)~~(3)~~ OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES~~, FOR ANY NEW SOURCE REVIEW PERMIT; AND~~

~~(B) SECTION 22a-174-2a(d)(4) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, FOR ANY TITLE V PERMIT~~.

44. Comment of the definition of "Operator." Please explain why the phrase "who are legally" was deleted from this definition. By removing that phrase, individual employees, as

opposed to the entity responsible for operating the facility may be subject to the permit requirements. This could lead to frequent notifications to the Department and possible permit revisions when employees responsible for operations change. The commentors suggest restoring the original definition as follows:

> [(64)](79) "Operator" means the person or persons who are legally responsible for the operation of a source of air pollution.

Response to comment 44: The Department did not intend to extend the meaning of this definition. Regardless of whether the adjective "legally" is utilized, employees, as agents of the employer, when operating equipment within the normal scope of duties are legally responsible for such operation. As such, the Department agrees with the commentor and should restore the original definition as follows:

> [(64)](79) "Operator" means the person or persons who are legally responsible for the operation of a source of air pollution.

45. Comment of the definition of "Potential Emissions" and "Potential to emit": In paragraph (A) of this definition, the DEP is incorporating EPA's concept on inherent physical limitations[2] that restrict a source's potential to emit. To clarify what constitutes an inherent physical limitation, EPA recommends the additional language:

> "Physical limitation is the inherent engineering, operational or technical capacity on a unit that restricts the potential emission of that emission unit."

In addition, subparagraph (B)(ii) states that operational limits shall be practicably enforceable or federally enforceable. Since the definition for "Practicably enforceable" is defined in part as any "federally enforceable" limitation, the inclusion of "federally enforceable" in this definition is redundant and should be removed.

Response to comment 45: As the Department's proposed revisions to the definition of "potential emissions" are based on EPA's guidance, the Department intends to construe key terms as they are construed by EPA. The Department intends the phrase "physical limitation" to mean an inherent engineering, operational or technical capacity on an emissions unit that restricts the potential emission of such unit. However, the Department should not incorporate this definition into regulation as it is based only on EPA guidance and therefore, subject to change with limited notice.

The Department should amend subparagraph (B)(ii) of the definition of "potential to emit" in recognition that the term "practicably enforceable" encompasses limits that are also "federally enforceable" and is, therefore, redundant. See response to comment 46, below, for the amended definition of "potential emissions".

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[2] See Memorandum from John Seitz entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (ACT)," dated January 25, 1995.

46. Comment on the definition of the term "Potential Emissions." The definition of "Potential Emissions" represents a significant improvement over current regulations since it allows the consideration of restrictions that are Practicably Enforceable. The definition, however, should limit the consideration of fugitive emissions as provided for under federal law.

Response to comment 46: The Department has eliminated the inclusion of fugitive emissions from the definition of "actual emissions" as suggested in earlier comments. However, the concept of "potential emissions" is fundamentally different from that of "actual emissions". A source's potential emissions are a theoretical maximum capacity to emit air pollution and as such should also include quantifiable fugitive emissions. See response to comment 46, below, for the amended definition of "potential emissions".

47. Comment on the definition of "Potential Emissions." The definition of "Potential Emissions" represents a significant improvement over current regulations since it allows the consideration of restrictions that are Practicably Enforceable. The definition, however, should limit the consideration of fugitive emissions as provided for under federal law. Also, the improvement noted above would seem to be undercut or erased by a subsequent clause which provides that "[A]ny physical limitation on ... [maximum] capacity" could be treated as part of the stationary source only "as determined by the Commissioner or Administrator". Proposed section 22a-174-1(86)(A). No indication is provided as to when and how such a determination could be solicited or made, and on what grounds it would be made. In addition, the definition seems to arbitrarily prevent air pollution control equipment that is integral to the design of the emissions source from being considered a "physical limitation". To address these issues, see the proposed revisions below:

> (86) "POTENTIAL EMISSIONS" OR "POTENTIAL TO EMIT" MEANS THE MAXIMUM CAPACITY OF A STATIONARY SOURCE, INCLUDING ALL PHYSICAL AND OPERATIONAL LIMITATIONS, TO EMIT ANY AIR POLLUTANT, INCLUDING FUGITIVE EMISSIONS TO THE EXTENT QUANTIFIABLE, PROVIDED THAT:
>
> (A) ANY PHYSICAL LIMITATION ON SUCH CAPACITY, ~~NOT~~ INCLUDING AIR POLLUTION CONTROL EQUIPMENT, SHALL BE TREATED AS PART OF THE STATIONARY SOURCE ~~AS DETERMINED BY THE COMMISSIONER OR ADMINISTRATOR~~ **IF IT IS INTEGRAL TO THE DESIGN OF THE SOURCE SUCH THAT THE SOURCE CANNOT BE OPERATED WITHOUT SUCH LIMITATION**; AND
>
> (B) ANY OPERATIONAL LIMITATION ON SUCH CAPACITY, INCLUDING AIR POLLUTION CONTROL EQUIPMENT **THAT IS NOT INTEGRAL TO THE DESIGN OF THE SOURCE**, OR A RESTRICTION ON THE HOURS OF OPERATION OR ON THE TYPE OR

AMOUNT OF MATERIAL PROCESSED, STORED OR COMBUSTED, SHALL BE TREATED AS PART OF THE STATIONARY SOURCE IF THE LIMITATION OR RESTRICTION:

(i) IS PRACTICABLY ENFORCEABLE, OR

(ii) IS FEDERALLY ENFORCEABLE.

Response to comment 47: The Department's consideration of fugitive emissions is addressed in the response to comment 45, above. The Department has further clarified how the term "physical limitation" is to be construed in response to comment 44, above. Given the substantial amount of federal guidance on the various means available to limit potential emissions and the consistency of the Department's definition with such guidance, the commentor's assertion that the definition arbitrarily prevents the consideration of air pollution control equipment from consideration as a physical limitation is without merit. As such the Department should amend the definition of "potential emissions" or "potential to emit" as:

(86) "POTENTIAL EMISSIONS" OR "POTENTIAL TO EMIT" MEANS THE MAXIMUM CAPACITY OF A STATIONARY SOURCE, INCLUDING ALL PHYSICAL AND OPERATIONAL LIMITATIONS, TO EMIT ANY AIR POLLUTANT, INCLUDING FUGITIVE EMISSIONS TO THE EXTENT QUANTIFIABLE, PROVIDED THAT:

(A) ANY PHYSICAL LIMITATION ON SUCH CAPACITY, NOT INCLUDING AIR POLLUTION CONTROL EQUIPMENT, SHALL BE TREATED AS PART OF THE STATIONARY SOURCE AS DETERMINED BY THE COMMISSIONER OR ADMINISTRATOR; AND

(B) ANY OPERATIONAL LIMITATION ON SUCH CAPACITY, INCLUDING AIR POLLUTION CONTROL EQUIPMENT, OR A RESTRICTION ON THE HOURS OF OPERATION OR ON THE TYPE OR AMOUNT OF MATERIAL PROCESSED, STORED OR COMBUSTED, SHALL BE TREATED AS PART OF THE STATIONARY SOURCE IF THE LIMITATION OR RESTRICTION IS PRACTICABLY ENFORCEABLE.

~~(i) IS PRACTICABLY ENFORCEABLE, OR~~

~~(ii) IS FEDERALLY ENFORCEABLE.~~

48. Comment on the definition of the term "Practicably Enforceable." This definition should not restrict "practicably enforceable" emissions limitations to those expressed in

pounds/hour, pounds per unit of production, or concentration levels since there are many minor sources for which such a restriction and/or the ability to monitor such a restriction, may be impracticable. Consistent with other regulatory air programs, the use of rolling 12 month rolling average emissions should be allowed. Furthermore, for many minor sources, such as batch operations, it will be impractical to install CEM equipment. The last sentence of subsection (iv) provides that "CEM or equivalent" monitoring should be used if a 12-month rolling average is used. Please explain why this is necessary and what "equivalent" monitoring means. Many permits and orders have been written to require 12-month rolling averages and few of such permits or orders require CEM to document compliance with 12-month rolling averages. The definition should be revised as follows:

(87) "PRACTICABLY ENFORCEABLE" MEANS:

(A) ANY FEDERALLY ENFORCEABLE EMISSION LIMITATION OR RESTRICTION ON POTENTIAL EMISSIONS; OR

(B) ANY EMISSION LIMITATION OR RESTRICTION ON THE POTENTIAL EMISSIONS SET FORTH IN A PERMIT, ORDER, REGULATION OR STATUTE ISSUED OR ADMINISTERED BY THE COMMISSIONER, PROVIDED SUCH EMISSION LIMITATION OR RESTRICTION:

(i) IDENTIFIES THE SUBJECT STATIONARY SOURCE OR CATEGORY OF STATIONARY SOURCE,

(ii) SPECIFIES AN EMISSION LIMITATION OR RESTRICTION USING A SHORT TERM EMISSIONS RATE FOR SUCH STATIONARY SOURCE EXPRESSED IN POUNDS PER HOUR, POUNDS PER UNIT OF PRODUCTION, CONCENTRATION LEVELS **OR ROLLING TWELVE MONTH EMISSIONS LIMITS** SUFFICIENT TO CALCULATE THE ACTUAL EMISSIONS FROM SUCH STATIONARY SOURCE,

(iii) SPECIFIES APPROPRIATE MONITORING TO DETERMINE COMPLIANCE WITH THE EMISSION LIMITATION OR RESTRICTION SPECIFIED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF THIS SUBDIVISION, AND

(iv) IF AN EMISSION LIMITATION OR RESTRICTION IS REQUIRED TO DEMONSTRATE THAT A STATE OR FEDERAL STANDARD DOES NOT APPLY, SUCH EMISSION LIMITATION OR RESTRICTION SHALL BE CALCULATED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF THIS SUBDIVISION AND

EXPRESSED USING THE SHORTEST TECHNICALLY AND ECONOMICALLY FEASIBLE AVERAGING PERIOD, IN NO CASE LONGER THAN A TWELVE MONTH ROLLING AVERAGE. ~~IF A TWELVE MONTH ROLLING AVERAGE IS SELECTED, THE MONITORING SHALL BE CEM OR EQUIVALENT.~~

Response to comment 48: See the Department's response to comment 51 below.

49. Comment on the definition of "Practicably Enforceable." This definition should not restrict "practicably enforceable" emissions limitations to those expressed in pounds/hour, pounds per unit of production, or concentration levels since there are many minor sources for which such a restriction and/or the ability to monitor such a restriction, may be impracticable. Consistent with other regulatory air programs, the use of rolling 12 month rolling average emissions should be allowed. Furthermore, for many minor sources, such as batch operations, it will be impractical to install CEM equipment. The last sentence of subsection (iv) provides that "CEM or equivalent" monitoring should be used if a 12 month rolling average is used. Many permits and orders have been written to require 12 month rolling averages, and few of such permits or orders require CEM to document compliance with 12 month rolling averages. This commentor also notes that the requirement of "CEM or equivalent" for rolling 12-month averages would apparently render the General Permit to Limit Potential to Emit (GPLPE) not practicably enforceable. The GPLPE sets emission limitations that are based on rolling 12-month averages, but does not require CEM. The commentor suggests that the reference to "CEM or equivalent" be eliminated. Alternatively, please explain what is meant by equivalent monitoring and how the GPLPE complies with this requirement. In addition, this definition includes potentially confusing and unnecessary self-references. Accordingly, the commentor suggests the definition be revised as follows:

(87) "PRACTICABLY ENFORCEABLE" MEANS:

(A) ANY FEDERALLY ENFORCEABLE EMISSION LIMITATION OR RESTRICTION ON POTENTIAL EMISSIONS; OR

(B) ANY EMISSION LIMITATION OR RESTRICTION ON THE POTENTIAL EMISSIONS SET FORTH IN A PERMIT, ORDER, REGULATION OR STATUTE ISSUED OR ADMINISTERED BY THE COMMISSIONER, PROVIDED SUCH EMISSION LIMITATION OR RESTRICTION:

(i) IDENTIFIES THE SUBJECT STATIONARY SOURCE OR CATEGORY OF STATIONARY SOURCE,

(ii) SPECIFIES AN EMISSION LIMITATION OR RESTRICTION USING A SHORT TERM EMISSIONS

RATE FOR SUCH STATIONARY SOURCE EXPRESSED IN POUNDS PER HOUR, POUNDS PER UNIT OF PRODUCTION, CONCENTRATION LEVELS **OR ROLLING TWELVE MONTH EMISSIONS LIMITS** SUFFICIENT TO CALCULATE THE ACTUAL EMISSIONS FROM SUCH STATIONARY SOURCE,

(iii) SPECIFIES APPROPRIATE MONITORING TO DETERMINE COMPLIANCE WITH **SUCH** ~~THE~~ EMISSION LIMITATION OR RESTRICTION ~~SPECIFIED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF THIS SUBDIVISION~~, AND

(iv) IF AN EMISSION LIMITATION OR RESTRICTION IS REQUIRED TO DEMONSTRATE THAT A STATE OR FEDERAL STANDARD DOES NOT APPLY, SUCH EMISSION LIMITATION OR RESTRICTION SHALL BE ~~CALCULATED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF THIS SUBDIVISION AND~~ EXPRESSED USING THE SHORTEST TECHNICALLY AND ECONOMICALLY FEASIBLE AVERAGING PERIOD, IN NO CASE LONGER THAN A TWELVE MONTH ROLLING AVERAGE. ~~IF A TWELVE MONTH ROLLING AVERAGE IS SELECTED, THE MONITORING SHALL BE CEM OR EQUIVALENT.~~

Response to comment 49: See the Department's response to comment 51 below.

50. Comment on the definition of the term "Practicably Enforceable." DEP should revise the definition of 'practicably enforceable' to include other ways to specify emission limits or restrictions other than pounds per hour, pounds per unit of production, or concentration levels, such as gallons per month on a rolling 12-month average. DEP's proposed definition for 'potential to emit' requires any operational limit to be practicably enforceable. The proposed definition of practicably enforceable restricts any operational limitation to one that is federally enforceable or meets specific requirements. These requirements specify that any operational limit be expressed in pounds per hour, pounds per unit of production or concentration levels as well as requiring continuous emission monitors (CEMs) for the use of rolling 12-month averages.

Fuel burning equipment typically limits its potential to emit but restricting annual operating hours or gallons of fuel burned. In some cases the fuel consumption is based on rolling 12-month averages. These requirements needlessly restrict the ability of an owners or operators to claim a limit on potential to emit for sources that would have little impact on air quality.

Furthermore, DEP's requirement for CEMs for any rolling 12-month average is unnecessary and in many cases impracticable. The rolling 12-month average is a long standing averaging period frequently used by EPA within its Air Program to demonstrate compliance, specifically within 40 CFR Part 63 rules (Subparts O, EE, GGG, MMM, and OOO). These Subparts do not require CEM data as a prerequisite for using a rolling 12-month average. Smaller emission units generally cannot meets the necessary physical requirements for installing CEM equipment (e.g., insufficient stack height), or the cost of CEM equipment would make operating smaller sources uneconomical. EPA guidance states that generic criteria for averaging time and operation limitations are not possible and that gallons per month and rolling 12-month period may be warranted (Limiting Potential to Emit in New Source Permitting Terrell F. Hunt, Air Enforcement Division, June 13, 1989). This commentor requests that DEP expand the definition of practicably enforceable to include other units for limiting emissions and delete the CEM requirement for using a rolling 12-month average.

Response to comment 50: See the Department's response to comment 51 below.

51. Comment on the definition of "practicably enforceable": The Department should not limit the use of emission caps containing 12-month rolling emission limitations.

This commentor urges the Department to not restrict "practicably enforceable" emissions limitations to those expressed in pounds/hour, pounds per unit of production, or concentration levels. There are many minor sources for which such a restriction and/or the ability to monitor such a restriction may be impracticable. Consistent with other regulatory air programs, the definition of "practically enforceable" should specifically authorize the use of 12-month rolling average emissions limitations. To accomplish this goal, the Department could revise proposed section 22a-174-1(87)(B)(ii) to provide the following:

> "(ii) SPECIFIES AN EMISSION LIMITATION OR RESTRICTION USING A SHORT TERM EMISSIONS RATE FOR SUCH STATIONARY SOURCE EXPRESSED IN POUNDS PER HOUR, POUNDS PER UNIT OF PRODUCTION, CONCENTRATION LEVELS **OR ROLLING TWELVE MONTH EMISSION LIMITATIONS** SUFFICIENT TO CALCULATE THE ACTUAL EMISSIONS FROM SUCH STATIONARY SOURCE,"

Furthermore, the last sentence of proposed section 22a-174-1(87)(B)(iv) provides that "CEM or equivalent" monitoring would be required if a 12-month rolling average is used. Many existing permits and orders set 12-month rolling emission limits, and few of such permits or orders require CEM to document compliance with such limits. Moreover, the requirement of "CEM or equivalent" for rolling 12-month emission limits could potentially be interpreted to render the General Permit to Limit Potential to Emit ("GPLPE") not practicably enforceable. The GPLPE sets emission limitations based on rolling 12-month totals, but does not require CEM. As a result, the commentor believes the Department should delete the reference to "CEM or equivalent" in proposed section 22a-174-1(87)(B)(iv):

> "(iv) IF AN EMISSION LIMITATION OR RESTRICTION IS REQUIRED TO DEMONSTRATE THAT A STATE OR FEDERAL STANDARD DOES

NOT APPLY, SUCH EMISSION LIMITATION OR RESTRICTION SHALL BE CALCULATED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF THIS SUBDIVISION AND EXPRESSED USING THE SHORTEST TECHNICALLY AND ECONOMICALLY FEASIBLE AVERAGING PERIOD, IN NO CASE LONGER THAN A TWELVE MONTH ROLLING AVERAGE. ~~IF A TWELVE MONTH ROLLING AVERAGE IS SELECTED, THE MONITORING SHALL BE CEM OR EQUIVALENT~~."

If the Department does not make this change, it will be critical to ensure that "CEM or equivalent" is interpreted in a manner that does not threaten the practicable enforceability of the 12-month rolling averages in existing operating permits, orders and general permits, and recognizes that CEM is often not the best or most efficient way to monitor compliance with a rolling 12-month emission limits. Accordingly, the commentor requests that the Department clarify the term "CEM or equivalent" in proposed section 22a-174-1(87)(B)(iv) and identify several scenarios where it would consider permits, orders or general permits using 12-month rolling emission limits to be practically enforceable, even though these permits, orders or general permits do not require CEM. Alternatively we request that DEP clarify that the term "rolling average" and similar such terms refers only to emission limitations requiring calculation of an arithmetic average, ie derivation of a mean, and does not includes limits based on simple aggregation over a given time period.

Finally, this commentor suggests the Department make the following grammatical changes to proposed section 22a-174-1(87) (B)(iii) to improve clarity:

(iii) SPECIFIES APPROPRIATE MONITORING TO DETERMINE COMPLIANCE WITH **SUCH** ~~THE~~ EMISSION LIMITATION OR ~~RESTRICTION SPECIFIED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF THIS SUBDIVISION~~, AND

Response to comments 48 through 51, inclusive. The comments are addressed by topic below:

- **12-month rolling averages**: The Department should utilize the flexibility provided by 12-month rolling averages as provided within existing federal guidance.

- **Restriction of emission limits:** Several commentors have suggested that the Department should include additional operational limits (i.e., restrictions on fuel use such as gallons per hour) as additional emission limits. While an operational restriction, such as fuel use limits, will serve to reduce emissions in a quantifiable manner, it is important to understand that an operational limitation is different than an emission limit in the context of the definition of "practicably enforceable." The Department should revise the proposed definition to further delineate the differences between emission limitations and operational restrictions.

- **CEM or equivalent**: Equivalent monitoring is any non-CEM alternative approved by the Commissioner that would yield information on emissions limitations or operational

restrictions that is qualitatively sufficient to determine actual emissions or compliance with any operational restriction. Stated in the alternative, "CEM or equivalent" does not mean that the alternative monitoring processes must be qualitatively **equal** to that of CEM. The Department should not make a change to this proposed language.

- **Status of the GPLPE:** The phrase "CEM or equivalent" in the proposed definition of "practicably enforceable" would not render the GPLPE unenforceable. As stated in Part XII of this report, the GPLPE is a permit issued under a federally enforceable state operating permit program. Since the GPLPE is federally enforceable, it is also practically enforceable within the meaning of the proposed definition of "practicably enforceable".

- **Hearing Officers' note**. The Department should correct a typographical error in section 22a-174-(87)(B)(iii) that mistakenly references subparagraph (B) instead of subparagraph (ii)

- The Department should revise the definition of "practicably enforceable" as follows:

(87) "PRACTICABLY ENFORCEABLE" MEANS:

(A) ANY FEDERALLY ENFORCEABLE EMISSION LIMITATION OR RESTRICTION ON POTENTIAL EMISSIONS; OR

(B) ANY EMISSION LIMITATION OR RESTRICTION ON THE POTENTIAL EMISSIONS SET FORTH IN A PERMIT, ORDER, REGULATION OR STATUTE ISSUED OR ADMINISTERED BY THE COMMISSIONER, PROVIDED SUCH EMISSION LIMITATION OR <u>OPERATIONAL</u> RESTRICTION:

(i) IDENTIFIES THE SUBJECT STATIONARY SOURCE OR CATEGORY OF STATIONARY SOURCE,

(ii) SPECIFIES AN EMISSION LIMITATION ~~OR RESTRICTION~~ USING A SHORT TERM EMISSIONS RATE FOR SUCH STATIONARY SOURCE EXPRESSED IN POUNDS PER HOUR, POUNDS PER UNIT OF PRODUCTION OR CONCENTRATION SUFFICIENT TO CALCULATE THE ACTUAL EMISSIONS FROM SUCH STATIONARY SOURCE <u>OR SPECIFIES AN OPERATIONAL RESTRICTION FOR SUCH STATIONARY SOURCE SUCH AS HOURS OF OPERATION OR FUEL USE RESTRICTIONS SUFFICIENT TO CALCULATE THE ACTUAL EMISSIONS FROM SUCH SOURCE,</u>

(iii)SPECIFIES APPROPRIATE MONITORING TO DETERMINE COMPLIANCE WITH **SUCH** ~~THE~~ EMISSION LIMITATION OR OPERATATIONAL RESTRICTION SPECIFIED IN ACCORDANCE WITH SUBPARAGRAPH ~~(B)~~ (ii) OF THIS SUBDIVISION, PROVIDED THAT IF A TWELVE MONTH ROLLING AVERAGE IS SELECTED, THE MONITORING SHALL BE CEM OR EQUIVALENT, AND

(iv)IF AN EMISSION LIMITATION OR OPERATIONAL RESTRICTION IS REQUIRED TO DEMONSTRATE THAT A STATE OR FEDERAL STANDARD DOES NOT APPLY, SUCH EMISSION LIMITATION OR RESTRICTION SHALL BE CALCULATED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF THIS SUBDIVISION AND EXPRESSED USING THE SHORTEST TECHNICALLY AND ECONOMICALLY FEASIBLE AVERAGING PERIOD, IN NO CASE LONGER THAN A TWELVE MONTH ROLLING AVERAGE. IF A TWELVE MONTH ROLLING AVERAGE IS SELECTED, THE MONITORING SHALL BE CEM OR EQUIVALENT.

52. Comment on the definition of "Process Source." This definition should be revised to use newly defined terms. For example, the phrase "operation, process, or activity" should be replaced by "emissions unit" and subparagraphs B and C, which appear to be incinerators, as that term is defined, should be replaced by the term "incinerator." Accordingly, the commentors suggest revising the definition as follows:

[(73)](89) "Process source" means any **EMISSIONS UNIT** [operation, process, or activity] except:

(A) The burning of fuel for indirect heating in which the products of combustion do not come in contact with process material[;], **AND**

(B) **AN INCINERATOR** [The burning of refuse; and

(C) The processing of salvageable material by burning].

Response to comment 52: The Department should not make the requested change because the proposed change is broader in scope than the subject of the proposed regulations.

53. Comment on the definition of "solid waste": One commentor notes that other definitions of "solid waste" are found in statute and in permits, as well as the proposed regulations are requests the Department clarify which definition prevails. For example:

Section 22a-174-38
(16) "Municipal solid waste" means municipal solid waste as defined in section 22a-207 of the general statutes.

Proposed Section 22a-174-1
[(84)](99) "Solid waste" means unwanted or discarded materials, including solid, liquid, semisolid, or contained gaseous material.

Response to comment 53: See the Department's response to comment 9 above.

54. Comment on the definitions of "Stack" and "Flare". The proposed definition of "stack" adopts the federal definition, but adds that a flare is also a stack. "Flare" is defined to "mean an apparatus, DEVICE, PROCESS, OR PROCEDURE for the burning of flammable gases or vapors at or near the exit of a stack, flue or vent." The use of the word stack in the definition of flare makes the definition circular. We do not understand the need to include "flares" in the definition of stack, and we suggest eliminating the phrase "PROVIDED THAT STACK SHALL ALSO INCLUDE A FLARE," from the definition. Furthermore, the definition of "flare" now refers to a "device, process or procedure." We understand what a device is, but not what a "process or procedure" is in this context. Please eliminate the terms "process or procedure" or explain the intent of these terms.

Response to comment 54: Please see the Department's response to comment 19 in Part VII of this report.

55. Comment on the definition of the term "Stationary source." This definition has been expanded to cover "portable emissions units." This has the potential to create unnecessary permit issues for *de minimis* sources. For example, portable compressors, rental engines, snow making machinery, spray painting equipment and other small sources could be deemed to require permits under this definition. In addition, since permits are location specific, such units may require new permits whenever they are moved. This issue can be avoided in several ways: First, the reference to portable units can be deleted from the definition. Alternatively, the permit by rule provisions should directly exempt such units, or single individual permits can be issued to rental companies, so that the leased portable units can be permitted only once.

Examples of portable equipment with minimal emissions that can be helpful at landfills, include, but are not limited to, air compressor equipment for cleaning equipment or pneumatic tools, and engines for the operation of electric lighting. This portable equipment typically would be a diesel-fueled 12.5 horsepower engine coupled to a generator. Such equipment could be used for up to fourteen hours per day over a period of two to three months. Assuming no regulated pollutant will be emitted by this equipment during this time frame in an amount greater than or equal to 15 tons per year and no federally regulated HAP will be

emitted in amounts greater than or equal to 10 tons per year, CRRA believes that such equipment should not be subject to permit application requirements. The regulations, either through the definition of stationary source, or through some other exemption should clearly provide that this type of portable equipment need not be subject to new source review.

Another example of a portable unit sometimes needed by CRRA is a portable electric generator. At CRRA-affiliated landfills, the gas collection systems require electricity to assure that landfill gas will not migrate from the site. This is a requirement for the safety of human health and the environment. Occasional unexpected power failures occur and in such cases, portable emergency generators are required to operate these systems. Such portable units typically would only be at a specific location for a period of hours or days. Therefore actual emissions from such units would be very small. Please confirm our understanding that such a use of a portable electrical generator, either diesel- or gasoline-powered, would not require permitting. Would such units be exempt from permitting under proposed Section 22a-174-3b or 3c?

Response to comment 55: See the Department's response to comment 57 below.

56. Comment on the definition of "Stationary source." This definition has been expanded to cover "portable emissions units." This has the potential to create unnecessary permit issues for de minimis sources. For example, portable compressors, rental engines, snow making machinery, spray painting equipment and other small sources could be deemed to require permits under this definition. In addition, since permits are location specific, such units may require new permits whenever they are moved. This issue can be avoided in several ways: First, the reference to portable units can be deleted from the definition. Alternatively, the permit by rule provisions should directly exempt such units, or single individual permits can be issued to rental companies, so that the leased portable units can be permitted only once.

Response to comment 56: See the Department's response to comment 57 below.

57. Comment on the definition of "stationary source": One commentor notes that the new definition of Stationary Source introduces the term *portable emissions unit*. There is no definition for either *portable emissions unit* or *emissions unit* in the Regulations (there is however, a definition of *emission unit* in Section 1, which cites 40 CFR 51.165 (a) (1) (vii):

> *Emissions unit* means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

Does this suggest that a new class of portable *emissions units* will need to be included in Title V applications? Portable compressors and engines should not be considered stationary sources. Also, does the elimination of the definition of *emissions units* in Section 33 create ambiguity for sources which have submitted a Title V application and identified all *emissions units*, but have not yet received approval of the application? See also Section 3a (a) (1) (D) and (E).

Response to comments 55 through 57, inclusive:

- With respect to portable emission units, the Department should not adopt a definition for "portable emission units." The Department is now distinguishing portable emission units from mobile sources so that emission units that may be moved from location to location, but remain stationary while in operation, will be subject to permitting requirements. This issue is also addressed in Part IX of this report. The Department remains concerned that sources may circumvent permit requirements by misrepresenting the emissions from some stationary sources that may be portable. The accumulation of emissions is what matters whether it comes from one stack or many or from portable or stationary sources. The definition of stationary source would indicate that multiple emission units as described could be considered a stationary source.

- With respect to de minimis sources, the Department does not agree with the assertions that the revised definition of "stationary source" will create additional permit applicability for smaller sources. The commentors should keep in mind that the revised definitions of "potential emissions", "maximum capacity" and "practicably enforceable" will greatly minimize permit applicability for small sources.

- As such, the Department should not change the proposed definition of "stationary source".

58. **Comment on the definition of "volatile organic compound":** The definition of the term "volatile organic compound" (VOC) is being amended to exclude methyl acetate and t-butyl acetate due to the negligible photochemical reactivity of these compounds. Exempting methyl acetate is consistent with revisions EPA has made to its definition of VOC.[3] The exemption of t-butyl acetate, however, has been proposed by EPA, but has not yet been promulgated.[4] Therefore, EPA recommends that Connecticut state this exemption as follows:

> "t-butyl acetate, as of the effective date of EPA's final rulemaking exempting this compound from the definition of VOC stated in 40 CFR Part 51."

In addition, the phrase "and perflorocarbon compounds which fall into these classes" that appears at the end of Connecticut's VOC definition should be deleted. This phrase correctly appears earlier in the definition.

Response to comment 58: See the Department's response to comment 61 below.

59. **Comment on the definition of "Volatile Organic Compound or VOC".** Since EPA regularly changes the definition of VOC as we learn more about how certain organic compounds react in the atmosphere, the definition of VOC should directly incorporate by

[3] See 63 FR 17331; April 9, 1998.

[4] See 64 FR 52731; September 30, 1999.

reference the federal definition. This will minimize the need for DEP to revise the definition regularly, and will insure that the state's regulation of VOCs is consistent with federal requirements.

Response to comment 59: See the Department's response to comment 61 below.

60. Comment on the definition of "Volatile Organic Compound or VOC": The definition of "Volatile Organic Compound" (VOC) at 22a-174-1(114) lists compounds that are currently exempt under federal regulations. Changes to the list of VOCs on the federal level have occurred several times during the past few years. Whenever a VOC is added or removed from the federal list at 40 CFR 51.100(s), the Department must institute the rule making process to incorporate the change into 22a-174-1. Rather than devoting any of the Department's time or resources to implementing any future changes in the definition of VOC, we suggest the Department adopt the federal definition of VOC at 40 CFR 51.100(s).

Adopting the federal regulations will avoid a potential situation in which increases in emissions of a chemical that is a Connecticut non-exempt VOC, but a federally exempt VOC, cannot be offset by a reduction in the emissions of the same chemical per 22a-174-3a(l)(4)(B)(viii).

Response to comment 60: See the Department's response to comment 61 below.

61. Comment on the definition of "Volatile Organic Compound or VOC": One commentor indicated that the Department should incorporate the federal definition for "VOCs" by reference.

EPA regularly changes the definition of VOC in 40 C.F.R. § 51.100(s) as more is learned about how certain organic compounds react in the atmosphere. As a result, we believe DEP should simply incorporate the federal definition for VOC by reference in proposed § 1(114). This will minimize the need for DEP to revise its definition for VOC regularly, and will insure that the state's regulation of VOCs remains consistent with federal requirements.

Response to comments 58 through 61, inclusive: In order to remain consistent with the federal definition of volatile organic compounds (VOC) in 40 CFR Part 51.100 and limit the confusion concerning which VOCs are exempt in Connecticut, the Department should amend the definition of VOC to provide for incorporation by reference of the federal definition. Therefore, the Department should amend the definition as follows:

[(97)](114) "Volatile organic compound" or "VOC" ~~[means any PHOTOCHEMICALLY REACTIVE compound of carbon [which participates in atmospheric photochemical reactions] excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate and the organic compounds listed [on] IN Table [1(a)-1] 1-2 below which the Administrator has designated as having negligible photochemical reactivity.~~] HAS THE SAME MEANING AS IN 40 CFR 51.100(s) AS AMENDED FROM TIME TO TIME. "

The revised language should be followed by the deletion of Table 1(a)-1.

62. Miscellaneous comments on proposed section 22a-174-1: A commentor requested clarification as to whether DEP views the differences between these definitions as concerns for the affected facilities.

Under section 22a-174-38(a)(17) "Municipal waste combustor," "municipal waste combustor unit" or "MWC" means any part or activity of any stationary source which part or activity emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant, exclusive of associated air pollution control equipment, that combusts municipal solid waste, inclusive of those emissions units combusting a single-item waste stream of tires. Combustors that combust landfill gases collected by landfill gas collection systems are not municipal waste combustors.

And under section 22a-174-38(a)(18) "Municipal waste combustor plant" or "plant" means any premises at which one or more municipal waste combustor units are situated.

And under section 22a-174-22 (a)(19) "Waste Combustor means an incinerator as defined in subsection 221-174-18(c) of the RCSA, a resources recovery facility as defined in section 22a-207 of the General Statutes, or a sewage sludge incinerator. The term does not include a flare or an industrial fume incinerator.

Sec. 1
[(38)](47) "Incinerator" means any device, apparatus, equipment, SLAB, or structure used for destroying, reducing, or salvaging, by fire OR HEAT, any WASTE [material or substance including, but not limited to, refuse, rubbish, garbage, trade waste, debris or scrap; or facilities for cremating] OR human or animal remains[. For further definitions related to incineration, see subdivision 22a-174-18(c)(1).] PROVIDED THAT, FOR THE PURPOSES OF THIS DEFINITION, WASTE DOES NOT INCLUDE:

(A) USED OIL MEETING THE SPECIFICATIONS OF 40 CFR 279.11; OR USED OIL BURNED IN SPACE HEATERS MEETING THE REQUIREMENTS OF 40 CFR 279.23.

[(73)](89) "Process source" means any operation, process, or activity except:

(A) The burning of fuel for indirect heating in which the products of combustion do not come in contact with process material;

(B) The burning of refuse; and

(C) The processing of salvageable material by burning.

[(79)](94) "Resources recovery facility" [means a facility utilizing processes aimed at reclaiming the material or energy values from municipal solid waste.] HAS THE SAME MEANING AS IN SECTION 22a-207(9) OF THE CONNECTICUT GENERAL STATUTES.

40 CFR 51.165 (a) (1) (v)
(A) *Major modification* means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

22a-174-1
[(52)] (67) ["Modify" or] "Modification" OR "MODIFIED SOURCE" means ANY PHYSICAL CHANGE OR CHANGE IN THE METHOD OF OPERATION OF, A STATIONARY SOURCE WHICH INCREASES THE EMISSION RATE OF ANY INDIVIDUAL AIR POLLUTANT OR WHICH RESULTS IN THE EMISSION OF ANY INDIVIDUAL AIR POLLUTANT NOT PREVIOUSLY EMITTED...

Response to comment 62: See the Department's response to comment 9 above.

63. Miscellaneous comment on definitions. A commentor requested clarification as to whether municipal waste combustors (MWCs) fall within the definition of *electric utility steam generating unit* in 40 CFR 51.165 (a)(1)(v)(C)(4).

Response to comment 63: The Department understands that municipal waste combustors are not considered electric utility steam generating units within the context of 40 CFR 51.165 (a)(1)(v)(C)(4).

VIII. Summary of Specific Comments on Proposed RCSA Section 22a-174-2a

1. General Comment on proposed section 22a-174-2a(d), (e) and (f): The Department should move substantive requirements from section 22a-174-2a to sections 22a-174-3a(g) and 22a-174-33(r).

As its title indicates, the original intent behind proposed § 2a was to create a regulation containing all of the "[p]rocedural requirements for new source review and Title V permitting". See Proposed § 2a. Unfortunately, proposed § 2a contains too many substantive as opposed to procedural requirements. The applicability rules for NSR and Title V permit modifications for existing facilities should be set forth in proposed § 3a(g) and § 33(r), respectively, and cross-referenced in §§ 2a(d), 2a(e) and 2a(f). Proposed § 2a, with differences between §§ 3a(a)(4), 3a(a)(5), 3a(g), 33(r) and §§ 2a(d), 2a(e) and 2a(f), is extremely confusing.

Response to comment 1: The Department has concluded that consolidating procedural requirements into one regulatory section is critical and should not make any changes based upon this comment. Because there is a close nexus between some of the procedural and substantive requirements of the CAA, the Department has made several policy decisions in structuring proposed section 22a-174-2a. the Department believes that the regulated community, upon gaining greater familiarity with the revised structure of the regulations, will come to share the Department's view of proposed section 22a-174-2a.

Comments on section 22a-174-2a(a), Signatory Responsibilities:

2. **Comment on section 22a-174-2a(a)** – The requirement that a corporate officer provide written authorization to the Connecticut Department of Environmental Protection (CTDEP) so that an employee may sign permit applications and other documents is impractical and unnecessarily burdensome. Similarly, the stipulation that a new written authorization be provided whenever a new employee assumes signatory responsibilities is impractical and likely to be overlooked by regulated entities. The regulations should be revised to allow any responsible corporate officer to sign permit related documents without prior submittal of an authorization to CTDEP.

Response to comment 2: Revised signatory responsibility requirements are being instituted to provide certainty to the Department that any person who signs any enforceable document is fully authorized to do so on behalf of the subject organization. Otherwise, the enforceability of documents such as permit applications, permits, compliance reports, compliance certifications or administrative orders, may be called into question at a later date. The regulated community should easily implement the additional administrative requirements once the proper internal business protocols are adopted. The Department should not make any changes to the proposed regulation based on this comment.

3. **Comment on section 22a-174-2a(a)(1)(B):** One commentor suggested changing "any officer or employee of a corporation" to "any authorized officer or employee of a corporation." Section 22a-174-22a(a)(2) describes the process for authorizing these officers or employees.

Response to comment 3: The Department should not revise proposed section 22a-174-2a(a)(1)(B) with respect to the authorization.

4. **Comment on section 2a(a)(1)(E):** The last sentence of subsection (E), which relates to signatories for federal entities should be revised or deleted since the proposed rule does not use the term "principal executive officer."

Response to comment 4: The Department should add the underlined language to section 22a-174-2a(a)(1)(E) as follows:

> (E) For a federal entity: by the principal executive officer, statutorily authorized official, or by a federal employee or any other representative who has received legal delegation of authority. For the purpose of this subsection, a principal executive officer of a federal agency or department includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency or department;

5. **Comment on section 2a(a)(2)(A):** This subsection, which requires submittal to the DEP to authorize any corporate employee to sign applications and other documents, is unnecessary and burdensome. Consistent with the Water Discharge Regulations, §22a-430-

3(b)(2), and past DEP practice, the regulations should make clear that a responsible corporate officer can sign such documents without submittal of an authorization to DEP. The only apparent reason for limiting the signatories for a company from the DEP's standpoint is that DEP needs to be able to rely on the authority or apparent authority of the employee to enforce its requirements against the company. A document signed by a responsible official should be sufficient for these purposes. In addition, a corporation should be allowed to identify a position, rather than an individual as the authorized representative. See Water Discharge Regulations, §22a-430-3(b)(2). Subsection (a)(4) of the proposed regulations, which requires new authorizations whenever there is a change in employees, is likely to be largely overlooked by regulated entities, which have turnover in employees. It serves neither DEP, nor the regulated community, to have regulations on the books that are often overlooked and are not necessary to protect the environment.

Response to comment 5: See the Department's response to comment 2 above.

6. **Comment on section 22a-174-2a(a)(2)(A)(ii):** This section requires that written signature authorization specify an individual. Due to turnover in positions of authority at many regulated facilities, this commentor suggests changing "an individual" to "an individual or position."

Response to comments 6: See the Department's response to comment 2 above.

7. **Comment on section 22a-174-2a(a):** The commentor believes the Department should clarify this section generally, and should restore key signatory flexibility authorized by current certification provisions.

As a threshold matter, there is no clear linkage between proposed § 2a(a)(1) (requirement that certain individuals sign submittals to DEP) and proposed § 2a(a)(2) (establishing "authorization" of individuals, but with no clear indication as to the significance of such authorization). This confusion can be addressed by relatively straightforward revisions to clarify that signatories under proposed § 2a(a)(1) must be authorized pursuant to § 2a(a)(2).

Moreover, as currently drafted, § 2a(a)(2) appears to eliminate a provision in the existing certification provisions of current § 33(b) that provides key flexibility for larger corporations. That is, current § 33(b) automatically authorizes specific corporate officers, or their functional equivalents (i.e., "any other person who performs similar policy or decision-making functions for the corporation, or the duly authorized representative responsible for overall operation of one or more manufacturing, production, or operating facilities...") to certify documents or authorize qualified representatives to do so. See § 33(b)(1)(A). Current § 33(b)(1)(A) also tracks and is consistent with the definition of "responsible official" in 40 C.F.R. § 70.2.

Proposed § 2a(a)(2) appears to eliminate the automatic authorization of functionally equivalent officials in operating divisions of large corporations, and to require authorization to be granted in every case by an officer of the corporation itself. It is not clear why DEP would want to eliminate this flexibility, which recognizes the complex organization structures of most large companies. For example, the "operating divisions" of a large corporation may themselves be larger than many ordinary companies. These divisions often operate relatively

independently and have their own officers, much like the overarching corporation. Under current § 33(b)(1)(A), officers of the division would be considered functionally equivalent to officers of a corporation, and could "authorize" qualified representatives to certify documents. This flexibility avoids forcing officers of operating divisions to turn to officers of the corporation itself. Such an exercise can be extremely burdensome and time-consuming, and fails to recognize that the officers of the operating division are better positioned to certify to the matters at issue.

In addition, it is not clear why it would be necessary to require authorizations to run to individuals, rather than positions. Such a scheme would mean that a new authorization must be filed with DEP every time a position at the company sees a change in personnel. We therefore request that proposed § 2a(a)(2)(A)(ii) be revised to allow authorization of a "**POSITION OR** individual" officer sign.

Furthermore, this commentor requests the Department consider modifying the language in § 2a(a)(2)(A)(ii) to state ...or and individual having overall responsibility for environmental matters for the company OR PREMISE, and... Again, the single sites or premises of a large corporation may themselves be larger than many ordinary companies.

Lastly, it is not clear why it is thought necessary to require advance filing of authorizations of all signatories. The federal regulations require such advance filings only in the Title V context, and only where the company in question is below certain employee or sales thresholds. See 40 CFR 70.2 (definition of "responsible official"). We are not aware that any such certifications are required in the federal NSR programs. Accordingly, we request DEP to revise § 2a(a) to be consistent with the federal standards. If DEP declines to do so, please explain in the hearing officer's report why DEP believes such additional requirements are necessary in Connecticut.

Based upon the foregoing, this commentor recommends that DEP copy existing § 33(b)(1)(A) into proposed § 2a(a)(2), without substantive changes.

Response to comment 7: See the Department's response to comment 8 below.

8. **Comment on section 22a-174-2a:** Subsection (a)(1)(B) should refer to "authorized" employees. In addition, the last sentence of subsection (E), which relates to signatories for federal entities should be revised or deleted since the proposed rule does not use the term "principal executive officer." Also, there is no clear linkage between proposed subsection 2a(a)(1) (requiring submittals to DEP to be signed by certain individuals) and proposed subsection 2a(a)(2) (providing how certain officials are to be "authorized"). This confusion can be addressed by relatively straightforward revisions (noted below) to clarify that signers per subsection 2a(a)(1) must be authorized per subsection 2a(a)(2).

Subsection 2a(a)(2)(A), which requires submittal to the DEP to authorize any corporate employee to sign applications and other documents is unnecessary and burdensome. Consistent with the Water Discharge Regulations, subsection 22a-430-3(b)(2), and past DEP practice, the regulations should make clear that a responsible corporate officer, including a "vice president in charge of a principal business function, or any other person who performs

similar policy or decisionmaking functions for the corporation," can sign such documents without submittal of an authorization to DEP. The only apparent reason for limiting the signatories for a company from the DEP's standpoint is that DEP needs to be able to rely on the authority or apparent authority of the employee to enforce its requirements against the company. A document signed by a responsible official should be sufficient for these purposes.

The proposed language also would eliminate a key flexibility provision from the existing certification provisions at R.C.S.A. subsection 22a-174-33(b). This provision automatically authorize specified corporate officers, or for certain larger facilities, their functional equivalents, i.e., "any other person who performs similar policy or decision-making functions for the corporation, or the duly authorized representative responsible for overall operation of one or more manufacturing, production, or operating facilities subject to this subsection". R.C.S.A. subsection 33-174-b(1)(A). This provision tracks the definition of "responsible official" in 40 CFR subsection 70.2. However, proposed subsection 2a(a)(2)(A) would eliminate this automatic authorization of functional equivalent officials at larger facilities, and require it to be granted (and re-granted, as inevitable personnel changes occur) in each case by an officer of the corporation itself. Yet the flexibility offered by the existing regulations recognizes and accommodates the complex organization structures of most large companies. For example, the "operating divisions" of a large corporation may be larger than most other corporations. The divisions often have their own officers, just like the overarching corporation itself. Such officers should be able to hold or delegate signatory responsibilities under the proposed rule, no different than officers of a smaller corporation. Otherwise, officers of the operating divisions will be forced to go "up the chain" to the officers of the overarching corporation. This is in many cases extremely burdensome and time-consuming, and further fails to recognize that the officers of the operating division are better positioned to certify as to the matters in question. Such internal delays would lead to many "paper" compliance issues, unrelated to air quality protection goals.

Finally, subsection 2a(a)(4) of the proposed regulations, which requires new authorizations whenever there is a change in employees is likely to be largely overlooked by regulated entities, which have turnover in employees. Moreover, a corporation should be allowed to identify a position, rather than an individual as the authorized representative. See Water Discharge Regulations, subsection 22a-430-3(b)(2). It serves neither DEP, nor the regulated community, to have regulations on the books that are easily overlooked and not necessary to protect the environment.

To address these concerns, this commentor proposes the following revisions to subsection 2a(a):

- Clarify in subsection 2a(a)(1) that those persons signing must be authorized in accordance with subsection 2a(a)(2).

- Copy the existing provisions in R.C.S.A. subsection 22a-174-33(b) regarding responsible officials and authorizations directly into subsection 2a(a)(2), without subtractions or other revisions.

- Revise subsection 2a(a)(2) to provide that the authorization goes to the office or position, not the particular individual who happens to hold such office or position at a particular time.

Response to comments 7 and 8: See the Department's response to comment 2 above. Furthermore, in response to comments 7 and 8, the Department should revise proposed provisions in section 22a-174-2a(a) to clarify the Department's intent as follows:

(1) Any document, such as a permit application, report or certification, submitted to the commissioner shall be signed by any of the following individuals, as authorized in accordance with subdivision (2) of this subsection, if applicable:

(A) For an individual or sole proprietorship: by the individual or proprietor, respectively;

(B) For a corporation: by any officer, employee or representative of a corporation;

(C) For a partnership: by a general partner;

(D) For a municipality: by the person authorized by charter or resolution of the board of selectmen or town council or other governing body;

(E) For a federal entity: by the principal executive officer, statutorily authorized official, or by a federal employee or any other representative who has received legal delegation of authority. For the purpose of this subsection, a principal executive officer of a federal agency or department includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency or department; or

(F) For a state entity: by the statutorily authorized official or by a state employee or any other representative who has received legal delegation of authority.

(2) An officer, employee, or ~~A~~ representative of a corporation ~~other than an officer~~, ~~partnership~~, an employee or representative of a municipality, state or federal entity, or any other government or quasi-public entity shall be authorized as follows:

(A) For a corporation:

(i) authorization is made in writing by ~~the president, secretary, treasurer, or vice president of the corporation in charge of a principal business function,~~ certified resolution of the board of directors on forms prescribed by the commissioner,

9. **Comment on proposed section 22a-174-2a(b)(6):** Procedural requirements for new source review and Title V permitting. The Department should also forward a copy of the notice of tentative determination to any federally recognized Indian governing body identified in section 22a-174-2a(b)(5)(E).

Response to comment 9: The Department should make the suggested change to require a copy of the notice of tentative determination be sent to any federally recognized Indian governing body as follows:

> (6) For any permit application under section 22a-174-3a of the Regulations of Connecticut State Agencies for a new major stationary source or a major modification at a major stationary source, the commissioner shall forward a copy of the notice of tentative determination, published in accordance with subdivision (3) of this subsection, to those individuals or entities identified in subparagraphs (A), (B), (C), **(E)** and (G), of subdivision (5) of this subsection.

10. Comment on section 22a-174-2a(c): This commentor notes that proposed section 22a-174-2a(c)(3) provides:

> (3) **Public adjudicative hearings,** in accordance with section 22a-3a-6 of the Regulations of Connecticut State Agencies and section 22a-174(*l*)(2) of the Connecticut General Statutes:
>
> (A) Prior to the issuance of the subject permit, may be held on the commissioner's own initiative or shall be held if requested, in writing, by:
>
> (i) any person when the proposed activity is subject to the provisions of the Act, or
>
> (ii) a petition signed by at least twenty-five (25) persons, and such petition is submitted to the commissioner during the comment period;

The commentor states that neither the federal Clean Air Act, nor state air pollution statutes require the Department to hold an adjudicative hearing upon the request of any one or twenty-five persons, unless such person is legally entitled by statute to such a hearing. Under the Clean Air Act, EPA typically holds legislative-type public comment hearings upon request of persons who do not have a direct interest in the source seeking the permit. An adjudicative hearing provides additional protection to applicants and others whose legal rights, privileges or duties may be affected. It is interesting to note that section 22a-174-2a(c)(6) only requires DEP to hold a "non-adjudicative" public informational hearing if there is a "material request" for such hearing. Since the adjudicative hearing is a much more labor-intensive hearing, DEP should consider a similar threshold for holding an adjudicative hearing, except where the adjudicative hearing is required by statute.

Response to comment 10: The Department should clarify that an adjudicative hearing (contested case) is required only when the legal rights, duties or privileges of a party are required by statute to be determined by the Department after an opportunity for hearing or in which a hearing is in fact held. Therefore, the Department should make the following changes to proposed section 22a-174-2a(c)(1), (3), (6), (8) and (9):

(1) Written comments may be filed by any person within thirty (30) days following the publication of a notice of a tentative determination under subsection (b)(3) of this section. The commissioner shall maintain a record of all comments made on the subject application. Any comments concerning the issuance of a Title V permit may be accompanied by a request for a public informational meeting or hearing, an adjudicatory hearing, or all three. Notwithstanding the provisions of section 22a-3a-6 of the Regulations of Connecticut State Agencies, ~~Any~~ any comments concerning the issuance of a permit under section 22a-174-3a of the Regulations of Connecticut State Agencies may be accompanied by a request for a public informational meeting or ~~an adjudicatory~~ hearing, or both.

(3) **Public adjudicative hearings**, ~~in accordance with section 22a-3a-6 of the Regulations of Connecticut State Agencies and~~ shall be held as provided in section 22a-174(l)(2) or section 22a-174(m) of the Connecticut General Statutes, and in accordance with section 22a-3a-6 of the Regulations of Connecticut State Agencies.

(A) ~~Prior to the issuance of the subject permit, may be held on the commissioner's own initiative or shall be held if requested, in writing, by:~~

~~(i) any person when the proposed activity is subject to the provisions of the Act, or~~

~~(ii) a petition signed by at least twenty-five (25) persons, and such petition is submitted to the commissioner during the comment period;~~

~~(B) Prior to the issuance of the subject permit, may be held on the commissioner's own initiative or shall be held following the commissioner's receipt of a written request for a public hearing if the permit application is for a new major stationary source or a major modification at a major stationary source, or for any stationary source where the stack height exceeds good engineering practice, and provided such request is submitted during the comment period set forth in subdivision (1) of this subsection; and~~

~~(C) May be held prior to the issuance of the subject permit on the commissioner's own initiative on any minor source permit or modification thereto.~~

(6) **Non-Adjudicative Public Informational Hearings.** ~~For the purposes of an application under section 22a-174-3a or section 22a-174-33 of Regulations of Connecticut State Agencies, the commissioner shall hold a non-adjudicative public informational hearing following receipt of a material request therefore, prior to the issuance of a~~

~~subject permit, or order pursuant to section 22a-174-33(d) of Regulations of Connecticut State Agencies. The commissioner shall publish, at the applicant's expense, a notice of such public informational hearing in a newspaper of general circulation in the affected area at least thirty (30) days prior to such a hearing. The commissioner may consider more than one permit application, or order pursuant to section 22a-174-33(d) of Regulations of Connecticut State Agencies, at any such hearing, provided the notice requirements of this subdivision have been satisfied. The commissioner shall consider all written comments submitted within the public comment period in the notice including all comments received at the public hearing when making a final decision on the approvability of the application.~~ Following receipt of a written material request and prior to the issuance of a subject permit, or order pursuant to section 22a-174-33(d) of Regulations of Connecticut State Agencies, the commissioner shall hold a non-adjudicative public informational hearing on:

(A) An application under section 22a-174-3a of the Regulations of Connecticut State Agencies;

(B) An application under section 22a-174-33 of the Regulations of Connecticut State Agencies;

(C) An order under section 22a-174-33(d) of the Regulations of Connecticut State Agencies; and

(D) Notwithstanding the above and following the commissioner's receipt of a written request for a public hearing, the commissioner shall hold such hearing if the permit application is for a new major stationary source or a major modification at a major stationary source, or for any stationary source where the stack height exceeds good engineering practice.

(8) Any notice of hearing or meeting pursuant to this subsection shall: ~~provide the name of the applicant; the location of the proposed activity; the application number; the type of permit being sought; name, address and phone number for a contact person at the Department; name, address and number for the Department's Americans with Disabilities Act coordinator; and the date, time and location of the public hearing or meeting. In addition, the commissioner may publish, at the applicant's expense, such notice in other media and in languages other than English.~~

(A) Be published at the applicant's expense in a newspaper of general circulation in the affected area at least thirty (30) days prior to such hearing or meeting;

(B) Provide the name of the applicant; the location of the proposed activity; the application number; the type of permit being sought; name, address and phone number for a contact person at the Department;

(C) Provide the name, address and number for the Department's Americans with Disabilities Act coordinator;

(D) Provide the date, time and location of the public hearing or meeting; and

(E) Be published in other media and in languages other than English as required by the commissioner.

(9) The commissioner may consider more than one permit application, or order pursuant to section 22a-174-33(d) of Regulations of Connecticut State Agencies, at any hearing or meeting under subdivisions (6) or (7) of this subsection, provided the notice requirements of subdivision (8) of this subsection have been satisfied. The commissioner shall consider all written comments submitted within the public comment period in the notice including all comments received at the public hearing when making a final decision on the approvability of the application.

11. Comment on section 22a-174-2a(c)(7), Non-Adjudicative Informational Meetings: Subsection 22a-174-2a(c)(7) has a typographical error "issue" should be "issuance" in the following clause: "For the purposes of an application under subsection 22a-174-3a or subsection 22a-174-33 of Regulations of Connecticut State Agencies, the commissioner may hold a non-adjudicative informational meeting prior to the ~~issue~~ **issuance** of a subject permit."

Response to comment 11: The Department should revise proposed section 22a-174-2a(c)(7) as follows:

(7) **Non-Adjudicative Informational Meetings.** For the purposes of an application under section 22a-174-3a or section 22a-174-33 of Regulations of Connecticut State Agencies, the commissioner may hold a non-adjudicative informational meeting prior to the ~~issue~~ issuance of a subject permit, either following receipt of a request therefore or upon the commissioner's own initiative. The commissioner shall publish, at the applicant's expense, notice of such public informational meeting in a newspaper of general circulation in the affected area at least thirty (30) days prior to such a meeting. The commissioner may consider more than one permit application at any such meeting.

12. Comment on section 22a-174-2a(d): While the procedures in section 22a-174-2a(d) of the proposed regulations seem straightforward, the introduction of multiple references to other sections of the regulations may lead to significant confusion, and invite numerous interpretations of the intent and meaning.

Response to comment 12: The Department made the decision to put all non-minor permit modification requirements into a single regulatory section after considerable input from stakeholder groups and weighing the benefits and drawbacks of such an approach. The Department does not agree that the proposed regulatory structure may lead to significant confusion or invite numerous interpretations. Proposed section 22a-174-2a is clearly structured and sets forth the procedural requirements for each of the

four permit programs in great detail. The Department should not make any changes to proposed section 22a-174-2a based upon this comment.

13. **Comment on section 22a-174-2a(d):** With respect to section 22a-174-2a(d)(8) of the proposed regulations, the commissioner is required to "take final action on a Title V non-minor permit modification within twelve (12) months from receipt of a complete application. In the event that this deadline is exceeded no application for a Title V non-minor permit modification shall automatically be deemed sufficient or approved;" (emphasis added). This provision appears to leave the entire process open-ended. Please clarify what happens after the 12-month period if the commissioner fails to take action.

Correspondingly, the commissioner is given unilateral authority to revoke a permit at any time under section 22a-174-2a(h), 22a-174-3a(f), and 22a-174-33(j).

Response to comment 13: The regulation does not specify what would happen if the commissioner took no action and to speculate would be outside the scope of this hearing report. The proposed regulations embody the federal requirement that the Department issue Title V non-minor permit modifications within a certain time frame. See 40 CFR 70.7. There is, however, conflicting guidance stating that no Title V permit may be automatically approved due to a delay by the permitting authority in issuing the Title V permit. See 40 CFR 70.7(b)(2). The proposed regulations attempt to reconcile these provisions to the extent possible. Therefore, the Department should not make any changes to the proposed regulations based upon this comment.

The commissioner is <u>not</u> unilaterally authorized to revoke a permit at any time under section 22a-174-2a(h), 22a-174-3a(f), and 22a-174-33(j). The commissioner may institute delicensing proceedings only in accordance with applicable law, which affords a permittee adequate due process.

14. Comment on section 22a-174-2a(d): One commentor notes that this subsection states: "An application for a non-minor permit modification shall be made on forms provided by the commissioner." This implies a form will be created, or perhaps already exists, for such action, which is different than the form described in section 22a-174-33 (g)(1). Please explain whether there is such a form.

Response to comment 14: The Department is currently developing the forms specified in the proposed regulations. Forms are a way to standardize the format of information submitted to the Department and to ensure such submitted information is properly certified. The lack of forms does not preclude the Department from taking any enforcement action to ensure compliance with the regulations. The applicant should provide all of the information required by the regulations on forms prescribed by the Commissioner, to the extent they are available.

15. Comment on section 22a-174-2a(d)(3), New Source Review and Title V Non-Minor Permit Modification: Subsection (d)(3) requires applications for non-minor permits for any identified "stationary source or emission unit." An emission unit is defined as a part of a stationary source. Please confirm that the use of the two defined terms in this provision

simply means that any stationary source or part thereof, which has a permit may be required to obtain a non-minor permit modification if the requirements of section 22a-174-3a(a)(1) are met.

Response to comments 15: The term emission unit is included in section 22a-174-2a(d)(3) of the proposed regulations because section 22a-174-3a(a)(1)(D) and (E) refer to emission units. Any stationary source or part thereof, which has a permit, may be required to obtain a non-minor permit modification as delineated in section 22a-174-2a(d)(3) of the proposed regulations.

16. **Comment on section 22a-174-2a(d)(4):** One commentor notes that this subdivision appears to provide the primary driving force for existing sources making a non-minor modification (see also section 22a-174-3a(a)(1)(B), (D) and (E)). This section requires the source to "apply for and obtain a non-minor permit modification." Certain activities are exempted under section 22a-174-2a(d)(2), which refers to section 22a-174-3a(a)(2). Activities which are not exempt, and have a potential to emit greater than 15 tons per year trigger a requirement to permit the modification. Section 22a-174-2a(d)(7) points to section 22a-174-33(g). The provisions for this process are spread throughout the Regulations in a maze of references and cross-references which leave open the question of whether any non-minor modification can be made without the submittal and approval of a full and complete Title V application. Is this the intent? How are the requirements for submitting a non-minor permit modification different than preparing a complete Title V application?

Response to comment 16: The Department intends that the Title V non-minor permit modification provisions meet the federal program requirements set forth in 40 CFR 70. The requirements for non-minor permit modifications to Title V permits are extensive and may result in an application very similar to that of a full Title V permit application.

17. **Comment on section 2a-174-2a(d)(4)(D):** The Department should clarify its intent to similarly exclude minor permit modifications, permit revisions and "Opt-Flex/Off-Permit" changes from non-minor permit modification requirements.

This commentor interprets proposed § 2a(d)(4)(D) to require a Title V permittee to apply for and obtain a Title V non-minor permit modification for changes <u>not otherwise</u>: (1) subject to the minor permit modification requirements of proposed § 2a(e); (2) subject to the permit revision requirements of proposed § 2a(f); or (3) allowed as off-permit changes under 40 C.F.R. § 70.4(b)(14) or operational flexibility under 40 C.F.R. § 70.4(b)(2).

As currently drafted, proposed § 2a(d)(4)(D) is somewhat ambiguous because it uses the phrase "<u>not</u> otherwise subject to" when referring to §§ 2a(e) and 2a(f) and the phrase "otherwise allowed" when referring to operational flexibility and off-permit changes. Proposed § 2a(d)(4)(D). We are concerned that this ambiguity could lead to different treatment of "op-flex/off-permit" changes and minor modification/permit revision requirements, which does not appear to be DEP's intent. In order to clarify this ambiguity, we request that DEP make the following change to § 2a(d)(4)(D):

"(D) To incorporate a change to an applicable requirement not otherwise subject to subsections (e) or (f) of this section or **NOT** otherwise allowed as an off-permit change pursuant to 40 CFR 70.4(b)(14) or as operational flexibility pursuant to 40 CFR 70.4(b)(12).".

Response to comment 17: The Department intentionally chose the phrases, "not otherwise subject to" when referring to sections 22a-174-2a(e) and 2a(f) and the phrase "otherwise allowed" when referring to operational flexibility and off-permit changes. A Title V source is not subject to operational flexibility and off-permit changes, rather the owner and operator of such source may choose to exercise those options, hence the phrase "otherwise allowed". A Title V source is subject to minor permit modifications and this is not optional. Thus the comment with respect to the addition of the word " not" is valid. The Department should make the requested change to section 22a-174-2a(d)(4)(D) as follows:

(D) To incorporate a change to an applicable requirement not otherwise subject to subsections (e) or (f) of this section or not otherwise allowed as an off-permit change pursuant to 40 CFR 70.4(b)(14), as amended from time to time, or as operational flexibility pursuant to 40 CFR 70.4(b)(12), as amended from time to time.

See also the Additional Comments of the Hearing Officer in Part XIII of this report.

18. Comment on section 22a-174-2a(d)(5): The commentor notes that the procedural steps outlined in section 2a(d)(5) refer to section "22a-3a-5," which appears to be an error.

Response to comment 18: The Department correctly referenced section 22a-3a-5 of the Regulations of Connecticut State Agencies. This provision, set forth in the Department's rules of practice, specifically pertains to the issuance of licenses. A permit is a type of license under the rules of practice. The Department should not make any changes based upon this comment.

19. Comment on section 22a-174-2a(e)(1), Permit Modifications: The DEP should include a de minimis level for modifications to a permitted unit that may increase emissions at a source. The new section 2a(e)(1) requires a permit modification for **any** modification of less than 15 tons/yr. The administrative burden in filing a request for a permit modification, when increases in emissions are insignificant, is excessive when compared with the minimal impact on air quality. DEP already has several mechanisms to track changes at a facility (e.g., PIQ inspections). EPA's Title V guidance documents and white papers define insignificant emission sources as emissions of less than one ton. Under existing section 22a-174-3, only specific modifications, or those modifications over 5 tons/yr. require a facility to provide notice to DEP. This commentor recommends that DEP include a de minimis value, either one ton/yr., five tons/yr., or some value in between, to reduce unnecessary paperwork and delay for modifications that result in an insignificant increase in air emissions.

Response to comment 19: Emissions limitations set forth in a permit are an enforceable existing requirement. The Department could not authorize any level of de minimis emissions beyond the allowable emission limits set forth in the permit, as such emission levels would violate the existing permit terms and conditions. Sources are not precluded from increasing actual emissions within the range of allowable levels authorized within the permit unless doing so would violate an otherwise applicable order or regulation. Therefore the Department should not include a de minimis value as requested by this commentor. However, the Department should clarify the provisions of section 22a-174-2a(e)(1) of the proposed regulations with respect to emission types. See the Department's response to comment 20, below.

20. Comment on section 22a-174-2a(e)(1): This subsection limits the ability to obtain a new source review minor permit modification to only those sources with a permit issued under the proposed new regulations (Section 22a-174-3a). There is no provision for currently permitted sources (that obtained permits under existing Section 22a-174-3) to similarly apply for a minor permit modification. Is this an oversight by the CTDEP? The commentor believes that the regulation should be modified to allow any permitted source that qualifies for a minor permit modification to apply for such modification.

Response to comment 20: The Department intended that permits issued under former section 22a-174-3 be eligible for modification under section 22a-174-2a. Thus, the Department should make the following change to section 22a-174-2a(e)(1):

(1) The permittee of any source that is subject to a new source review permit issued by the commissioner under section 22a-174-3a(a)(1)(D) or (E) or former section 22a-174-3 of the Regulations of Connecticut State Agencies shall apply for a new source review minor permit modification to incorporate any modification of an emission unit with ~~an~~ any increase in potential emissions, above allowable emissions, ~~in allowable emissions~~ of less than fifteen (15) tons per year of any individual air pollutant, unless such modification is subject to the provisions of section 22a-174-3a(a)(1)(A), (B), (C) or (F) of the Regulations of Connecticut State Agencies.

The additional changes to proposed section 22a-174-2a(e)(1) are in accordance with comment 19, above and comment 21, below.

21(A) and (B). Comments on section 22a-174-2a(e), New Source Review and Title V Minor Permit Modification:

(A) Section 2a(e)(1), provides that:

The permittee of any source that is subject to a new source review permit issued by the commissioner under section 22a-174-3a(a)(1)(D) or (E) of the Regulations of Connecticut State Agencies shall apply for a new source review minor permit modification to incorporate any modification of an emission unit with an increase in allowable emissions of less than fifteen (15) tons per year of any individual air pollutant, unless such modification is subject to

the provisions of section 22a-174-3a(a)(1)(A), (B), (C) or (F) of the Regulations of Connecticut State Agencies.

The definition of modification should include a 5 ton per year threshold, as suggested in the comments on the definition. If such ton per year threshold is included, the reference to modification of "less than fifteen (15) tons per year" would apply only to changes that increased potential emissions by more than 5 tons per year. As an alternative, this section could be changed to apply to increases of emissions of "**more than five (5), but** less than fifteen (15) tons per year." There should be a de minimis level of emissions increase that will not trigger a minor permit modification, since otherwise, any change which increases emissions by even a pound or less would require a permittee to apply for a permit modification requiring the DEP and the regulated community to expend valuable resources on activities with little impact on air resources.

(B) Subsection 2a(e)((3)B)(i) requires applications for minor permit amendments to include a description of "any ***modification*** in potential emissions resulting from the proposed modification." The use of the term "modification" when referring to potential emissions is an incorrect use of the defined term. The regulations should be revised to refer to any ***increase*** in potential emissions. Moreover, as explained above there should be a ton per year threshold for any emission increases to trigger permit modification requirements.

Response to comment 21(A): See the Department's response to comment 19, above, concerning "de minimis" emission increases.

Response to comment 21(B): The Department should make the requested change. See the Department's response to comment 22(C), below.

22(A) –(G). Comments on section 22a-174-2a(e), New Source Review and Title V Minor Permit Modification:

(A) Subsection 2a(e)(1), provides that:

The permittee of any source that is subject to a new source review permit issued by the commissioner under subsection 22a-174-3a(a)(1)(D) or (E) of the Regulations of Connecticut State Agencies shall apply for a new source review minor permit modification to incorporate any modification of an emission unit with an increase in allowable emissions of less than fifteen (15) tons per year of any individual air pollutant, unless such modification is subject to the provisions of subsection 22a-174-3a(a)(1)(A), (B), (C) or (F) of the Regulations of Connecticut State Agencies.

As proposed, subsection 2a(e)(1) would require minor permit modifications for any modification that increases "allowable emissions". This commentor believes a de minimis threshold should be incorporated to ensure DEP and the regulated community are not expending valuable resources on the preparation and review of "minor" permit modifications. Of particular concern is a potential timeliness issues in light of significant DEP resource constraints, particularly due to the consequences if a permittee were to implement the

modification and DEP later were to deny the minor permit modification. See proposed subsection 2a(e)(4). As a result, this commentor recommends one of the following alternatives: First, the definition of modification should include a 5 ton per year threshold, as suggested in the comments on the definition of modification. If such ton per year threshold is included, the reference to modification of "less than fifteen (15) tons per year" would apply only to changes that increased potential emissions by more than 5 tons per year. As an alternative, this section could be changed to apply to increases of emissions of "**more than five (5), but** less than fifteen (15) tons per year."

(B) DEP should clarify the apparent intent that "minor permit modifications" under proposed § 2a(e) would apply to modifications to an emission unit covered only by permits issued under existing section 22a-174-3 (old Section 3). However, DEP should also revise this section to ensure that it does not apply to emissions units which received old Section 3 permits solely because their potential emissions exceeded a level that would now be too low to trigger permitting. Such a provision is needed to avoid arbitrary and inequitable results, and depletion of the resources of DEP and regulated sources alike on inconsequential permit modifications for inconsequential sources.

As drafted, proposed R.C.S.A. § 22a-174-2a(e)(1) requires "minor permit modifications" only for emission units that hold a minor NSR permit issued under new Section 3a. However, the reference to "former section 22a-174-3" in proposed § 22a-174-2a(e)(4) indicates that the "minor permit modifications" would also be required of old Section 3 permit holders. If this is the case, this applicability should be clarified in proposed R.C.S.A. § 22a-174-2a(e)(1), with an important caveat: "minor permit modifications" should be required only for sources which were issued a "permit to construct" under current (and soon to be former) Section 3(b)(1)(A) (regarding sources with potential emissions of at least 15 tons/year). Without such a limitation, proposed R.C.S.A. § 22a-174-2a(e) would treat identical sources with identical emissions in completely different ways, based solely on whether the source dates from before or after the adoption of new Section 3a.

For example, consider two identical sources, A and B, each with potential emissions of 5 tons/year. Source A was began operations in 2000, and so was required to obtain a "permit to operate" under current R.C.S.A. § 22a-174-3(f). Source B will begin operations in 2002, after the (expected) adoption of proposed Section 3a. Because Source B's potential emissions are less than 15 tons/year, it will not need a permit. Then consider that Source A and Source B each want to implement a facility modification that will increase their actual emissions by 1 ton/year. (Assume that for Source A, it would also increase its allowable emissions by 1 ton/year.) If proposed Section 2a(e) is made applicable to any old Section 3 permit-holder, Source A would require a "minor permit modification". Source B would not. This would be irrational and inequitable. This also does not represent a sound commitment of public and private resources, requiring a permit modification process for a small operation like Source A. (This example also illustrates, as discussed above, how the lack of a de minimis cut-off in proposed either in the definition of "modification" or in Section 2a as drafted would burden DEP and source alike with permit modification proceedings for inconsequential emission increases. Thus, demonstrating the need to return to the current NSR regulation threshold for modifications of five (5) tons per year.)

The straightforward solution in this instance is to use the same cut-off trigger for "entry" into proposed Section 2a, regardless of when a source was permitted. A common trigger is readily at hand: 15 tons/year of potential emissions, which is the trigger for minor NSR permitting under proposed R.C.S.A. § 22a-174-3a(a)(1)(D) and (E), and under current (and expected soon to be former) R.C.S.A. § 22a-174-3(b)(1)(A).

Accordingly, the following language revisions should be made to subsections 2a(e)(1) and (e)(4):

(e) New Source Review and Title V Minor Permit Modification

(1) The permittee of any source that is subject to a new source review permit issued by the commissioner under section 22a-174-3a(a)(1)(D) or (E) **OR FORMER SECTION 22a-174-3(b)(1)(A)** of the Regulations of Connecticut State Agencies shall apply for a new source review minor permit modification to incorporate any modification of an emission unit with an increase in allowable emissions of less than fifteen (15) tons per year of any individual air pollutant, unless such modification is subject to the provisions of section 22a-174-3a(a)(1)(A), (B), (C) or (F) of the Regulations of Connecticut State Agencies.

(4) With respect to an application for a new source review minor permit modification, under subdivision (1) of this subsection, to a permit issued under section 22a-174-3a) **OR FORMER SECTION 22a-174-3(b)(1)(A)** of the Regulations of Connecticut State Agencies, the existing permit terms and conditions of the permit sought to be modified remain in full force and effect if the modification that is the subject of the application is determined by the commissioner to require a non-minor permit modification.

(C) Subsection 2a(e)(3)(B)(i) requires applications for minor permit amendments to include a description of "any ***modification*** in potential emissions resulting from the proposed modification." The use of the term "modification" when referring to potential emissions is an incorrect use of the defined term. The regulations should be revised to refer to any ***increase*** in potential emissions. Moreover, as explained above there should be a ton per year threshold for any emission increases to trigger permit modification requirements.

(D) Subsection 22a-174-2a(e)(3(C). The proposed version of this provision where an intended modification would be below permitting triggers, the source could not implement the modification until at least 21 days after filing for the minor permit modification. Given the significant resource constraints experience by DEP, and particularly given the large number of minor permit modifications that would be triggered absent any de minimis threshold for such modifications, it seems unlikely that DEP would be able to consistently review and respond to minor permit modification filings within 21 days. Accordingly, the 21-day period will likely serve only to delay sources from implementing desired, minor modifications.

The equivalent minor permit modification "track" in the federal Title V regulations does not have such a delay feature. See 40 CFR 70.7(e)(2)(v) (providing that states may allow a source to "make the change proposed in the minor permit application immediately after it files such application"). Similarly, the state's current NSR program does not require any such delay. If a modification is below permitting triggers, a source is free to make the modification immediately (subject, as always, to the risk that DEP could someday disagree with its non-applicability determination).

Accordingly, the following revisions are requested to proposed R.C.S.A. § 22a-174-2a(e)(3)(C):

> (C) Subject to limitations specified in subdivision (5)(F) of this subsection, a permittee may implement the modifications proposed in the minor permit modification application ~~no less than twenty-one (21) days~~ **IMMEDIATELY** after filing a complete application with the commissioner. The permittee shall comply with the terms and conditions of the proposed modified permit and the terms and conditions of the existing permit that are not being modified, until the commissioner issues or denies the proposed modified permit.

(E) Subsection 2a(e)(4). DEP should incorporate a "safe harbor" provision in proposed subsection 2a(e)(4) that would insulate a permittee who reasonably and in good faith submits a minor permit modification and implements a modification that DEP ultimately concludes in fact will require a non-minor permit modification:

With respect to an application for a new source review minor permit modification, under subdivision (1) of this subsection, to a permit issued under subsection 22a-174-3a or former subsection 22a-174-3 of the Regulations of Connecticut State Agencies, the existing permit terms and conditions of the permit sought to be modified remain in full force and effect if the modification that is the subject of the application is determined by the commissioner to require a non-minor permit modification, UNLESS THE PERMITTEE ACTED IN GOOD FAITH AND REASONABLY BELIEVED THAT THE MODIFICATION CONSTITUTED A MINOR PERMIT MODIFICATION.

(F) Subsection 2a(e)(5)(G). Currently, proposed subsection 2a(e)(5) allows DEP to approve a Title V minor permit modification without public notice, comment or hearing. We would encourage DEP to extend the same treatment to NSR permit modifications as well by making the following changes:

> ~~(G) Notwithstanding the requirements of subsections (b) and (c) of this subsection, the commissioner may modify a Title V permit under this subsection without published notice, public comment, or hearing.~~
>
> (6) NOTWITHSTANDING THE REQUIREMENTS OF SUBSECTIONS (B) AND (C) OF THIS SUBSECTION, THE COMMISSIONER MAY

MODIFY A TITLE V PERMIT OR NEW SOURCE REVIEW PERMIT UNDER THIS SUBSECTION WITHOUT PUBLISHED NOTICE, PUBLIC COMMENT, OR HEARING.

(G) Subsections 2a(d), (e) and (f). To avoid potential confusion and future mis-interpretations, DEP should expressly restate the exclusion provided by R.C.S.A. subsection 22a-174-33(r)(2) for operational flexibility and off-permit changes from non-minor modification, minor modification and permit revision requirements in proposed Subsections 2a(d), (e) and (f). Proposed new section 22a-174-2a(j)as follows:

> (j) Operational flexibility and off-permit changes authorized by subsection 33(r)(2) are not subject to the requirements of this subsection.

Response to comment 22(A): See the Department's response to comments 19 and 20 above.

Response to comment 22(B): The Department has proposed to make the suggested revision, in part. See the Department's response to comments 19 and 20 above. The Department's proposed change is broader than that requested in this comment in that the Department included a reference to "former" section 22a-174-3 (rather than only section 22a-174-3(b)(1)(A). The Department should not make a change to section 22a-174-2a(e)(4) at this time as it already covers permits issued under the former section 22a-174-3.

Response to comment 22(C): The Department should revise proposed section 22a-174-2a(e)(3)(B)(i) to refer to any increase in potential emissions rather than any modification in proposed emissions as follows:

> (3) The procedural requirements for all new source review and Title V minor permit modifications, except as otherwise provided in subdivisions (4) and (5) of this subsection, are as follows:
>
> (A) An application for a minor permit modification shall be made on forms provided by the commissioner and signed in accordance with subsection (a) of this section;
>
> (B) An application for a minor permit modification shall include the following:
>
> (i) a description of the proposed modification, a proposed modified permit, any proposed monitoring procedures, any ~~modification~~ <u>increase</u> in potential emissions resulting from the proposed modification, and an identification of all regulatory, statutory, or otherwise applicable requirements that would become applicable as a result of such modification, and
>
> (ii) a statement, certified in accordance with subsection (a)(5) of this section, that the proposed minor permit modification meets all

regulatory, statutory, or applicable requirements identified in the subject application pursuant;

(C) Subject to limitations specified in subdivision (5)(F) of this subsection, a permittee may implement the modifications proposed in the minor permit modification application no less than twenty-one (21) days after filing a complete application with the commissioner. The permittee shall comply with the terms and conditions of the proposed modified permit and the terms and conditions of the existing permit that are not being modified, until the commissioner issues or denies the proposed modified permit.

(D) The commissioner shall process any minor permit modification, subject to subdivision (1) of this subsection, at a Title V source in accordance with both the Title V and new source review minor modifications provisions in subdivisions (3) through (5), inclusive of this subsection unless otherwise allowed pursuant to subdivision (r)(2) of section 22a-174-33 of the Regulations of Connecticut State Agencies.

Response to comment 22(D): The Department should not change the 21 day period for the Department to review proposed minor permit modifications to ensure such modifications are below relevant applicability thresholds. The Department fully anticipates meeting the 21 day review requirement for these proposed permit modifications. The commentor should understand that the proposed regulations, by streamlining permitting requirements for small sources and increasing applicability thresholds for minor sources, should enable the Department to fully comply with the 21 day requirement. Furthermore, this review will assist the regulated community in avoiding compliance issues with respect to undertaking an activity that should have been subject to a more vigorous permit review process.

Response to comment 22(E): The Department should not adopt the "safe harbor" provision envisioned by this comment. A permittee's "good faith belief" is irrelevant as to whether an activity constitutes a violation of a permit. The existing permit terms and conditions of the permit sought to be modified remain in full force and effect if the modification that is the subject of the application is determined by the commissioner to require a non-minor permit modification. Any further discussion of potential enforcement action based upon this regulatory provision is outside the scope of this hearing report.

Response to comment 22(F): The Department is authorized to make the suggested change under the recent revisions to sections 22a-6g and 22a-6h of the Connecticut General Statutes. As such, the Department should revise proposed section 22a-174-2a(e)(5)(G) as follows:

~~(G) Notwithstanding the requirements of subsections (b) and (c) of this subsection, the commissioner may modify a Title V permit under this subsection without published notice, public comment, or hearing.~~

(6) Notwithstanding the requirements of subsections (b) and (c) of this subsection, the commissioner may modify a Title V permit or new source review permit under this subsection without published notice, public comment, or hearing.

Response to comment 22(G): The Department should not make the change proposed by the commentor. This exclusion is the option of the owner or operator, and as stated earlier, a source is not subject to operational flexibility and off-permit changes, rather the owner and operator may choose to exercise those options. To make the option clearer the underlined "not" has been added to Section 22a-174-2a(d)(4)(D). See the Department's response to comment 17.

23. Comment on section 22a-174-2a(e)(1): This subdivision addresses permits that were issued under section 22a-174-3a. It appears that this section should also address permits that were issued under section 22a-174-3. If this section does not apply to permits issued under 22a-174-3, then section 22a-174-2a(d) would apply to any permit issued under 22a-174-3, provided the criteria established in 22a-174-2a(d)(3) are applicable. However, as stated in 22a-174-2a(d)(3), this section would only apply if the source is identified in 22a-174-3a(a)(1).

For a source with potential emissions of 10 tpy that had a permit issued under 22a-174-3, the source is not identified in 22a-174-3a(a)(1). Please clarify what modification process would be required for this source to increase actual emissions by an amount less than 15 tpy.

Response to comment 23: The Department intends to treat all permits issued under the revised new source review program and the former new source review program under the same permit modification and permit revision provisions regardless of when the permits were issued. See the Department's response to comment 20 above.

24. Comment on section 22a-174-2a(e)(5)(B): This subparagraph states that completed forms must be provided to the commissioner to use to notify the Administrator and others. Does the Department intend to provide these forms?

Response to comment 24: See the Department's response to comment 14 above.

25. Comment on section 22a-174-2a(e)(1): The Department should avoid the use of the phrase "New source review" for minor modifications in this subsection as it further complicates and infringes upon the complex federal permit review process. The Department should substitute the term "minor modification" to differentiate the State of Connecticut review process from the contentious federal new source review regulation. Furthermore, section 22a-174-2a(e) does not seem to address new or modified sources with potential emissions greater than fifteen tons per year but less than major modification thresholds. This commentor questions whether the Department intended these sources to be included in the requirement to "apply for a new source review minor permit modification"?

Response to comment 25: The Department should not make a change based upon this comment. Section 22a-174-2a(e) of the Regulations of Connecticut State Agencies does address new or modified sources with potential emissions less than fifteen tons per year. New

or modified sources with potential emissions equal to or greater than fifteen tons per year are addressed by proposed Section 22a-174-2a(d)(3) of the Regulations of Connecticut State Agencies.

26. Comment on section 22a-174-2a(e)(3)(B)(i): This provision requires a applicant for either a new source review or Title V minor permit modification to include a "proposed modified permit" to the Department. This commentor believes it is more appropriate for the Department to modify the permit.

Response to comment 26: The requirement to submit a modified Title V permit to the Department is based on the requirement to do so that is set forth in 40 CFR 70. The clerical task of typing a minor permit modification is unimportant and will not effect the Department's primary task – the oversight and ultimate approval or denial of the contents of such permit. The Department should not modify this provision based upon this comment.

27. Comment on section 22a-174-2a(e): The Department should avoid expending its limited permitting resources on processing minor modifications.

Proposed § 2a(e)(1) would require a minor permit modification for any modification, at a facility with a proposed § 3a NSR permit, which results in any emission increase. This requirement would flood the regulated community and DEP in applications for minor permit modifications for inconsequential source modifications. Any savings to DEP resources from raising the permit trigger in § 3a will be washed out by this flood. It is also likely that this requirement could be overlooked, resulting in compliance issue(s) for very small increases. There are a number of possible ways to fix this. Perhaps the simplest solution would be to amend proposed § 2a(e)(1) to be optional for modifications with increases less than 15 tons per year ("TPY"), if an applicant wishes to obtain enforceable limits on potential emissions. In the alternative, DEP should incorporate a de minimis threshold.

This commentor also expressed support of the comment on limiting the application of proposed § 2a(e) to permits to construct issued to 15 TPY sources under current § 3(b)(1)(A), rather than any source permitted under current § 3.

Response to comment 27: With respect to the comment on de minimis emission levels, see the Department's response to comment 19 above. With respect to this commentor's support of other comments on limiting the application of proposed section 22a-174-2a(e) to permits issued under current section 22a-174-3(b)(1)(A), see the Department's response to comment 22(B) above.

28. Comment on section 22a-174-2a(e)(3(C): A commentor suggests that sources should be allowed to immediately implement minor permit modifications. This commentor suggests that the 21 day waiting period be removed from the minor permit modification section and allow immediate implementation of minor modifications Pfizer also particularly supports the CBIA comment regarding this matter, to avoid unnecessary delays in implementation.

Response to comment 28: See the Department's response to comment 22(D) above.

29. Comment on section 22a-174-2a(f), Permit Revisions: The introductory language to the permit revision subsection, §2a(f) apparently is intended to make clear that no permit revision is required for activities described in sections 22a-174-3a(a)(2)(A)(i) through (iii) and 22a-174-3a(a)(2)(B) through (C) of the Regulations unless an existing permit contains conditions or limitations which could be construed as restricting the source from conducting such activities. Please confirm that this is the intent of the regulations. Assuming that this is the intent, the qualifying language "unless required by any provision of such permit or order of the commissioner" is unclear. To clarify the intent, the DEP should replace the word "required" with "limited." With this change, the regulation would only require a permit revision for such activities if an existing permit or order limited such activity at the source. In addition, this subsection contains a typographical error. The proposed revised subsection is shown below:

> (1) Exemptions. The owner or operator of a stationary source may perform the ~~activites~~ **activities** described in sections 22a-174-3a(a)(2)(A)(i) through (iii) and 22a-174-3a(a)(2)(B) through (C) of the Regulations of Connecticut State Agencies unless otherwise ~~required~~ **limited** by any provision of such permit or an order of the commissioner.

Response to comment 29: The Department should correct the identified typographical error, with respect to "activities." The Department should also change the word "required" to "restricted" as this more clearly matches the Department's intent that any lawful restriction would preclude the owner or operator of the stationary source from performing the delineated activities. Therefore, the Department should revise section 22a-174-2a(f)(1) as follows:

> (1) Exemptions. The owner or operator of a stationary source may perform the ~~activites~~ **activities** described in sections 22a-174-3a(a)(2)(A)(i) through (iii) and 22a-174-3a(a)(2)(B) through (C) of the Regulations of Connecticut State Agencies unless otherwise ~~required~~ **restricted** by any provision of such permit or an order of the commissioner.

30. Comment on section 22a-174-2a(f)(2): This subsection lists specific activities that may be approved by a permit revision. Among the identified activities is "(D) Requiring more frequent or additional monitoring, record keeping or reporting." The regulation should also allow DEP to approve the use of "**equivalent**" monitoring, recordkeeping or reporting through a permit revision.

Response to comment 30: Permit revisions are only intended to cover a very limited group of changes. The Department relies heavily on the monitoring, recordkeeping and reporting of emissions and related parameters to determine compliance. The determination as to what is equivalent monitoring, recordkeeping or reporting would need to be made by the

Commissioner on a case by case basis and should not fall within the category of permit revisions. The Department should not make the suggested change.

31. Comment on section 22a-174-2a(i), Permit Renewal: The information requirements for a permit renewal include "any **modifications** in potential emissions resulting from the proposed modifications." Since "modification" is a defined term, the word "modification" in this clause should be changed to "increase" or "change." In addition, since most renewals will not involve "modifications" this subparagraph should also be qualified to indicate that information on modifications is only required if a modification is proposed. Subsection (i)(1) should be revised as follows:

> (1) In addition to the requirements of subsection 22a-3a-5(c) of the Regulations of Connecticut State Agencies, except as provided in subdivision (2) of this subsection, the permittee shall apply for a permit renewal, if the subject permit contains an expiration date, at least one hundred twenty (120) days prior to the permit expiration date. Such application shall include a description of any proposed modifications, a proposed permit, any proposed monitoring procedures, any **INCREASES** in potential emissions resulting from ~~the~~ **ANY** proposed modifications, and an identification of all regulatory, statutory, or otherwise applicable requirements that would become applicable as a result of such **PROPOSED** modifications.

Response to comments 31: The Department should revise this provision as the word "modification" is a defined term and not appropriate for use in this instance. The Department should instead use the phrase "increases or decreases" to convey the intent the permit renewals track new potential emissions as well as reduced potential emissions resulting from a proposed modification. Section 22a-174-2a(i)(1) should be revised as follows:

> (1) In addition to the requirements of subsection 22a-3a-5(c) of the Regulations of Connecticut State Agencies, except as provided in subdivision (2) of this subsection, the permittee shall apply for a permit renewal, if the subject permit contains an expiration date, at least one hundred twenty (120) days prior to the permit expiration date. Such application shall include a description of any proposed modifications, ~~a proposed permit~~ proposed permit language, any proposed monitoring procedures, any ~~modifications~~ **INCREASES OR DECREASES** in potential emissions resulting from ~~the~~ **ANY** proposed modifications, and an identification of all regulatory, statutory, or otherwise applicable requirements that would become applicable as a result of such **PROPOSED** modifications.

32. Comment on section 22a-174-2a(i)(1): The second sentence in section 22a-174-2a(i)(1) states that, "Such application shall include a description of any proposed modification, a proposed permit, any proposed monitoring procedures,....." Please confirm that each application for permit renewal must contain a "proposed permit," and if so, (1) what format the "proposed permit" would take; (2) whether the Department intends to develop forms for this submittal; and (3) whether the Department intends to provide electronic copies of existing permits to streamline the process for both the applicant and the Department.

Response to comment 32:

- The format of the proposed permit should be as complete as possible and may be similar to that of the existing permit, provided that all additional informational requirements are met;

- With respect to forms, see the Department's response to comment 14 above;

- With respect to the provision of electronic copies of existing permits to applicants for permit renewal, the Department should explore this option to streamline the process for both the applicants and itself. However, committing to do so at this time is beyond the scope of this report.

33. Comment on the inclusion of "operational flexibility" into the provisions of section 22a-174-2a: The Department should amend section 22a-174-2a to clearly exclude operational flexibility and off-permit changes authorized by section 22a-174-33(r)(2).

The commentor reads proposed § 33(r)(2) to exclude operational flexibility and off-permit changes from the requirements of § 2a. This exclusion is crucial to Connecticut industry, particularly the dynamic pharmaceutical industry. However, to avoid potential confusion and future interpretational issues, we believe DEP should expressly restate this exclusion in § 2a. In particular, we request that DEP add the following new language to proposed § 2a:

> *(NEW) Proposed § 2a(j)*
>
> OPERATIONAL FLEXIBILITY AND OFF-PERMIT CHANGES AUTHORIZED BY SECTION 22a-174-33(r)(2) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES ARE NOT SUBJECT TO THE REQUIREMENTS OF THIS SECTION.

Response to comment 33: The Department should not make the change proposed by the commentor. This exclusion is the option of the owner or operator, and as stated earlier, a source is not subject to operational flexibility and off-permit changes, rather the owner and operator may choose to exercise those options. See the Department's response to comment 17 above.

IX. Summary of Specific Comments on Proposed RCSA Section 22a-174-3a

General Comments

1. Comment on section 22a-174-3a: One commentor suggested the Department should break out section 22a-174-3a into three individual sections due to the complexity of the subject matter and a desire to make the regulations more palatable.

Response to comment 1: As this commentor noted, section 22a-174-3a of the proposed regulations implements three regulatory programs. However, breaking this proposed regulation into three separate regulatory sections will not make the regulations more 'palatable' as this commentor suggests. The three programs exist in the same regulatory provision because they have many of the same procedural requirements in common, for example application requirements, standards for granting permits, etc. The Department's decision to propose a regulation that contains all the New Source Review permitting requirements in one section avoids unnecessary duplication for many of the administrative portions of the regulations. The Department should not make the suggested change.

2. **Comment Requesting Guidance for Existing Units:** A commentor requested the Department answer the following question based on the NSR rules as proposed: Must a source maintain its current NSR permit issued under 22a-174-3, if the unit in question has a potential to emit greater than 5 tons/yr. but less than 15 tons/yr.?

Response to comment 2: Existing permits issued under section 22a-174-3 of the Regulations of Connecticut State Agencies for the sources described above will remain in full force and effect as issued.

3. **Miscellaneous Comments:** One commentor expressed support for the Department's efforts to streamline the state's NSR and Title V regulations. In particular, the commentor supports the increased NSR applicability thresholds (based on potential to emit) from 5 tons per year (tons/yr.) to 15 tons/yr. or 10 tons/yr. for hazardous air pollutants. Moreover, the commentor agrees with the efforts to only require permits, and the accompanying reporting and record keeping, for sources and emission units that are most likely to have an impact on the state's air quality.

The commentor also identified several areas where instead of streamlining the process, DEP has added unnecessary requirements for emission units that are unlikely to affect the state's air quality. Specifically, the commentor identified the following concerns with the proposed regulations:

- Including portable emission units within the definition of a stationary source and then only effectively exempting diesel engines from the NSR requirements,

- Allowing the DEP commissioner to require an owner or operator to re-analyze its BACT determination at any time prior to construction,

- Requiring an NSR permit holder to apply for a permit modification for any, even minor, increases in emissions, and

- Restricting valid and enforceable methods of compliance within the definition of "Practicably Enforceable" by requiring specific units for emissions limitations and CEM equipment if using rolling 12-month averages.

Further, this commentor requested that DEP add an exemption to 22a-174-3c to exclude any temporary emission unit that operates at a site for less than 90 days and provide guidance on how these proposed rules would affect sources with potential emissions greater than 5 tons/yr. but less than 15 tons/yr., where the source has a valid NSR permit under 22a-174-3.

Response to comment 3: This commentor's issues are addressed as in other portions of this report as follows:

- **Portable emission units**: See the Department's response to comments 11 and 12 below.
- **BACT determination:** See the Department's response to comment 55 below.
- **NSR minor permit modifications**: See the Department's response to comment 19 in Part VIII of this report.
- **12-month rolling averages within the definition of "practicably enforceable":** See the Department's response to comments 48 through 51, inclusive, in Part VII of this report.
- **Proposed exemption under section 22a-174-3c for sources that operate less than 90 days:** See the Department's response to comments 11 and 12 below.

<u>Comments on section 22a-174-3a(a), Applicability and Exemptions</u>

4. Comment on exemptions from the requirements of section 22a-174-3a(a): A commentor notes that section 22a-174-3a does not provide an exemption for alternative fuels, which is important in the context of changes to the composition of municipal waste. This commentor does not elaborate on what such context would be.

Response to comment 4: This commentor has not provided the Department with sufficient information concerning the proposed exemption for "alternative fuel" or why such exemption is important in the context of changes to municipal waste. Without specific emissions related information concerning the type of fuel or the different compositions of municipal waste, the Department should not provide such a sweeping exemption for 'alternative fuels".

5. Comment on the applicability of section 22a-174-3a(a): One commentor requests the Department clarify whether changes in the fuel characteristics (i.e. composition of MSW for MWCs) which *may* result in an increase in potential emissions could be considered new or modified sources under section 22a-174-3a(a)(1)(E). Note the definition of *emission unit* in 40 CFR 51.165 (a) (1) (vii):

> *Emissions unit* means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Act.

Response to comment 5: In general, changes in fuel characteristics may require a permit modification. The final determination would depend on a number of additional facts that this

commentor has not provided. Further elaboration on this comment would be speculative and is beyond the scope of this report.

6. Comment on sections 22a-174-3a(a)(1)(D)&(E); and 22a-174-3a(a)(2)(A) (ii), (iv) and (v): One commentor suggested the Department should lower the applicability threshold in section 22a-174-3a for the minor source permit program from fifteen tons to ten tons based, in all instances on potential rather than actual emissions.

Response to comment 6: The Department has decided as a matter of policy to increase the minor new source review applicability thresholds for small sources as proposed in section 22a-174-3a to 15 tons per year of actual emissions. The Department believes the 10 ton emissions level proposed by this commentor is taken from section 3a(a)(1)(C) of the proposed regulations. This provision contains the emission thresholds to address preconstruction review requirements for sources of federally listed hazardous air pollutants (HAPs). HAPs are of greater concern and warrant the lower threshold. With respect to the comment that the Department base its permitting program on potential, rather than actual emissions, the commentor should understand that the definition of actual emissions in some instances requires use of potential emissions in lieu of actual emissions in a manner consistent with the federal new source review program requirements. By adopting the federal approach (i.e., basing permit applicability on actual emissions first and potential emissions second), the Department will be better equipped to focus its limited resources on those sources of air pollution that will effect air quality to such a degree that warrants a case by case technology determination under BACT. As such, the Department should not make any changes to the proposed regulations based upon this comment.

7. Comment on section 22a-174-3a(a)(1)(F): The Department should delete the word "Any" that begins the sentence because it is redundant with the "any" that ends the lead-in paragraph.

Response to comment 7: The Department should make the suggested change to proposed section 22a-174-3a(a)(1)(F) as follows:

> ~~Any stationary~~ Stationary source or modification that becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant.

8. Comment on section 22a-174-3a(a)(1) Applicability: The proposed applicability subsection represents a great improvement over earlier drafts and the existing section 22a-174-3. By separating new emission units and modifications to existing emission units, the applicability requirements are clearer. However, it is not clear why proposed subsection (a)(1)(F) is needed since subsections (a)(1)(A) and (B) cover new major stationary sources and major modifications. Subsection (a)(1)(F) provides as follows:

> (F) Any stationary source or modification that becomes a major stationary source or major modification solely by virtue of a relaxation in any

enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant.

Please explain the intent of this subsection.

Response to comment 8: Proposed section 22a-174-3a(a)(1)(F) is designed to make the federal requirement in 40 CFR 51.165(a)(5)(ii) clear and enforceable so that, for example, a source requesting to increase an existing permit limit, established after August 7, 1980, when such limit enabled a source to avoid major new source review, would now be subject to major new source review.

9. **Comment on section 22a-174-3a(a), Aggregation of small sources:** The current regulations, section 22a-174-3(b)(3), provide some guidance on when the DEP will aggregate emissions from small sources for new source review permitting purposes. In addition, early drafts of the proposed regulations released for review at SIPRAC contained a similar provision explaining the circumstances in which DEP would aggregate emissions for permit applicability purposes from small sources constructed during the same time period. Such language does not appear in the proposed rule. Please provide an explanation of DEP's intent with respect to the aggregation of small sources at a premises, which would not individually require permits. For example, in order to recover energy from landfill gas, an array of microturbines may be installed at a landfill. Based on the amount and quality of landfill gas, some flexibility of operation would be necessary, so that the appropriate number of microturbines could operate at any given time. Taken alone, an individual turbine would likely have potential emissions below any permitting threshold. However, if the emissions from multiple microturbines were combined for new source review permitting purposes, the combination of sources may trigger new source review. Would the emissions from such an array have to be aggregated to determine the applicability of new source permitting requirements? Would such an array need to be permitted as one aggregated source? Conversely, would the individual microturbines be permitted individually?

Response to comment 9: The Department recognizes that the issue of aggregation is important to the regulated community. This issue is also important to the Department, as it is concerned about total emissions, whether from one stack or many, and the possibility that some sources may attempt to misrepresent their operating patterns in an effort to avoid otherwise applicable regulatory requirements. The response to this comment is found in the definition of "stationary source" which indicates that multiple units as described in the comment above would be considered a single stationary source. If it was determined that the units would require new source review permits, the number of individual new source review permits issued would not be determined by this regulatory package and this question is outside the scope of this hearing report. The Department should not make a change based upon this comment.

10. **Comment on section 22a-174-3a(a)(2), Exemptions:** Taken together with proposed section 22a-174-2a(f), it is our understanding that the activities listed in 22a-174-3a(a)(2)(A)(i) through (iii) and 22a-174-3a(a)(2)(B) through (C) of the Regulations can be implemented without a permit revision or modification. Please confirm this understanding.

Response to comment 10: In general such a scenario would be possible especially if an existing permit was silent as to the activity proposed for exemption. However the Department should caution that the exemptions in proposed section 22a-174-3a(a)(2)(A) do not allow a source to violate the terms or conditions of the existing new source review permit. Additionally, the owner or operator of the source must still comply with sections 182(c)(6) and 182(f) of the federal Clean Air Act. As discussed later in this report, the provisions of sections 182(c)(6) and 182(f) of the federal Clean Air Act may necessitate new source review for some otherwise exempt sources.

11. Comment on Exemption for Portable Sources: A commentor requested DEP create a new exemption for portable equipment operated at a site for less than 90 days. DEP has proposed two new sections (22a-174-3b and 22a-174-3c) that exempt emissions units, which would have little or no impacts on air quality, from obtaining an NSR permit. These exemptions replace the general permits for emergency engines, automotive refinishing operations and nonmetallic mineral process, external combustion engines and surface coating operations that are permanent additions to a site. While these categories cover a large number of sources, they do not cover portable units that are temporarily needed at a site. Electrical supply is occasionally required immediately at large facilities (such as hospitals, businesses, or office buildings) that have lost access to grid power, often storm related or for necessary maintenance. These units may operate more than the 500-hour limit under the emergency engine exemption, may not be exempt under the nonroad engine exemption, as currently proposed, or would not fit into any exemption. Requiring such units to obtain an NSR permit is impracticable. DEP should include an additional exemption in section 22a-174-3c for portable equipment, where the operating unit is clearly temporary.

Response to comment 11: By way of proposed section 22a-174-3a(a)(2)(B)(iii), the Department intended to exempt temporary replacement equipment from new source review provided such replacement is not operated for more than 90 days. This provision was not intended to exempt all portable equipment. The Department is, however, proposing to clarify proposed section 22a-174-3a(a)(2)(B)(iii) in accordance with the Department's response to comment 20 below. For additional clarification on the exemption related to 40 CFR Part 89, see the Department's response to comment 12 below.

12. Comment on section 22a-174-3a(a), requesting exemption for portable emission units: The Department should, at a minimum, revise the existing exemption under 22a-174-3a(a)(2)(C)(ii) to include all internal combustion engines. This commentor believes that DEP's intent when including an exemption for any source subject to Part 89 was to exempt all nonroad internal combustion engines including spark-ignition units. However, the applicability section in Part 89 (40 CFR 89.1(a)) states, "This part applies to all compression-ignition nonroad engines . . . ." Part 89 defines a compression-ignition as "a type of engines with operating characteristics significantly similar to the theoretical Diesel combustion cycle." DEP should clarify the exemption for nonroad engines by deleting the existing language at 22a-174-3a(a)(2)(C)(ii) and replacing it with, "nonroad engine as defined in 40 CFR part 89." Alternately, DEP can define a non-road engine in 22a-174-1 as "any internal combustion engine that, by itself or in or on a piece of equipment, is portable or transportable, meaning

designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform," and delete the reference to Part 89.

Response to comments 11 and 12: : To exempt a broader spectrum of engines, the Department should revise the exemption in proposed section 22a-174-3a(a)(2)(C)(ii) to include all non road engines defined in 40 CFR Part 89 as follows:

(C) Any:

(i) mobile source, or

(ii) ~~source subject to~~ non-road engine as defined in 40 CFR Part 89.

13. Comment on section 22a-174-3a(a)(2), Exemptions: The exemption for "routine maintenance, repair and replacement" has long included the caveat "unless such replacement results in reconstruction as defined in this subsection". R.C.S.A. subsection 22a-174-1(52) (definition of "modification"). This clause is helpful in clarifying the bounds of this exemption, and should continue to be included. Proposed language for subsection 3a(a)(2)(A)(i) should read as follows:

(A) Any activity that:

constitutes routine maintenance, repair, or replacement at a stationary source, UNLESS SUCH REPLACEMENT RESULTS IN RECONSTRUCTION AS DEFINED IN THESE REGULATIONS ...

Response to comment 13: Maintenance, repair and replacement do not have to go so far as to constitute reconstruction in order to be considered non-routine. The Department should not make a change based upon this comment. However, in order to clarify the context of the exemption, and following the federal model, this language should only remain in the section 22a-174-1 proposed definition of "Modification" or "Modified Source" and be deleted from the proposed section 22a-174-3a(2)(A)(i) as follows:

(vi) ~~constitutes routine maintenance, repair, or replacement at a stationary source,~~

The remaining subparagraphs in proposed section 22a-174-3a(2)(A) should be renumbered as appropriate.

14. Comment on construction of air pollution control equipment: The inclusion of subsection 22a-174-3a(a)(2)(A)(ii) allows the installation of air pollution equipment without a permit revision or modification, as long as such equipment does not result in an increase in actual emissions of more than 15 tons per year (10 tons of a federally regulated hazardous air pollutant). This is a great improvement over current regulations, which had been interpreted

to require permits for virtually all air pollution control equipment. The addition of section 22a-174-3(n) to the current regulations in October 2000, was interpreted by DEP to continue to require permit modifications for air pollution control equipment, but it exempted sources which added certain air pollution control equipment or "process changes to control air pollution" from conducting a BACT analysis. For example, under existing regulations, DEP had interpreted the addition of Selective Non-Catalytic Reduction (SNCR) to existing facilities as requiring permits and BACT if potential emissions of ammonia increased by more than five tons per year. It is our understanding that the exemption in subsection 22a-174-3a(a)(2)(A)(ii) means that the addition of air pollution equipment, such as SNCR, to a permitted stationary source, would not trigger a need to obtain either a permit modification or revision, unless the emissions of any individual air pollutant, such as ammonia, would increase by 15 tons per year or more (10 TPY for a Federal HAP) as a result of the installation of such equipment. Please confirm this interpretation, which we strongly support. If this is not the intent of the regulations, please explain how DEP would address the situation of adding SNCR to an existing source to control NO_X emissions.

Response to comment 14: The commentor's interpretation of section 22a-174-3(n) of the Regulations of Connecticut State Agencies, while not entirely correct, is beyond the scope of this report. Also, it would not be appropriate for the Department to elaborate on specific examples or fact patterns because the information provided is not complete. Therefore the Department's response is to be taken in a general sense.

The Department agrees with the general interpretation expressed in this comment. The exemption in section 22a-174-3a(a)(2)(A)(ii) does mean that the addition of air pollution equipment (or the implementation of process changes to control air pollution – see response to comment 18(A) below) to a permitted stationary source generally will not trigger a need to obtain either a permit modification or revision unless the emissions of any individual air pollutant would increase by 15 tons per year or more (10 TPY for a Federal HAP) as a result of the installation of such equipment. However, this is a qualified exemption as the owner or operator of a stationary source must comply with sections 182(c)(6) and 182(f) of the Clean Air Act, which may necessitate new source review for some otherwise exempt sources. Furthermore, despite the exemption language proposed for the revised regulation, any existing permit issued under section 22a-174-3 of the Regulations of Connecticut State Agencies will remain in full force and effect as issued.

15. Comment on section 22a-174-3a, applicability: CRRA is considering several air pollution control projects, described below. Please confirm CRRA's understanding of the applicability of the proposed regulations to these projects.

SNCR at Bridgeport

In order to control emissions of NO_x and comply with Section 22a-174-38 of the Regulations, SNCR will be added to the three MWCs at the Bridgeport Resco RRF. Assuming that no regulated pollutant will be emitted by the addition of SNCR in an amount greater than or equal to 15 tons per year and no federally regulated HAP greater than or equal to 10 tons per year, CRRA does not believe it

is necessary to apply for a modified or revised permit. Please confirm that this understanding is correct, or if it is not correct, please describe the steps that would be required for such an installation under the proposed regulations. In addition, since each MWC unit is separately permitted, CRRA assumes that any increases in ammonia emissions from each SNCR will be considered separately and not aggregated for permit applicability purposes.

NO_X and CO control on South Meadows Jets

In order to control NO_x emissions from the registered gas turbine engines used for peaking purposes at the South Meadow Station, control technology may be installed which decreases NO_x, but increases CO by less than 15 tons per year. It is CRRA's understanding no BACT analysis or permit application would be required under the proposed regulations. Please confirm that this understanding is correct, or if it is not correct, please describe the steps that would be required for such an installation under the proposed regulations.

Response to comment 15: The Department should not elaborate on specific examples or fact patterns because the information provided is not complete. Therefore the Department's response is to be taken in a general sense.

- **SNCR at Bridgeport:** See the Department's response to comment 14 above. Also, note that existing permits may impose additional requirements on any such proposed modifications and should be reviewed.

- **NO_X and CO control on South Meadows Jets:** See the Department's response to comment 14 above. Also, note that existing permits may impose additional requirements on any such proposed modifications and should be reviewed.

As stated in the Department's response to comment 14, the Department intended the proposed regulations only require BACT for those pollutants which will be emitted in excess of 15 tons per year from the new source or modification; and that only those pollutants which increase by more than 15 tons per year from a modification will be subject to BACT.

16. **Comment on section 22a-174-3a:** Does the installation of pollution control equipment for compliance purposes require a facility to undergo NSR? If so, it should not.

Response to comment 16: See the Department's response to comments 14 and 15 above.

17. **Comment on section 22a-174-3a(a), Exemption from permitting for addition of air pollution control equipment and fuel switching.** CBIA supports the exemptions in proposed § 3a(a)(2)(A)(ii), (iv) and (v), which would help to limit disincentives that environmentally beneficial measures can face from potential permitting requirements. Because installation of air pollution control equipment and switching to cleaner-burning fuels clearly present environmental benefits, the proposed exemption properly focuses on the actual

emissions from such changes, to avoid triggering burdensome and time-consuming permitting requirements based on hypothetical but unrealistic "potential emissions".

Response to comment 17: The Department notes this commentor's support of the proposed revisions referenced above. It is important to note, however, that the definition of actual emissions in some instances will require the use of potential emissions to make permit applicability determinations consistent with elements of the federal new source review program.

18. Comment on Process changes to control air pollution and fuel changes:

(A) Process changes to control air pollution: Subsection 22a-174-3a(a)(2)(A)(ii) could further streamline efforts to reduce air pollution by including process changes to control air pollution within the exemption. To accomplish this, CRRA and CBIA recommend that the definition of process changes to control air pollution from section 22-174-3(n) be added to revised section 22a-174-1, and that the exemption in subsection 22a-174-3a(a)(2)(A)(ii) be revised as follows:

> (vii) adds air pollution control equipment or **implements process changes to control air pollution** unless the addition results in an increase in actual emissions of any individual air pollutant of fifteen (15) tons or more per year, or ten (10) tons or more per year of a hazardous air pollutant subject to the provisions of subsection (m) of this section;

(B) Comment on fuel changes: When read with proposed section 22a-174-2a(f), it appears that sources permitted under NSR or Title V rules can convert their fuel from oil to natural gas or from residual oil to distillate oil with a permit revision, as long as actual emissions of and individual air pollutant do not increase by more than 15 tons per year. This is also an improvement over current regulations. However, the proposed regulations should not be read as limiting other fuel conversions which do not result in an increase in potential emissions of any individual air pollutant by more than 15 tons per year. See, subsection 22a-174-3a(a)(1)(E). New fuels, such as fuels made from renewable resources, which do not fit neatly within the classification of natural gas or distillate oil, may be available in the future. It is important that the proposed regulation's specific language addressing natural gas and distillate oil conversions, not be read as eliminating other more general exemptions. Please confirm that other fuel conversion may be made without permit revisions or modifications, as long as they do not trigger the other applicability provisions.

Response to comment 18(A): The Department's efforts to limit disincentives for environmentally beneficial measures could be augmented by adopting the suggested changes. The Department should revise section 22a-174-3a(a)(2)(A)(ii) as follows:

> (ii) adds air pollution control equipment or implements process changes to control air pollution unless the addition or implementation results in an increase in actual emissions of any individual air pollutant of fifteen (15) tons or more per year, or ten (10) tons or more per year of a

hazardous air pollutant subject to the provisions of subsection (m) of this section;

In addition, the Department should incorporate the definition of "process changes to control air pollution" into revised section 22a-174-1 of the proposed regulations from section 22-174-3(n) of the Regulations of Connecticut State Agencies.

Response to comment 18(B):: Because the emissions associated with the type of fuel discussed above are not clearly defined, the Department cannot confirm that a fuel conversion to an as yet unidentified fuel may be made without need for a permit revision or modification. If such fuel becomes available in the future, as anticipated by this commentor, the Department will at that time make a determination as to whether a permit revision or modification would be required.

19. **Comment on section 22a-174-3a(a)(2)(A)**: This provision exempts certain activities from the permitting rules. While some of these activities would always be excluded from federal permitting requirements, the activities listed in (2)(A)(ii), (iv) and (v) may be modifications that have actual emission increases and may be defined as major modifications under section 182(c)(6) of the CAA. EPA recommends the DEP include a clause at the beginning of this section that states that the exemption shall not apply to any activity that results in a major modification as defined in section 182(c)(6) of the CAA.

Response to comment 19: The Department should change proposed section 22a-174-3a(a)(2)(A) as follows:

(2) Exemptions. Notwithstanding the provisions of subdivision (1) of this subsection, the owner or operator of a stationary source or modification may conduct activities listed in subdivision (2)(A), and may construct or operate the sources listed in subdivision (2)(B) and (2)(C) of this section, without a permit under this section, with the exception of any source subject to subdivision (1) of this subsection in accordance with subdivision (6) of this subsection:

20. **Comment on section 22a-174-3a(a)(2)(B)(iii):** The provision allows a source to replace an existing engine or boiler with a replacement without a permit provided the replacement does contribute to a violation of a NAAQS or exceed 90 days operation. The provision does not limit the size of the replacement unit nor provide an emission limit for the replacement. To ensure that replacement units do not violate NAAQS or possibly increase emissions above a major source threshold level, EPA recommends the DEP limit the replacement unit to those that an emission rate equal to or less than the replaced unit. EPA recommends the following language:

". . . provided the replacement units has a combined emission rate equal to or less than the existing units and that the number . . ."

Response to comment 20: The Department should change proposed section 22a-174-3a(a)(2)(B)(iii) as follows as it more clearly defines the requirements for such exemption:

(iii) a portable engine or boiler temporarily replacing an existing engine or boiler, provided that the replacement unit has a combined emission rate equal to or less than the existing engine or boiler and that the number of days total that any and all such portable engines or boilers may be used does not exceed ninety (90) days in any calendar year ~~and does not contribute to a violation of a National Ambient Air Quality Standard~~,

21. Comment on section 22a-174-3a(a)(2)(A): One commentor notes that subparagraphs (ii), (iv), and (v) of this subdivision each refer to the use of "actual emissions" to determine whether an emissions increase will be exempt from permitting. This conflicts and is inconsistent with the use of "potential emissions" to determine permit applicability in Section 22a-174-3a(*l*). In addition, since "actual emissions" are based on actual source operations, "actual emissions" cannot be determined for a new source that has yet to be constructed or operated. For new sources, is it the CTDEP's intent that "actual emissions" be assumed to be equal to the source's potential to emit? If so, ERL suggests that it would be more appropriate and more consistent to base permit applicability determinations on "potential emissions".

Response to comment 21: The proposed regulations contain a revised definition of 'actual emissions.' This revised definition requires, in some instances, the use of potential emissions in lieu of actual emissions consistent with elements of the federal new source review program. The Department should not make any changes based upon this comment.

22. Comment on section 22a-174-3a(a)(2)(A)(i), exemptions: The Department should clarify that "routine" modifies "maintenance", and is inapplicable to "repair" or "replacement."

This has always been the case in Connecticut. In practice, the literal words of the current DEP air regulations differ from the federal words. In the current Connecticut definition of "modification", "routine" modifies "maintenance", but not "repair" or "replacement". See 22a-174-1(52). The federal definition of "major modification" may be interpreted to mean that "routine" modifies "maintenance", "repair" and "replacement". See 40 C.F.R. § 51.166(b)(2).

It is very important for Connecticut facilities to clearly understand whether repairs are exempt, particularly in light of the 5 year / 25 ton aggregation provision by which a source can be pulled into major NSR permitting. If "routine repairs" are exempt, but "non-routine repairs" are considered "modifications", the Department should establish clear lines distinguishing between the two concepts. EPA's current subjective, case-by-case, retroactive interpretation of "routine repair" for utility boilers is incomprehensible when applied to process equipment. In a state subject to 5 year / 25 ton tracking rules, the regulated community must clearly understand what modifications must be tracked. We ask DEP to confirm that routine modifies "maintenance", "repair", and "replacement".

Response to comment 22: It continues to be the Department's understanding that routine maintenance, routine repair and routine replacement are exempt from new source review applicability. Maintenance, repair and replacement, which are not routine, are not exempt

from new source review applicability. EPA's approach is intended to ensure that non-routine maintenance, repair or replacement will be subject to appropriate reviews. The Department should not make any changes based upon this comment. See also the Department's response to comment 13 above.

23. Comment on section 22a-174-3a(a)(2)(B)(iii), exemptions: The Department should develop a program to issue permits to the owner or operator of portable engines and boilers. This commentor encourages the Department, as part of this rulemaking, to adopt a separate permit program for owners or operators of portable engines or boilers that are not subject to Title II of the 1990 Clean Air Act Amendments ("CAAA") (i.e., mobile sources or non-road engines). This commentor understands that the current regulatory program does not require a facility to obtain an NSR permit (or apply for an NSR or Title V permit modification or revision) when a contractor temporarily brings a portable engine to the facility and then operates the portable engine. As a practical matter, at large facilities, it is impossible to anticipate on any given day whether a contractor (or for that matter, the telephone company or the electric company) will operate a portable engine at the facility. Moreover, the owner or operator of the portable engine (i.e., the contractor in our example) is currently not obligated to obtain a permit or order to operate the portable engine. By adopting a separate permit program to address owners or operators of portable engines or boilers not otherwise subject to Title II of the CAAA, the Department could fill a gap in its existing (and proposed) permit program, and avoid needless depletion of DEP and regulated party resources in dealing with these minor emission sources.

Response to comment 23: See the Department's response to comments 11 and 12 above.

24. Comment on other exempted sources, subsection 22a-174-3a(a)(2)(B)(and (C): These exemptions will help both the DEP and the regulated community focus limited resources on more significant sources of air pollution, and therefore, CRRA strongly supports these exemptions. However, there are some small sources that should be exempted either here or in sections 22a-174-3b or 3c. For example, the portable engine or boiler exemption should be expanded to cover temporary engines or boilers that are brought to a site, for example, to respond to an emergency situation, even if they are not replacements for other equipment. Similarly, subsection 22a-174-3a(2)(C) exempts non-road engines subject to 40 CFR Part 89. This exemption should be clarified to apply to any non-road engines of the type covered by 40 CFR Part 89. Many engines used around the State are not "subject" to Part 89 because they were built prior to the applicability date in that regulation. Such sources should be exempt from the permit requirements because they typically are moved from site to site, and they are small sources of air pollution. In the final regulation, please clarify the intent of this exemption.

Response to comment 24: See the Department's response to comments 11 and 12 above.

25. Comment on section 22a-174-3a(a)(2)(B)(and C), other exempted sources: These exemptions will help both the DEP and the regulated community focus limited resources on more significant sources of air pollution, and therefore, we strongly support these exemptions. However, there are some small sources that should be exempted either here or in sections 22a-174-3b or 3c. For example, the portable engine or boiler exemption should be expanded to

cover temporary engines or boilers that are brought to a site, for any reason, even if they are not replacements for other equipment. engines temporarily used for emergencies. The scope of the 90-day limit could also be clarified. Proposed language follows:

(ii) a portable engine or boiler temporarily replacing an existing engine or boiler **OR OTHERWISE BEING USED FOR TEMPORARY PURPOSES**, provided that the number of days total that any and all such portable engines or boilers **AT THE PREMISES** may be used does not exceed ninety (90) days in any calendar year and does not contribute to a violation of a National Ambient Air Quality Standard, or

Similarly, subsection 22a-174-3a(2)(C) exempts non-road engines subject to 40 CFR Part 89. This exemption should be clarified to apply to any non-road engines of the type covered by 40 CFR Part 89. Many engines used around the State are not "subject" to Part 89 because they were built prior to the applicability date in that regulation. Such sources should be exempt from the permit requirements because they typically are moved from site to site, and they are small sources of air pollution. In the final regulation, please clarify the intent of this exemption.

Response to comment 25: See the Department's response to comments 11 and 12 above.

26. Comment on section 22a-174-3a(a)(2)(B)(iii), exemptions: The Department should broaden the exclusion for portable engines.

This commentor supports the adoption of section 22a-174-3a(2)(B)(iii) with respect to boilers. However, with respect to portable engines, section 22a-174-3a(a)(2)(B)(iii) conflicts with our understanding of the Department's current treatment of portable engines. The Department could alleviate this concern, as well as make the proposed NSR permitting program more workable, by broadening the exclusion for portable engines beyond "replacement of an existing engine". For example, this would allow a source to bring in a temporary generator to the site to facilitate electrical work on its grid connection. At a minimum, the Department should revise section 22a-174-3a(a)(2)(B)(iii) to provide for exclusion of all portable engines, regardless of whether the portable engine replaces an existing engine. Moreover, the Department should remove the ambiguous and impractical caveat that the portable unit "does not contribute to a violation of a National Ambient Air Quality Standard". This commentor suggests the Department revise section 22a-174-3a(a)(2)(B) as follows:

"...(iii) a ~~portable engine or~~ boiler temporarily replacing an existing ~~engine or~~ boiler, provided that the number of days total that any and all such ~~portable engines or~~ boilers may be used does not exceed ninety (90) days in any calendar year and does not contribute to a violation of a National Ambient Air Quality Standard, or

(iv) A PORTABLE ENGINE, PROVIDED THAT THE NUMBER OF DAYS TOTAL THAT ANY AND ALL SUCH ENGINES USED AT THE PREMISE (UNLESS SUCH ENGINE IS OWNED OR OPERATED BY A PARTY

OTHER THAN THE PREMISE OWNER OR OPERATOR) DOES NOT EXCEED NINETY (90) DAYS IN ANY CALENDAR YEAR ~~in compliance with section 22a-174-3b or Section 22a-174-3c of the Regulations of Connecticut State Agencies, unless otherwise subject to this section pursuant to subdivisions (6) or (7) of this subsection;~~

~~(iv)~~(v) In compliance with Section 22a-174-3b or Section 22a-174-3c of the regulations of Connecticut state agencies, unless otherwise subject to this section pursuant to subdivisions (6) or (7) of this subsection;...".

Response to comment 26: See the Department's response to comments 11 and 12 above.

27. **Comment on section 22a-174-3a(a)(2)(C)(ii):** A commentor noted that this subsection appears to provide for an exemption from the requirement to obtain a permit for non-road compression-ignition engines. Please confirm that this exemption is intended to specifically address only non-road diesel engines, and not address non-road gasoline, natural gas, or propane-fired engines.

Response to comment 27: Proposed section 22a-174-3a(a)(2)(C)(ii) does provide a qualified exemption from the requirement to obtain a permit for non-road engines defined as such in 40 CFR Part 89 (see the Department's response to comments 11 and 12 above). The definition of 'non-road engine' set forth in 40 CFR 89.2 encompasses internal combustion engines, which is a category broader than 'compression ignition engines.'

28. **Comment on section 22a-174-3a(a)(2)(B)(iii):** A commentor requested the Department clarify whether the statement "does not contribute to a violation of a National Ambient Air Quality Standard" in section 22a-174-3a(a)(2)(B)(iii) means that a facility would not be allowed to run a temporary portable engine or boiler described in the section on a day when there is an exceedance of either the 1-hour or 8-hour primary and secondary ambient air quality standards for ozone, as described in 40 CFR 50.9 and 40 CFR 50.10.

Response to comment 28: The statement "does not contribute to a violation of a National Ambient Air Quality Standard" in section 22a-174-3a(a)(2)(B)(iii) would not prevent a facility from operating a temporary portable engine or boiler on a day when there is an exceedance of either the 1-hour or 8-hour primary and secondary ambient air quality standards for ozone, as described in 40 CFR 50.9 and 40 CFR 50.10. The reason being that an "exceedance" of an NAAQS is not the same as a "violation" of a NAAQS.

29. **Comment on section 22a-174-3(a), netting:** If DEP's intent is that the term net emissions increase does not apply to minor modifications, as well as minor sources, subsection 22a-174-3a(a)(3)(A) should make this clear by using a defined term "minor modification", as follows:

(A) This section to any minor source or **minor** modification;

Response to comment 29: The term "minor modification" is a term used within the proposed regulations and therefore it would not clarify the context of when netting may be used. With respect to minor permit modification, section 22a-174-2a(e) as proposed indicates when a change would necessitate a minor permit modification. The Department should revise proposed section 22a-174-3a(a)(3)(A) as follows:

> (3) In determining the applicability of subsections (k) or (*l*) of this section, the owner or operator may determine the net emissions increase. However, the net emissions increase shall not be used determining the applicability of:
>
> (A) This section to any minor source or modification **thereof**; or
>
> (B) Subsection (j) of this section.

30. Comment on 22a-174-3a, concerning applicability to pending permits: To make clear that DEP intends to apply the new regulations to pending applications for permits or permit modifications, subsection 22a-174-3a(a)(4) should be revised as follows:

> (4) This section and section 22a-174-2a of the Regulations of Connecticut State Agencies shall apply to any stationary source or modification for which a permit application under former section 22a-174-3 of the Regulations of Connecticut State Agencies was filed prior to the effective date of this section, and for which a permit **or modified permit** has yet to be issued or denied.

Response to comment 30: The Department should interpret the phrase "for which a permit has yet to be issued or denied" to include proposed permit modifications. The term 'permit' does not exclude the subcategory of 'modified permit,' therefore no change is necessary. The Department should not make any changes based upon this comment.

31. Comment on section 22a-174-3a(a)(4): This provision states that section 22a-174-3a shall apply to any source for which a permit application was filed under former section 22a-174-3 prior to the effective date of this section, and for which a permit has yet to be issued or denied. The commentor understands that this language allows for the 'cancellation' of a permit application for a source that was required to apply for a permit under former section 22a-174-3 but that is not required to obtain a permit under section 22a-174-3a.

Additionally, section 22a-174-3a(a)(8) states that any permit issued under former section 22a-174-3 shall remain in full force and effect unless otherwise determined by the Commissioner. Has the Department established the means by which a permit issued under section 22a-174-3 will be revoked if such permit would not have been required by the new section 22a-174-3a?

Response to comment 31: First, a permit applicant may withdraw an application if the proposed activity is no longer subject to the regulations. Second, as the commentor recognized, existing new source review permits will remain in full force and effect as issued.

The Department's process for de-licensing (permit revocation) is subject to various procedural safeguards set forth in the state administrative procedures act, the Department's rules of practice, and various other policies, regulations and statutes.

32. Comment on section 22a-174-3a(a)(4): This provision states that sections 22a-174-2a and 22a-174-3a shall apply to any stationary source or modification for which a permit application was filed prior to the effective date of the new regulations, but for which a permit had not been issued or denied. Please confirm that "issued" means signed by the Commissioner. For example, please confirm that any applications for construction permits that were submitted solely to comply with the requirements of 22a-174-3(a)(2), such as a fuel oil tank subject to only recordkeeping requirements under 40 CFR 60 Subpart Kb, would not require a permit after the effective date of the new regulations, provided a permit had not yet been signed by the Commissioner.

Response to comment 32: The commentor correctly states that that sections 22a-174-2a and 22a-174-3a shall apply to any stationary source or modification for which a permit application was filed prior to the effective date of the new regulations, but for which a permit had not been issued or denied. With respect to the meaning of "permit issuance", the Department should interpret this to mean, for an individual permit, the Department's final approval of a permit, which is normally occurs upon the Commissioner's signature of the permit.

33. Comment on section 22a-174-3a(a)(4): A commentor noted this subdivision applies to sources for which a permit application was filed prior to the effective date of the new regulations. Please clarify the permitting requirements for a source that meets the following criteria:

- The source was subject to permitting requirements under 22a-174-3;
- The source did not apply for a permit under 22a-174-3; and
- The source does not require a permit under 22a-174-3a.

For example, if a fuel oil tank subject to 40 CFR 60 Subpart Kb that was installed prior to the effective date of the new regulations is identified during a compliance audit after the effective date of the new regulations, what, if any, permitting obligation would exist for the source?

Response to comment 33: The owner or operator of a stationary source should be under no obligation to apply for a permit under regulations that are no longer in effect. However, nothing in the proposed regulations, which is the subject of this hearing report, precludes the Commissioner from taking an enforcement action for failure to comply with regulations that were in effect at the time the source was constructed and/or operated.

34. **Comment on section 22a-174-3a(a)(6):** The Department should delay implementation of the De Minimis Rule until such time that EPA adopts final regulations for this rule.

The commentor enclosed a copy of 61 *Fed. Reg.* 38250, 38302 (July 23, 1996). This was included in the EPA's proposal to revise the NSR rules to address the CAAA. As DEP is aware, EPA continues to evaluate this proposal, due to the complexity and importance of NSR issues.

In Paragraph IV, "Transition", EPA explained that it does not intend to apply the de minimis provisions of CAAA §§ 182(c)(6), 182(c)(7), 182(c)(8) and 182(f) until EPA first adopts implementing regulations, except for the change of the significance threshold from 40 tons to 25 tons:

> "The EPA believes that the remainder of these special modifications provisions are sufficiently complicated that it is appropriate to defer implementation until State NSR rules implementing the provisions are in place or when the EPA takes final action on this proposal, whichever comes first."

61 *Fed. Reg.* at 30302. Paragraph IV also explains that EPA will wait until after promulgation of the final rule to issue SIP calls to any state in connection with CAAA §§ 182(c)(6), 182(c)(7), 182(c)(8) and 182(f) requirements. Id.

Prior to July 23, 1996, EPA Region I took the position in several meetings at DEP offices in Hartford that the Region would enforce the "de minimis" provisions of the CAAA, even in the absence of the final federal regulations. The Region also refused to accept the Connecticut "de minimis" rules adopted as part of our SIP in the early 1990s. However, the Region I position was overturned by the 1996 policy decision at EPA headquarters, as stated in the *Federal Register* item.

Due to the complexity and importance of these regulations, it is logical that EPA would allow states to await promulgation of the final federal rule. Moreover, in the absence of federal rules, a **Connecticut-specific** "de minimis" rule will be very difficult to implement and will have significant implications for manufacturing in our state. As a result, we support DEP's decision to await promulgation of the federal "de minimis" rule implementing CAAA §§ 182(c)(6), 182(c)(7), 182(c)(8) and 182(f) requirements, and request that the hearing officer's report clarify that this is DEP's intent. In particular, the hearing officer's report should clarify that proposed §§3a(a)(6) and 3a(a)(7) requires facilities to keep records of increases and decreases of actual emissions, but does not impose the substantive requirements of CAAA §§ 182(c)(6), 182(c)(7), 182(c)(8) and 182(f).

Response to comment 34: The commentor raises several issues that were discussed during the drafting of the proposed regulations. These issues are important and should also be addressed in this report:

- The *Federal Register* citation provided by this commentor is to a proposed rule, not a final rule, and is therefore not binding upon the State of Connecticut;

- Even if the EPA did finalize the proposed rule identified by the commentor, the final rule would not abrogate the responsibility of the major stationary sources to comply with directly applicable provisions of the federal Clean Air Act;

- Because there are directly applicable provisions within the federal Clean Air Act (even if these provisions exist due to EPA's inability to adopt appropriate regulations), sources within Connecticut need to be aware of such requirements in order to ensure their compliance therewith and limit potential liability against citizen suits under the federal Clean Air Act.

The Department will be required to revise the proposed regulations at a future date when EPA adopts regulations implementing the requirements of sections 182(c) and 182(f) of the federal Clean Air Act. Until such time, the Department should continue to ensure, to the extent possible, that sources within Connecticut know of are in compliance with the substantive requirements of these provisions. The Department should not make any changes based upon this comment.

35. Comment on section 22a-174-3a(a)(6) and (7): Each of these subdivisions refer to the use of "actual emissions" increases and decreases to determine the applicability of subdivision (1)(B) and to determine if a modification exceeds major source threshold levels. The current regulations stipulate that increases and decreases of "potential emissions" should be used for applicability purposes. The use of "potential emissions" is more practical because "actual emissions" cannot be determined for new sources.

Response to comment 35: The Department should not make any changes based upon this comment. See the Department's response to comment 21 above.

36. Comment on section 22a-174-3a(a)(6) and section 22a-174-3a(*l*)(3)(A)(i): Under Section 182(c)(6) of the CAA, a modification with allowable emissions below significant levels listed in table 3(a)(k)-1 may still be defined as a major modification. To ensure these modifications do not avoid LAER, the DEP should revise paragraph (l)(3)(A)(i) to say:

> "A LAER determination is required for a major stationary source or major modification subject to Section (a)(l)."

Response to comment 36: The Department should change proposed section 22a-174-3a(*l*)(3)(A)(i) consistent with the intent of the commentor and further clarify (ii) as follows:

(i) a LAER determination for each non-attainment air pollutant ~~with allowable emissions in excess of the amount listed in Table 3a(k)-1, and~~ for which the subject source is a major modification or new major stationary source, and

(ii) ~~an evaluation of secondary impacts or cumulative impacts for each non-attainment air pollutant with potential emissions in excess of the amount~~

~~listed in Table 3a(k)-1of subsection (k)~~ a LAER determination for each air pollutant which would cause or contribute to a violation of a National Ambient Air Quality Standard in an adjacent non-attainment area;

For clarification, the Department should move the stricken portion of subparagraph (A)(ii) above to new subparagraph (G) in section 22a-174-3a(*l*)(3) as follows:

(E) If the owner or operator of the subject source or modification has made modifications to the subject source or modification and any of these modifications are subject to but have not previously been evaluated under this subsection, the commissioner shall conduct a LAER review under this subsection and require implementation of LAER for such modifications; ~~and~~

(F) In no event shall the application of LAER result in an emission limit or rate of emissions that is less stringent or environmentally protective than an emission limitation approved by the commissioner as BACT, an emission limitation demonstrated or established in any State Implementation Plan or any applicable limitation or standard under 40 CFR Parts 60, 61, 62 or 63; and

(G) An owner or operator of the subject source or modification shall submit, for approval in writing an evaluation of secondary impacts or cumulative impacts for each non-attainment air pollutant with potential emissions in excess of the amount listed in Table 3a(k)-1of subsection (k).

See also the Department's response to comment A.6 in Part VI. of this report.

37. Comment on section 22a-174-3a(a)(6) and 3a(a)(7) applicability of the record keeping requirements in section 22a-174-3a: Based upon this commentor's review of section 22a-174-3a, the record keeping requirements of section 22a-174-3a (a)(6) will be used to track modifications that increase or decrease emissions of NOx and VOCs, allowing the facility and the Department to determine when a "major modification" occurs.[5] See sections 22a-174-3a(a)(6) and 22a-174-3a(a)(1)(B). Moreover, the record keeping requirements of section 22a-174-3a(a)(7) would require the facility to track net emission increases of attainment pollutants (i.e., particulate matter (TSP and PM-10), sulfur dioxide or carbon monoxide) that result in "major modifications". As drafted, however, this commentor believes section 22a-174-3a(a)(6) and 3a(a)(7) could be interpreted to require facilities to retain records of emission increases or decreases that result from normal operational fluctuations occurring on a daily (or even hourly) basis. While this commentor does not believe that this was the Department's intent at the time of the proposal, the following amendment would greatly clarify the scope of section 22a-174-3a(a)(6) and 3a(a)(7):

"(6) To determine the applicability of subdivision (1)(B) of this subsection, pursuant to the de minimis rule under section 182(c)(6) and (f) of the Act, the owner or operator of a major stationary source shall make and keep records of

[5] See Proposed § 3a(a)(6) ("[t]o determine the applicability of subdivision (1)(B) of this subsection..."); Proposed § 3a(a)(1)(B) (referencing only "major modifications").

actual VOC and NOx emission increases and decreases **FROM MODIFICATIONS** at such source including emission increases below fifteen (15) tons per year of any individual air pollutant.".

"(7) To determine if the net emission increase of a modification exceeds the major source threshold levels and is subject to subsection (k) of this section, the owner or operator shall make and keep records of actual emissions increases and decreases **FROM MODIFICATIONS** including those below fifteen (15) tons per year, over the five (5) consecutive calendar years preceding the completion of construction.".

Response to comment 37: The Department should change section 22a-174-3a(a)(6) to further clarify the Department's intent by adding the underlined language as follows:

(6) To determine the applicability of subdivision (1)(B) of this subsection, pursuant to the de minimis rule under section 182(c)(6) and (f) of the Act, the owner or operator of a major stationary source shall make and keep records of actual VOC and NOx emission increases and decreases at such source, resulting from any physical change in, or change in the method of operation of a stationary source. Such increases shall include ~~including~~ emission increases below fifteen (15) tons per year of any individual air pollutant.

The Department should not change section 22a-174-3a(a)(7) of the proposed regulations based upon this comment. The suggested change would overly narrow the scope of this provision.

38. Comment on section 22a-174-3a(a)(7), determination of contemporaneous increases and decreases for PSD applicability analyses: Proposed § 3a(a)(7) requires record-keeping of emission increases and decreases over the five calendar years preceding the completion of construction. The proposed standard is consistent with the standard provided in the current state regulations at RCSA § 22a-174-1(45) (definition of "major modification"), which has been previously approved by EPA into the state's SIP. CBIA does not support extending and potentially obscuring the delineation of the "look-back" period by having it run from the "commencement of construction" rather than the "completion of construction".

Response to comment 38: The Department believes the 'look-back' period in the proposed regulations (to completion of construction) is reasonable and should make no changes to the proposed regulations based on this comment.

39. Comment on section 22a-174-3a(a)(7): One commentor recommends that the phrase "completion of construction" be replaced with the phrase "commencement of construction" in this subdivision. The commentor believes that pinning applicability on the commencement of construction would result in a more accurate estimation of net emissions increases.

Response to comment 39: The Department believes the proposed revision to the 'look-back' period is reasonable and should not make any changes to the proposed regulations based on this comment.

40. **Comment on section 22a-174-3a(a)(7), applicability of record keeping requirements:** As drafted, section 22a-174-3a (a)(7) refers only to a "modification", in the context of discussing netting determinations and related record-keeping of contemporaneous increases and decreases. It could be claimed that this language implies that a netting analysis is required for any modification. This would be contrary to longstanding EPA policy on PSD applicability. EPA has on several occasions emphasized that "the netting calculus (the summation of contemporaneous emissions increases and decreases) is not triggered unless there will be a significant emissions increase associated with the proposed modification .... [EPA] reaffirms that EPA's current policy is not to aggregate less than significant increases at a major source when the emissions increase from a proposed modification is less than significant". Memorandum from J. Calcagni/EPA-Air Quality Management Division to W. Hathway/EPA-Air, Pesticides and Toxics Division (Sept. 18, 1989), at p. 2 (also citing prior EPA guidance to this effect).

To avoid potential misinterpretation and inconsistency with the federal PSD program, the commentor requests the Department clarify section 22a-174-3a(a)(7) as follows:

> (7) To determine if the net emission increase of a modification **ASSOCIATED WITH A SIGNIFICANT EMISSIONS INCREASE** exceeds the major source threshold levels and is subject to subsection (k) of this section, the owner or operator shall make and keep records of actual emissions increases and decreases including those below fifteen (15) tons per year, over the five (5) consecutive calendar years preceding the completion of construction.

Response to comment 40: The commentor's concerns that the language of section 22a-174-3a(7) of the proposed regulations could be taken to mean that a netting analysis is required for ***any*** modification is unwarranted. The Department has indicated that it intends to implement the PSD program as required by EPA. The provision of concern to this commentor clearly links the word "modification" to applicability of subsection (k) [PSD requirements]. The Department should not make a change based upon this comment.

41. **Comment on section 22a-174-3a(c)(1):** This subsection identifies the specific information that must be provided with all air permit applications. However, some of the requested information may not be needed by the CTDEP in certain cases. For example, grade elevations and the dimensions of all buildings on a premise would only be needed by the CTDEP if the proposed source triggered the requirement for an ambient impact modeling analysis. For sources that are not subject to an ambient impact assessment, providing such superfluous information would be unnecessarily burdensome and costly to the permit applicant. As such, the regulations should be revised to limit the information that must be provided to what the commissioner deems necessary.

Response to comment 41: See the Department's response to comment 43 below..

42. **Comment on section 22a-174-3a(c)(1)(C):** This provision requires a permit applicant to submit to the Department the site plan for the premises. It is believed that this information

is only required if ambient air modeling is required. This commentor believes this information is unduly burdensome for large premises. The commentor requests the Department adopt language stating that site plans shall only be required if requested by the commissioner.

Response to comment 42: See the Department's response to comment 43 below.

43. Comments on section 22a-174-3a(c), Applications: This section includes information requirements applicable only for some applications. For example, a detailed site plan with grade elevations is needed only for modeled sources. Therefore, the regulations should be drafted to make clear that the Commissioner has discretion not to require all of the identified information to deem an application complete. Subsection 22a-174-3a(c)(1) should be revised as follows:

> (1) The owner or operator of a stationary source or modification subject to the provisions of this section shall apply for a permit on forms provided by the commissioner. All permit applications shall include THE FOLLOWING INFORMATION AS THE COMMISSIONER DEEMS NECESSARY:

Response to comments 41 through 43, inclusive: The Department should not indicate that a site plan is not required with every application. However, the Department should revise section 22a-174-3a(c)(1)(C) to the extent possible to reduce the administrative burden on the applicant associated with submittal of the site plan. The Department should also change the proposed regulation to reflect that grade elevations and the dimensions of all buildings on a premise would only be needed as determined by the Commissioner.

The language in section 22a-174-3a(c)(1)(C) should be changed to state the following:

> (C) The premises' site plan, including: a linear scale and north arrow, the plot plans depicting existing and proposed building locations~~, building dimensions~~, the legal boundaries of the property, stack locations, location of the subject stationary source or modification on the premises, ~~final grade elevations for all structures located on the premises,~~ and a United States Geological Survey topographic quadrangle map identifying the latitude and longitude of the subject stationary source or modification; and to the extent the commissioner deems it necessary, building dimensions and final grade elevations for all structures located on the premises;

44. Comment on section 22a-174-3a(c)(1)(I), applications: A commentor requests the Department confirm that the requirements of section 22a-174-3a(c)(1)(I) is a reporting obligation that attaches only to permit applications submitted for major modifications under proposed section 22a-174-3a(a)(1)(B). In addition, the commentor requests the Department amend section 22a-174-3a(c)(1)(I) to clearly articulate this intent as follows:

"(I) If the premises is a major stationary source, for the purposes of determining compliance with subdivisions (a)(6) and (7) of this section, a summary of the potential emissions from the new subject stationary source or modification and actual emissions from existing stationary sources located at the premises over the preceding five (5) consecutive calendar years, **IF APPLICABLE**;".

Response to comment 44: The Department believes that making the requested change would not lend clarification to this federal requirement. The Department should not make any changes based upon this comment. See also the Department's response to comment 34 above.

45. Comment on section 22a-174-3a(d)(4): This provision authorizes the Department to place an expiration date on any permit issued under section 22a-174-3. That expiration date should provide adequate time for the permit holder to prepare a description of any proposed modifications along with any modifications in potential emissions resulting from the proposed modifications, and identify all regulatory, statutory, or otherwise applicable requirements that would become applicable as a result of such modifications, and submit an application for permit renewal in accordance with the timeframe established in 22a-174-2a(i)(1). To ensure the permit holder has adequate time to perform these tasks and make timely application for permit renewal, we suggest adding the following language to the end of the first sentence in section 22a-174-3a(d)(4), "provided that expiration date is at least one year after the date the expiration date is placed in the permit."

Response to comment 45: The Department should not preclude the possibility of issuing a permit with a very short duration. The Department should not make any changes based upon this comment.

46. Comment on section 22a-174-3a(d)(4), Expiration dates: This provision should be limited to permits issued under new section 22a-174-3a. Otherwise, the provision would provide no guidance for the basis or procedure for DEP to insert an expiration permit, thereby raising due process concerns. The provision would also create potential conflicts with proposed section 22a-174-3a(f), which conditionally grants DEP authority to modify, revise or revoke permits, and proposed section 22a-174-2a(i)(3), which expressly exempts from permit renewals all permits to operate issued after June 1, 1972 and before April 2, 1986. Proposed language follows:

(4) An expiration date may be placed within any permit issued pursuant to this subsection ~~or former subsection 22a-174-3 of the Regulations of Connecticut State Agencies~~. Any permit containing an expiration date shall be renewed in accordance with the provisions of subsection 22a-174-2a(i) of the Regulations of Connecticut State Agencies.

Response to comment 46: The Department should make the following change to clarify the intent of section 22a-174-3a(d)(4):

(4) An expiration date may be placed within any permit issued pursuant to this section ~~or former section 22a-174-3 of the Regulations of Connecticut State Agencies~~. Any permit issued pursuant to this section or former section 22a-174-3 of the Regulations of Connecticut State Agencies containing an expiration date shall be renewed in accordance with the provisions of section 22a-174-2a(i) of the Regulations of Connecticut State Agencies.

47. Comment on section 22a-174-3a(f)(2): This section contains the federal requirements for review of phased construction projects. Under the federal requirements for phased construction at 51.166(j)(4), the permitting authority is required to review BACT determinations that may result in additional modification revision or revocation of the permit. To comply with this requirement, EPA recommends the following:

"The commissioner shall review and may . . ."

Response to comment 47: The Department should make the following change to section 22a-174-3a(f)(2):

(2) The commissioner shall review and may modify, revise or revoke any permit if the owner or operator:

(F) Has not commenced construction authorized by the permit within eighteen (18) months from the date of issuance, or such other period, as the permit provides, whichever is later;

(G) Has discontinued construction for eighteen (18) months or more after actual construction authorized by the permit has begun; or

(H) Has not commenced operation authorized by the permit within twenty-four (24) months from the completion of construction, or such other period as the permit provides, whichever is later.

48. Comment on section 22a-174-3a(f)(3)(B): This subsection states that the commissioner may modify or renew a permit for an incinerator or resources recovery facility on his own initiative. ERL does not understand the regulatory basis for the special treatment of these particular types of facilities. The commissioner's right to modify or renew permits is already set forth in other parts of the regulations. Therefore, this subsection should be deleted.

Response to comment 48: See the Department's response to comment 49 below.

49. Comments on section 22a-174-3a(f), Modification, revision or revocation of a permit: The procedural protections, granted to a permittee to prevent the unlawful revocation or modification of its permit, are set forth in the Connecticut General Statutes §§ 4-184 and 22a-174c. Subsection 3a(f)(1) properly refers to the statutes in describing the conditions and

procedures for revocation and revision of a permit. Subsection 3a(f)(3) appears to set forth additional bases for modifying or renewing certain permits. That section provides that:

> The commissioner may modify or renew on his own initiative, any permit if the owner or operator:
>
> (C) Has failed to comply with any applicable regulation; or
>
> (D) Has a permit for an incinerator or resources recovery facility.

The General Statutes, §22a-174c, already provides that a permit can be modified or revoked for violations of regulations. Therefore §22a-174-3a(f)(3)(A) is unnecessary. Moreover, there is no basis in law either to treat owners and operators of incinerators and resource recovery facilities different from other license holders, or to eliminate the statutory protections provided to license holders. Permits for incinerators or resources recovery facilities can be modified or revoked in accordance with the statutes. Therefore, this subsection should be deleted. If DEP does not delete this subsection, please explain the legal basis for it, and the procedures and grounds that DEP believes would be required to modify or renew a permit for an incinerator or resources recovery facility.

Response to comments 48 and 49: The general statutes and other regulatory provisions set forth sufficient authority for the commissioner to modify or revoke new source review permits (or any other license). Therefore the Department should delete the following language from the proposed regulations:

~~(3) The commissioner may modify or renew on his own initiative, any permit if the owner or operator:~~

~~(A) Has failed to comply with any applicable regulation; or~~

~~(B) Has a permit for an incinerator or resources recovery facility.~~

50. Comment on section 22a-174-3a(j), Table 3a(k)-1: This table provides the applicability threshold levels used to determine applicability for PSD BACT in Section (j), the PSD program in section (k) and LAER in section (l). To make this table consistent with significance levels for major modification, EPA recommends the DEP modify the table by removing the pollutants Asbestos, Beryllium and Vinyl Chloride. These pollutants are no longer subject to Title I requirements. In addition, the DEP should include the significance levels for any unlisted regulated pollutant (except those regulated under Title III) and for pollutants impacting class I areas. These levels are found at 40 CFR 51.166 (b)(23)(ii) and (iii) except that (b)(23)(ii) should be revised as follows:

> "In reference to a net emission increase or the potential of a source to emit a pollutant subject to regulation under the act and is not listed under paragraph (b)(23)(i) of this section and not regulated under Title III of the CAA, any emission rate."

Response to comment 50: Based on the comment from EPA Region 1, the Department should remove Asbestos, Beryllium and Vinyl Chloride from Table 3a(k)-1 because these pollutants are no longer subject to Title I requirements. The Department should not revise Table 3a(k)-1 to adopt EPA's suggestion to include the significance levels for any unlisted regulated pollutant found at 40 CFR 51.166 (b)(23)(ii) and (iii). The "de minimis" emission level (i.e., the level of emissions which would trigger permit applicability) for "any other pollutant Federally regulated under the Clean Air Act" is a level of zero (0.0). In light of the various requirements imposed by other programs on federally regulated air pollutants, it would be impractical and extremely burdensome to subject a source to the requirements of proposed section 22a-174-3a at such a trivial threshold amount[6]. Therefore, Table 3a(k)-1 should be revised as follows:

Table 3a(k)-1 Significant Emission Rate Thresholds

AIR POLLUTANT	EMISSION LEVELS (TONS PER YEAR)
Carbon Monoxide	100
Nitrogen Oxides (as an ozone precursor)	25
~~Nitrogen~~ Oxides (NOx National Ambient Air Quality Standard)	40
Sulfur Dioxide	40
Particulate Matter	25
PM_{10}	15
Volatile Organic Compounds	25
Hydrogen Sulfide (H~S)	10
Total Reduced Sulfur (including H_2S)	10
Reduced Sulfur Compounds (including H_2S)	10
Sulfuric Acid Mist	7
Fluorides	3
~~Vinyl Chloride~~	~~1~~
Lead	0.6
Mercury	0.1

[6] This response is consistent with the Department's previous position on this issue. See "Hearing Report, Amendments to the Regulations of Connecticut State Agencies Concerning Sections 22a-174-1 and 22a-174-3, December 1993", response to comment 25, page 25. (January 11, 1994).

~~Asbestos~~	~~0.007~~
~~Beryllium~~	~~0.0004~~
Municipal Waste Combustor Organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6}
Municipal Waste Combustor Metals (Measured as particulate matter)	15
Municipal Waste Combustor Acid Gases (Measured as sulfur dioxide and hydrogen chloride)	40

51. Comment on section 22a-174-3a(j)(5): – This subsection appears to allow the CTDEP to reconsider its Best Available Control Technology (BACT) determination at any time prior to commencement of construction. Providing such broad latitude to the CTDEP to change BACT determinations will jeopardize the ability of major projects to secure financing. This is because major projects are typically financed following the issuance of air permits, after control technology requirements have been established. If BACT requirements remain uncertain after permit issuance, it will be more difficult for projects to obtain financing. This comment suggests that the CTDEP reconsider this provision of the regulations. As long as project construction is commenced within a reasonable time after permit issuance, the CTDEP's BACT determination at the time of permit issuance should be final.

Response to comment 51: See the Department's response to comment 57 below.

52. Comments on section 22a-174-3a(j), Best Available Control Technology (BACT).

(A) Applicability. Section 22a-174-3a(j) identifies the sources required to conduct a BACT analysis and the considerations in determining BACT. With respect to minor sources, the proposed rule requires BACT for new emission units with potential emissions of more than 15 tons per year of an individual air pollutant, and modifications to existing emission units that result in an increase in potential emissions of more than 15 tons per year. Please clarify: (1) that the regulations only require BACT for those pollutants which will be emitted in excess of 15 tons per year from the new source or modification; and (2) that only those pollutants which increase by more than 15 tons per year from a modification will be subject to BACT.

(B) Reconsideration of BACT. Subsection 3a(j)(5) reads as follows:

> (5) Prior to commencing construction, including each phase of phased construction, the owner or operator may be required by the commissioner to demonstrate the adequacy of the technology used pursuant to any previous BACT determination.

This subsection appears to allow DEP to reconsider its BACT determination at any time prior to commencement of construction. If this is the intent, it can cause significant difficulties for project financing. Typically, major projects are financed following the issuance of air permits, when the control technology requirements are established. The commentors suggest that the following subsection be deleted or clarified to limit its potential negative effect on projects.

(C) BACT considerations. Subsection 3a(j)(6), provides in part:

(6) In determining whether to approve BACT, the commissioner shall:

(A) Take into account any emission limitation, including any visible emission standard, which is achievable under any permit limitation or any stack test demonstration acceptable to the commissioner;

This subsection should provide better guidance, consistent with current regulations, as to what may be considered "achievable." This can be accomplished in two ways: First, the regulation should use the phrase "achieved in practice" in place of "achievable." Since the "achieved in practice" phraseology is used under the Clean Air Act, greater guidance as to its meaning will be available. Second, the current regulations describe some of the qualifications on using stack tests from pilot or prototype equipment. Similar language is included with respect to LAER determinations in subsection 3a(l)(3)(B). The commentors suggest that language comparable to the existing regulations be added to this provision. The suggested revision is set forth below:

(A) Take into account any emission limitation, including any visible emission standard, which **HAS BEEN ACHIEVED IN PRACTICE** ~~is achievable~~ under any permit limitation or any stack test demonstration acceptable to the commissioner **(FOR PURPOSES OF DETERMINING THE ACCEPTABILITY OF A STACK TEST, THE COMMISSIONER MAY EXCLUDE ANY STACK TEST ON A PILOT PLANT OR PROTOTYPE EQUIPMENT WHICH DOES NOT HAVE REASONABLE OPERATING EXPERIENCE OR WHICH MAY NOT BE GENERALLY AVAILABLE FOR INDUSTRY USE)**;

(D) Netting. Please explain the meaning of subsection 3a(j)(8)(C), which reads as follows:

(8) In no event shall the application of BACT result in:

(C) The use of a net emissions increase to meet the commissioner's approval of BACT.

Response to Comment 52(A): The proposed regulations require BACT for those pollutants with potential emissions of 15 tons or more per year from the new source or modification.

Only those pollutants which increase by more than 15 tons per year from a modification will be subject to BACT. The Department should not make a change based upon this comment.

Response to Comment 52(B): See the Department's response to comment 56 below.

Response to Comment 52(C): The Commissioner is required to ensure that the subject sources implement the best available control technology to reduce emissions to the ambient air. This requirement may also include generally available control technology, or in some instances include technology only stack tested on a prototype. The Department should not make a change based upon this comment.

Response to Comment 52(D): This proposed language means that netting can not be used in lieu of BACT for those sources required to implement BACT under proposed section 22a-174-3a(j)(1)(C) and (D), if an applicability determination approved by the Commissioner indicates that BACT is applicable to a source.

53. Comment on section 22a-174-3a(j): A commentor requested the Department clarify whether "potential emissions" in sections 22a-174-3a(j)(1)(A), (C), and (D) refer to the proposed actual emissions associated with the new source or modification. For example, please confirm that a BACT analysis would not be required for a natural gas-fired engine with proposed actual NO_x emissions of 6 tpy, although the potential NO_x emissions on an 8,760 hour/year basis are greater than 15 tpy.

Response to comment 53: The definition of potential to emit/potential emissions takes into consideration federally enforceable and practicably enforceable limitations. The Department should not elaborate on the proposed hypothetical situation since there are additional considerations that must be taken into account before a response could be formulated.

54. Comment on section 22a-174-3a(j), Best Available Control Technology (BACT) for phased construction projects: There appears to be an unnecessary "the" in subsection 3a(j)(4). See proposed revision below:

> (4) Notwithstanding any permit for a new source or modification under this subsection the commissioner may require for ~~the~~ phased construction projects that the permittee resubmit for review and approval a BACT analysis prior to the commencement of each phase of the construction.

Response to comment 54: The Department should make the suggested change to Section 22a-174-3a(j)(4) as shown in bold as follows:

> (4) Notwithstanding any permit for a new source or modification under this subsection the commissioner may require for ~~the phased~~ construction projects, including phased construction projects, that the permittee resubmit for review and approval a BACT analysis if such construction or phase of construction has not commenced within the eighteen (18) months following ~~prior to the commencement of~~

~~each phase of the construction~~ the commissioner's approval of the current BACT determination for such construction or phase of construction.

The other changes are proposed in response to comments 52, 53(B), 56 and 58.

55. Comment on section 22a-174-3a(j)(5), BACT Review: A commentor requested DEP remove section 22a-174-3a(j)(5). This proposed section would allow the commissioner to request the holder of a valid NSR permit, to demonstrate the adequacy of the BACT determination, prior to beginning construction. This language creates uncertainty in the construction process. DEP already has the ability to modify, revise or revoke any permit where construction has not commenced within 18 months (22a-174-3a(f)(2)(a)), or in the case of phased construction, request a BACT determination prior to each phase (22a-174-3a(j)(4)). Under its general enforcement authority, DEP also can take action against any owner or operator who obtains an NSR permit with misleading or fraudulent information. Thus, the language in section 22a-174-3a(j)(5) is unnecessary.

Moreover, the language provides the holder of a valid permit no security that the permit issued authorizing construction, is final. If new technology should become available, DEP could review the BACT determination and potentially re-issue the permit with new requirements based on technology that was not available when the project was planned. A business undertaking a multi-million dollar construction project should be able to rely on a valid BACT analysis for a specified time (i.e., 18 months) and not worry that the control equipment ordered in reliance on the BACT analysis may be obsolete when it arrives.

Response to comment 55: See the Department's response to comment 57 below.

56. Comment on section 22a-174-3a(j)(4) and (5), BACT: The Department should eliminate provisions in sections 22a-174-3a(j)(5) and (6) *(Ed. note: the Department believes the commentor meant (j)(4) and (j)(5))* that could require "Resubmission" or "Reconsideration" of BACT during phased construction projects

Proposed §§ 3a(d)(3)(H), 3a(j)(2), and 3a(j)(3) all require that a permit applicant may not commence construction of a facility subject to permitting unless and until the applicant demonstrates to DEP that the facility will incorporate Best Available Control Technology ("BACT"). However, proposed § 3a(j)(4) also states that DEP may require a permittee to resubmit and obtain approval of a revised BACT analysis prior to commencing construction on "each phase" of a "phased construction project". Id. Moreover, proposed § 3a(j)(5) would appear to authorize DEP to require the permittee to demonstrate the adequacy of the previous BACT determination before commencing construction of "each phase of phased construction". Proposed § 3a(j)(5). These additional provisions are vague, unnecessary, and would create significant and potentially fatal obstacles for project financing. Accordingly, these provisions should be deleted from any final regulations.

In particular, the terms "phase" and "phased construction project" are not defined in the regulations. This leaves sources in the difficult position of not knowing when their projects would be deemed to be "phased", and therefore subject to losing the ability to rely on a previous BACT approval by DEP. In addition, once a BACT determination for a particular

source is made, the permittee and equally importantly, the permittee's financiers -- should be allowed to rely on that determination. Typically, major projects are financed following the issuance of air permits, and only after control requirements are established. Of these projects that, are in fact phased, proposed §§ 3a(j)(4) and 3a(j)(5) would make it impossible to plan for and obtain capital requests. For example, Pfizer could obtain a § 3a permit for a planned facility expansion that requires the installation of a thermal oxidizer at a cost of $15 million (i.e., BACT). In response, the facility would submit a capital request to finance the expansion with a $15 million price tag attributed to the thermal oxidizer. However, after completion of the first phase of the multi-phase expansion (e.g. after one-year of construction), DEP, under the authority granted by §§ 3a(j)(4) and 3a(j)(5) could conclude that the thermal oxidizer no longer reflects BACT, but another control technology, at a cost of $25 million does. Significant capital expenditures for projects (i.e., the additional $10 million for the new control device) can take several months, if not years, to approve. Such a delay would halt the next phase of the construction until the "revised project" was refinanced. In turn, this delay would ultimately disrupt carefully developed corporate plans, thereby making it practically impossible to obtain the financing for complex construction projects in Connecticut.

Response to comments 52(B), 53, 54, 55 and 56: There were many comments on the proposed language in section 22a-174-3a(j)(4) and (5). The Department should make the following changes to clarify the Department's understanding of the federal requirements by limiting the scope to lapses in construction or phases of construction of 18 months or more:

(4) Notwithstanding any permit for a new source or modification under this subsection the commissioner may require for ~~the phased~~ construction projects, including phased construction projects, that the permittee resubmit for review and approval a BACT analysis if such construction or phase of construction has not commenced within the eighteen (18) months following ~~prior to the commencement of each phase of the construction~~ the commissioner's approval of the current BACT determination for such construction or phase of construction.

(5) Prior to commencing construction, including each phase of phased construction, the owner or operator may be required by the commissioner to demonstrate the adequacy of the technology used pursuant to any previous BACT determination, if such construction or phase of construction has not commenced within the eighteen (18) months following the commissioner's approval of the current BACT determination for such construction or phase of construction.

Regardless of whether an activity is characterized as construction or a phase of construction, the Department should gather as much information as possible in order to make informed decisions that best serve the public and the environment. The Department is concerned that sources may attempt to circumvent permit requirements by not revealing the entire nature of a proposed project. Insufficient information could impact a previous BACT determination by the Commissioner. The more forthright an applicant is in the application process the more likely they are to avoid costly changes to complex plans.

57. **Comment on section 22a-174-3a(k)(2)(A)** – This subsection defines a major modification as having "actual emissions that are equal to or greater than the significant emission rate thresholds in Table 3a(k)-1…". "Actual emissions" cannot be determined for new sources. As such, ERL recommends that this determination instead be made based on "potential emissions". Alternatively, the CTDEP should clarify how "actual emissions" should be evaluated for a new or modified source.

Response to comment 57: See the Department's response to comment 21 above.

58. **Comment on section 22a-174-3a(k)(5)(A)** – Paragraph (iii) of this subsection requires that a permit applicant conduct an analysis of the effect of the subject source on the ambient air quality for any pollutant subject to a National Ambient Air Quality Standard (NAAQS). This requirement is inconsistent with federal Prevention of Significant Deterioration (PSD) requirements and represents an unnecessary burden on air permit applicants. Federal PSD rules require an ambient impact analysis only for those pollutants that will be emitted in amounts that exceed the significant emission rate thresholds listed in Table 3a(k)-1 of the proposed regulations. In this regard, paragraph (i) of this subsection is consistent with the federal requirements. However, little environmental benefit will be gained by requiring an impact analysis for other pollutants that are emitted in insignificant or negligible amounts, just because those pollutants are subject to an NAAQS.

Response to comment 58: Based on this comment, the Department should make the following change to proposed section 22a-174-3a(k)(5)(A):

(5) Ambient Monitoring

(A) The permit application shall contain an analysis of the effect on ambient air quality in the area of the subject source or modification, of the following pollutants:

(i) those that have allowable emissions in excess of the amount listed in Table 3a(k)-1 of this subsection, or

(ii) those listed in section 22a-174-24 of the Regulations of Connecticut State Agencies, ~~or~~

~~(iii) those which are subject to a National Ambient Air Quality Standard~~;"

59. **Comment on section 22a-174-3a(k)(5)(C)** – This subsection requires that permit applicants provide continuous air quality monitoring data for all pollutants subject to an NAAQS. This requirement is again inconsistent with federal PSD requirements and represents an unnecessary burden on the permit applicant. If adequate monitoring data are not available from CTDEP monitoring locations, the collection of data can be extremely costly. This regulation should be modified to be consistent with federal PSD requirements, in that

ambient monitoring data should be required only for pollutants with significant emission rates greater than the thresholds in Table 3a(k)-1.

Response to comment 59: The NSR program must contain provisions sufficient to meet the state's obligation to perform the increment analysis under 40 CFR Part 51.166(m)(1)(iii). The manner in which the Department has met this requirement is consistent with the federal PSD program for instances where the state lacks sufficient data from ambient monitoring locations. The Department should not make a change based upon this comment.

60. Comment on section 22a-174-3a(k)(6)(C) – This subsection appears to allow for the consideration of reductions in emissions only from stationary sources located on the owner's or operator's premise. No allowance for the consideration of emissions reductions at other increment consuming sources is provided. This is inconsistent with federal PSD rules, which provide for the expansion of PSD increment when emissions are reduced at increment consuming sources. By not allowing increment expansion to be considered at non-premise sources, the CTDEP will limit economic growth in Connecticut by overestimating PSD increment consumption.

Response to comment 60: Based on this comment, the Department should make the following changes to proposed section 22a-174-3a(k)(6)(C):

(C) A permit application for the subject source or modification shall include a calculation of the increase, above the baseline concentration, in ambient concentrations of pollutants to be expected from the new major stationary source or major modification. Such calculation shall be based on:

(i) the allowable emissions from the subject source or modification,

(iv) the actual emissions from all major stationary sources which were required to obtain a permit after the major source baseline date,

(v) the increased actual emissions from all modifications to the major stationary source which were required to be permitted after the major source baseline date and before the minor source baseline date. The owner or operator shall use allowable emissions instead of actual emissions if such modifications are located on the owner's or operator's premises,

(iv) the actual emissions from all stationary sources, other than major stationary sources, which were required to obtain a permit after the minor source baseline date,

(v) the allowable emissions for any stationary source for which a permit is pending and for which the commissioner has made a determination of application sufficiency, and

(vi) the reductions, occurring on or after the minor source baseline date, in actual emissions and federally enforceable allowable emissions from stationary sources located in the baseline area ~~on the owner's or operator's premises~~;

61. Comment on section 22a-174-3a(k)(6)(A): This provision provides the requirements for the source impact analysis. Besides determining that a source or modification will not result in an exceedance of a maximum allowable increase over an applicable baseline concentration, the analysis should determine that a source or modification does not result in a violation of a National Ambient Air Quality Standard. EPA recommends the following language:

> "The owner . . . shall not exceed or contribute to an exceedance of any national ambient air quality standard or of the . . ."

Response to comment 61: Based on this comment, the Department should make the following change to proposed section 22a-174-3a(k)(6)(A):

(6) Source Impact Anaylsis:

(A) The owner or operator of the subject source or modification which will have an impact on air quality equal to or greater than any amount listed in Table 3a(i)-1 of subsection (i) of this section shall not cause or contribute to air pollution in violation of the National Ambient Air Quality Standards or any applicable maximum allowable increase above baseline concentration established in Table 3a(k)-2 of this subsection;

62. Comment on section 22a-174-3a(k), PSD provisions, Table 3a(k)(1): The listing for MWC organics is missing a -6 in 10^{-6}.

Response to comment 62: The official version of the proposed regulation contained the 10^{-6}. The proposal continues to include 10^{-6}. The Department presumes that a software malfunction used to open an electronic version of the proposed regulation did not allow for recognition of the 10^{-6}. The Department should not make a change based upon this comment.

63. Comment on section 22a-174-3a(k)(3): One commentor requested the Department clarify this subdivision as the commentor believes the intent of the statement contained in section 22a-174-3a(k)(3) is unclear.

Response to comment 63: The Department should not make a change based upon this comment. See the Department's response to comment 65 below.

64. Comment on Table 3a(k)-1 in section 22a-174-3a(k): One commentor believes that separate thresholds for nitrogen oxides (NOx) creates confusion within this table. The commentor suggests the Department lower the threshold to a single value of 25 tons per year.

Response to comment 64: NOx is regulated as both an attainment and non-attainment pollutant. First, NOx is a precursor in the formation of ground-level ozone. Second, NOx is a criteria air pollutant for which the EPA has established a NAAQS. Connecticut is in attainment of the NOx NAAQS, but is not in attainment of the ozone NAAQS. Since the State of Connecticut is designated as nonattainment for ozone, Table 3a(k)-1 must set the NOx threshold at 25 tons per year for purposes of non-attainment new source review. Since the State of Connecticut is designated as attainment for NOx, Table 3a(k)-1 must set the prevention of significant deterioration review threshold for NOx at 40 tons per year. These are independent federal requirements with which Connecticut must comply. This means that is some instances, sources must undertake both and LAER and BACT analysis to comply with both programs.

65. **Comment on section 22a-174-3a(*l*):** One commentor suggested the Department rename this subsection to "Permit requirements for non-attainment areas **or impacting non-attainment areas"** so that the name of the subsection better reflects the regulatory requirements.

Response to comment 65: The title is sufficient as it is stated as titles do not impose regulatory requirements. The Department should not make a change based upon this comment.

66. **Comment on section 22a-174-3a(*l*):** As stated in paragraph (l)(1)(A), a nonattainment permit is required for any major source or major modification at a major stationary source located in a nonattainment area including ozone nonattainment areas. The specific reference to serious and severe nonattainment areas found at paragraph (l)(1)(C) is redundant and should be removed.

Response to comment 66: Based on this comment, the Department should delete proposed section 22a-174-3a(*l*)(1)(C), to remove the redundant phrase, as follows. In addition, to clarify the applicability of section 22a-174-3a(l) additional changes should be made to proposed section 22a-174-3a(*l*)(1), and (A) and (B):

(1) Applicability. ~~Except as provided in subdivision (2) of this subsection and in~~ In accordance with subsection (a) of this section, the provisions of this subsection shall apply to the owner or operator of any new major stationary source or major modification which ~~emits any non-attainment air pollutant if such source~~:

(A) Is or will be a major stationary source or major modification for any non-attainment air pollutant if such source is ~~Is~~ located in a non-attainment area for such air pollutant; or

(B) Is located in an attainment area or unclassifiable area, but the allowable emissions of ~~such~~ any air pollutant would cause or exacerbate a violation of a National Ambient Air Quality Standard in an adjacent non-attainment area. Allowable emissions of any such air pollutant will be deemed not to cause or ~~exacerbate~~ contribute to a violation of a National Ambient Air Quality

Standard provided that such emissions result in impacts that are less than levels set forth in Table 3a(i)-1 in subsection (i) of this section.

~~(C) Is located in a serious or severe non-attainment area for ozone and is a proposed major stationary source or major modification of volatile organic compounds or nitrogen oxides.~~

67. Comment on section 22a-174-3a(*l*)(1)(B) – The second sentence of this paragraph states that "Allowable emissions of such air pollutant will be deemed not to cause or exacerbate a violation of a National Ambient Air Quality Standard provided that such emissions are less than levels set forth in Table 3a(i)-1 in subsection (i) of this section." In that sentence, the comparison of "emissions" to "levels set forth in Table 3a(i)-1" is incorrect. Table 3a(i)-1 does not present emission levels. It presents significant ambient impact levels. Therefore, ERL recommends that this sentence be revised as follows:

> "...provided that such emissions **result in impacts that** are less than levels set forth in Table 3a(i)-1....

Response to comment 67: The Department should make the change as requested in this comment. See the Department's response to comment 66 above.

68. Comment on section 22a-174-3a(*l*)(3)(A)(i) and (ii): One commentor believes that this provision incorrectly references Table 3a(k)-1 because this table is only applicable to prevention of significant deterioration determinations. The commentor notes that new major stationary sources or major modifications located in non-attainment areas are subject to the "offset" requirements set forth in section 22a-174-3a(*l*)(4).

Response to comment 68: The Department believes this table is correctly referenced in this section. The Department should not make any changes based upon this comment.

69. Comment on section 22a-174-3a(*l*)(4)(B): – Paragraph (iv) of this subsection states that net air quality benefits must be determined by the use of atmospheric modeling procedures for carbon monoxide or particulate matter. Why are only these two pollutants specifically identified? Federal nonattainment permitting rules require that a net air quality benefit be demonstrated for each pollutant that triggers nonattainment New Source Review applicability. Therefore, why have other pollutants such as nitrogen oxides (NO_x) and sulfur dioxide (SO_2) been excluded from this requirement?

Response to comment 69: This proposed language in section 22a-174-3a(*l*)(4)(B) does not eliminate the other pollutants, it simply identifies the procedure for those particular pollutants that do not otherwise have an associated procedure. The Department should not make any changes based upon this comment.

70. Comment on section 22a-174-3a(*l*)(4)(B)(i): This provision stipulates that in order to use certified emission reduction credits (CERCs) as offsets within a non-attainment new source review permit, the CERCs must be created within five years preceding the submission

of a permit application. This commentor believes that this time restriction will devalue CERCs and delay the further creation of CERCs. Therefore, this commentor urges the Department to remove the five year limitation.

Response to comment 70: See the Department's response to comment 71 below.

71. Comments on section 22a-174-3a(*l*), Nonattainment provisions relating to Offsets. Subsections 3a(*l*)(4) and (5) sets forth the requirements for obtaining offsetting emission reductions for major sources subject to federal nonattainment requirements. Since these subsections do not use the defined term "continuous emission reduction credits (CERCs)", please confirm that this section allows the use of either CERCs or discrete emission reduction credits (DERCs). In addition, the section no longer contains language specifying that CERCs resulting from a shutdown or curtailment of a source can only be used if such shutdown or curtailment occurred after November 15, 1990. Subsection 3a(l)(4)(B)(i) states that emission reduction credits must be created within five years before the application, but allows the Commissioner to consider a different time period, beginning no earlier than November 15, 1990. Please confirm that shutdowns after November 15, 1990, may still be considered for CERCs.

Response to comments 70 and 71: At this time, the Department should include only CERCs in proposed section 22a-174-3a(l)(5). This subdivision should be revised as follows:

> (5) The owner or operator of the subject source or modification shall secure certified emission reduction credits before using them. ~~Discrete emission reduction credits shall be secured in twenty-four (24) month allotments prior to their use.~~ Continuous emission reduction credits shall be secured and retired prior to their use. Emission reduction credits shall be:
>
> (A) Created and used in accordance with 40 CFR 51;
>
> (B) Real, that is, resulting in a reduction of actual emissions, net of any consequential increase in actual emissions resulting from shifting demand. The emission reductions shall be measured, recorded and reported to the commissioner;
>
> (C) Quantifiable, based on stack testing approved by the commissioner in writing, conducted pursuant to an appropriate, reliable, and replicable protocol approved by the commissioner. Such quantification shall be in terms of the rate and total mass amount of non-attainment pollutant emission reduction;
>
> (D) Surplus, not required by any Connecticut General Statute or regulation adopted thereunder, or mandated by the State Implementation Plan, and not currently relied upon for any attainment plan, any Reasonable Further Progress plan or milestone demonstration;

(E) Permanent, in that at the source of the emission reduction, the emission reduction system shall be in place and operating, and an appropriate record keeping system is maintained to collect and record the data required to verify and quantify such emissions reductions; and

(F) Enforceable and approved by the commissioner in writing after the submission to the commissioner of documents satisfactory to the commissioner or incorporated into a permit as a restriction on emissions.

Based on the Department's response to this comment, the Department should also eliminate the five-year limitation in proposed section 22a-174-3a(*l*)(4)(B)(i) as follows:

(B) The commissioner shall not grant a permit to an owner or operator of the subject source or modification unless the owner or operator demonstrates that internal offset or certified emission reduction credits under subparagraph (A) of this subdivision:

(i) have occurred ~~or were created within the five (5) years~~ preceding the submission of such application and prior to the date that the subject source or modification becomes operational and begins to emit any air pollutant. The commissioner may consider a ~~different~~ time period, beginning no earlier than November 15, 1990,

(ii) are not otherwise required by any of the following: the Act; a federally enforceable permit or order; the State Implementation Plan; or the regulations or statutes in effect when such application is filed,

(iii) will be incorporated into a permit or order of the commissioner and would be federally enforceable,

(iv) will create a net air quality benefit in conjunction with the proposed emissions increase. In determining whether such a net air quality benefit would be created, the commissioner may consider emissions on an hourly, daily, seasonal or annual basis. For carbon monoxide or particulate matter (total suspended particulate and PM_{10}), the net air quality benefits shall be determined by the use of atmospheric modeling procedures approved by the commissioner and the Administrator in writing. Upon the request of the commissioner, the owner or operator shall make and submit to the commissioner, a net air quality benefit determination for each air pollutant. Such determination shall include, but not be limited to, all increases and decreases

of emissions from stationary sources at any premises providing the offsetting emission reductions,

(v) shall be based on the pounds per hour of potential emissions increase from the subject source or modification. The commissioner may consider other more representative periods, including, but not limited to, tons per year or pounds per day,

(vi) are identified in an emissions inventory maintained by the commissioner or otherwise approved in writing by the commissioner,

(vii) are of the same non-attainment air pollutant of which the owner or operator proposes to increase. Reductions of any exempt volatile organic compound listed in Table 1-3 of section 22a-174-1 of the Regulations of Connecticut State Agencies or those listed in 40 CFR 51.100 shall not be used to offset proposed increases emissions of non-exempt volatile organic compounds,

(viii) occurred at either: one or more stationary sources in the same non-attainment area or stationary sources in another non-attainment area if, under the Act, such area has an equal or higher non-attainment classification than the area in which the proposed activity would take place, and if emissions from such other non-attainment area contribute to a violation of a National Ambient Air Quality Standard in the non-attainment area in which the proposed activity would take place,

(ix) for the applicable non-attainment air pollutant, shall be from reductions in actual emissions, and

(x) offset actual emissions at a ratio greater than one to one, as determined by the commissioner. In addition, the owner or operator shall offset emission increases of allowable emissions at a ratio, for volatile organic compounds or nitrogen oxides, of at least: 1.3 to 1 in any severe non-attainment area for ozone, and 1.2 to 1 in any serious non-attainment area for ozone.

The Commissioner may still consider for CERCs emission reductions that occurred after November 15, 1990. However, many such shutdown credits have already been consumed by the Department's Reasonable Further Progress Demonstration and are no longer available for use.

72. Comment on section 22a-174-3a(*l*)(4)(B)(x): One commentor strongly encourages the Department to increase the offset ratio specified in the federal clean air act from 1.1 to 1 to a minimum of 1.5 to 1 with a desired ratio of 2 to 1. This commentor believes that any

ratio lower than 1.5 to 1 does not provide a sufficient margin for emission calculation errors nor does the 1.1 to 1 ratio provide any net environmental benefit.

Response to comment 72: This offset ratios contained in existing R.C.S.A. section 22a-174-3(*l*) are carried over into proposed section 22a-174-3a(*l*). The Department is required by section 182(c)(7) of the Act to adopt an offset ratio of 1.2 : 1 for the serious ozone non-attainment area. Section 182(d)(10) of the Act requires the offset ratio be 1.3 : 1 for the severe ozone non-attainment area. Both the existing NSR regulation and the proposed revisions are consistent with the offset ratios required by EPA and the Act. The Department should not make any changes based on this proposed comment.

73. **Comment on section 22a-174-3a(*l*), LAER offset ratio.** Proposed § 3a(l)(4)(B)(x) would maintain the LAER offset ratios at 1.2:1 (in serious non-attainment areas) and 1.3:1 (in severe non-attainment areas). This is consistent with federal standards under the CAAA. Particularly given the difficulties in obtaining offsets and the significant constraints on economic development in Connecticut from both the offset process and LAER requirements, CBIA does not support any increase of such standards.

Response to comment 73: See the Department's response to comment 72 above.

74. **Comment on section 22a-174-3a(*l*)(5):** This subsection allows the use of discrete emission reductions (DERs) to meet the emission offset requirements for NSR. To comply with the offset provisions under section 173 of the CAA, EPA requires sources to procure continuous reductions in actual emissions that offset the projected emission increase from the new source for each year the new source operates. Typically, sources comply with the offset requirements by obtaining continuous emission reduction credits (CERCs) since these reductions are continuous over the life of the new source. In order for a NSR program to allow DERs, that are by definition not continuous, the State must show that yearly DER generation exceeds DER use such that an actual emission reduction occurs for each year the source operates.

Currently, the DEP uses single source SIP actions to create DERs and to audit the generation and use of DERs. While adequate for the purpose of showing compliance to RACT rules, this system may not be advisable for creating DERs that comply with the CAA NSR offset requirements. Recent DEP audits indicate that total yearly actual emission reductions may not be occurring. If so, it could be argued that a source using DERs developed under these single SIP actions do meet the NSR requirements of the CAA for actual emission reductions. In addition, Section (l) allows sources to procure DERs in 24 month block allotments. It is possible a source could find itself without sufficient DERs to cover its offset requirements for the third and fourth year of operation. In addition, the SIP actions do not describe what action the state will take if sufficient offsets are not available or if the auditing shows current DERs do not meet the CAA's NSR requirements. Considering these issues, EPA strongly recommends that the DEP only allow sources to use CERCs for offsets until such time that the DEP has worked through these issues with us.

Response to comment 74: See the Department's response to comments 70 and 71 above.

75. Comment on section 22a-174-3a(m), Permit Requirements for Hazardous Air Pollutants subject to the provisions of section 112(g) of the Act: EPA is pleased that Connecticut has proposed requirements in its regulations to address Section 112(g) of the Clean Air Act. As we stated in our August 13, 2001 Federal Register proposal to fully approve CT's Title V program, Sections 22a-174-3a(a)(1)(C) and 3a(m) in the State's proposed rule are now adequate for issuing permits that contain Section 112(g) requirements. However, one requirement in Connecticut's rule should be clarified and one reference should be corrected. We recommend the following clarification and correction to Connecticut's rule.

(A) Under Section 3a(m)(8), Connecticut includes a provision that the permittee will not be required to comply with an applicable emission standard promulgated by the Administrator under section 112(d) or 112(h) of the Act if the emission limitation in Connecticut's permit is at least as stringent as that required by the applicable emission standard promulgated by EPA. We understand from discussions with staff at CT DEP, that CT interprets the term applicable emission standard to mean only the emission limitation in the national emission standard. Forty CFR, Subpart B, Section 63.44, the regulations implementing Section 112(g), provides that if EPA promulgates a MACT standard with a less stringent level of control than determined in the case-by-case MACT determination, the permitting authority is not required to incorporate any less stringent terms of the promulgated standard. To clarify that certain provisions other than the emission limitation of the national emission standard may still apply to a source if CT issues a more stringent emission limit, EPA recommends adding the following language to this term.

> "The permittee will not be required to comply with any less stringent provisions of an applicable emission standard..."

(B) Section 3(a)(m)(6) requires the source and the commissioner to comply with 40 CFR 63.56. These are the provisions implementing Section 112(j) of the Act. Section 63.44 includes similar provisions for Section 112(g) of the Act. EPA believes Connecticut intended to refer to the provisions of Section 63.44 here.

Response to comment 75(A): The Department should revise proposed section 22a-174-3a(m)(8) to clarify that the permittee will not be required to comply with "any less stringent provisions of" the applicable emission standard. The Department should also revise this subdivision to include the second underlined phrase "if the level of control required by" in response to comment 76(E). Section 22a-174-3a(m) should be revised as follows:

> (8) Notwithstanding subdivisions (5), (6) and (7) of this subsection the permittee will not be required to comply with <u>any less stringent provisions of</u> an applicable emission standard promulgated by the Administrator under section 112(d) or 112(h) of the Act if <u>the level of control required by</u> the emission limitation established by the permit issued pursuant to this subsection is at least as stringent as that required by the applicable emission standard promulgated by the Administrator under section 112(d) or 112(h) of the Act as determined by the commissioner."

Response to comment 75(B): The Department should revise proposed section 22a-174-3a(m)(6) to correct the CFR citation noted by EPA as follows:

> (6) The owner or operator of a source subject to this subsection and the commissioner shall comply with the provisions of 40 CFR Part ~~65.56~~ 63.44 as amended from time to time.

76. Comment on section 22a-174-3a(m), federal Case-by-Case MACT determinations: Subsection 3a(m) sets forth requirements for case-by-case MACT. It's our understanding that the intent of this subsection is to implement Subsection 112(g) of the Clean Air Act (40 CFR 63 Subpart B, hereinafter "Subsection 112(g)") with respect to construction and reconstruction of major sources of Hazardous Air Pollutants ("HAPs"). Subsection 112(g) requires State permitting authorities with an approved Title V program to make case-by-case maximum achievable control technology (MACT) determinations for constructed or reconstructed major sources in source categories for which national emission standards for hazardous air pollutants (NESHAPs) have not yet been promulgated. Unfortunately, the proposed subsection does not precisely adopt the federal program. In general, to assure that the state program is identical to that required by federal law, DEP should incorporate by reference the applicable provisions of 40 CFR 63. Listed below are some examples of where the current proposal differs from the federal rule:

(A) 22a-174-3a(m)(1) - **Definitions**

Subsection 112(g) requires determination and installation of maximum achievable control technology ("MACT") for constructed and reconstructed major sources of HAPs. Constructed and reconstructed major sources of HAPs are defined differently in Subsection (m) than they are in 112(g). The DEP regulations define "major source of hazardous air pollutants", "construct a major source of hazardous air pollutants" and "reconstruct a major source of hazardous air pollutants". Subsection 112(g) defines "construct a major source" and "reconstruct a major source".

The DEP defines "major source of hazardous air pollutants" as any stationary source that emits or has the potential to emit ten (10) tons per year or more of any particular hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants. "Construct a major source of hazardous air pollutants" is defined as "to fabricate, erect or install a major source of hazardous air pollutants or group of major sources of hazardous air pollutants within a contiguous area and under common control."

However, under Subsection 112(g), construction of a major source includes the installation of "new process or production units" (and reconstruction include replacement of components at an existing process or production unit) that in and of themselves are major sources (emits or has potential to emit 10 tons per year of any HAPs or 25 tons per year of any combination of HAP). A "process or production unit" is "any collection of structures and/or equipment, that processes, assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product." 40 CFR Part 63.41. The definition notes that a single facility may contain more than one process or production unit. In addition to requiring MACT

determination for the installation of a new "process or production unit", Subsection 112(g) provides an exclusion from MACT determination for sources that are using existing control technology which the DEP has determined to be Best Available Control Technology ("BACT") within the last five years (the "good controls" exclusion, 40 CFR Part 63.41, Paragraphs (2)(i) through (vi) of the definition of "construct a major source").

Because the definitions in Subsection (m) do not include the addition of "process or production units", Subsection (m) may not apply to all of the sources subject to case by case MACT review under 112(g). In addition, without the "good controls" exclusion, it may apply to some sources that would qualify for this exclusion to 112(g) requirements. Suggest changing definitions to be consistent with those in the federal regulations.

(B) 22a-174-3a(m)(2) - **Exemptions**

Subsection 112(g) exempts certain units and activities from the requirements of that subsection. The proposed Subsection (m) does not include several of these exemptions including:

- 40 CFR Part 63.40(b) requirements do not apply if the "owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before the effective date of subsection 112(g)(2)(B).
- 40 CFR Part 63.40(c) Exclusion for electric utility steam generating units.
- 40 CFR Part 63.40(f) Exclusion for research and development activities.

These exemptions should be added to Subsection (m).

In addition, the proposed rule does not contain the exemption for research and development facilities, as defined in subsection 22a-174-33(c)(4), which was a part of an earlier draft. Please re-insert this exemption, or explain why this exemption has not been included. If there is no exemption for research and development facilities, please explain how DEP intends to apply the case-by-case MACT rules to such complex facilities.

In addition, 22a-174-3a(m)(2)(A) exempts from the requirements of this subsection "[a] major source of hazardous air pollutants subject to the MACT standards of 40 CFR 63, provided that such owner or operator has met all requirements for preconstruction review and any other applicable requirements of 40 CFR 63, Subpart A". No date is given as to when these requirements must be met.

(C) 22a-174-3a(m)(3) - **Requirements for application**

40 CFR Part 63.43(e) includes the application requirements for a case-by-case MACT determination. The requirements listed in 22a-174-3a(m)(3) are described in 63.43(e)(2), although they are listed differently. One requirement shown in the federal rule that is not in the proposed state regulation is the submittal of the name and address (physical location) of

the major source to be constructed or reconstructed. In addition, the drafting of Subsection (m)(3)(B) is confusing. It is not clear what is required to be submitted for each single HAP with PTE of 10 TPY or more or any combination of HAPs with PTE of 25 TPY or more. The application requirements in the federal rule should be incorporated by reference.

Proposed Subsection (m) does not contain any reference to administrative procedures for review of the Notice of MACT Approval, the Notice of MACT Approval and Opportunity for public comment on the Notice of MACT approval which are described in 40 CFR Part 63.43(f), (g), and (h). Subsection 112(g) provides review options. For example, if the permitting authority requires the owner or operator to obtain, or revise a permit issued pursuant to title V of the Act before construction or reconstruction of the major source of they owner operator has the discretion to obtain or revise such permit, Subsection 112(g) gives the option of using the administrative procedures set out in an approved Title V program. 40 CFR Part 63.43(c).

(D) 22a-174-3a(m)(7).

Subsection 3a(m)(7) provides that:

(7) Any permit issued pursuant to this subsection will require the permittee to comply with the applicable emission standard promulgated by the Administrator under subsection 112(d) or 112(h) of the Act no later than eight (8) years after such standard is promulgated *or eight (8) years after the date by which the permittee was first required to comply with* ***THE*** *emission limitation established by such permit, whichever is earlier.*

Please explain how the second italicized clause would be applied to a source that installs case-by-case MACT which is different from a MACT standard later adopted by EPA. In addition, a word to qualify "emission limitation" in the last clause of the paragraph appears to be missing. We have added the word "the" as a suggested qualifier.

(E) 22a-174-3a(m)(8) **-When compliance with standard promulgated under 112(d) or 112(h) not required**

This requirement is in 40 CFR Part 63.44 and 63.56. We suggest adding the following bold language to be consistent with 40 CFR 63.56: "will not be required to comply with an applicable emission standard promulgated under subsection 112(d) or 112(h) of the Act **IF THE LEVEL OF CONTROL REQUIRED BY** the emission limitation established by..."

Response to 76(A): It is understandable that the regulated community would prefer the Department incorporate by reference the substantive provisions of 40 CFR 63 into proposed section 22a-174-3a(m). However, 40 CFR 63 Subpart B does not require a state to incorporate the provisions by reference. The limiting provisions set forth in 40 CFR 63.44(d) states that the federal rule does not prevent a state from being more stringent. Due to potential impacts to public health from HAPs, the Department should be more stringent than EPA. Section 63.42(a) sets forth that a state should review its existing programs, procedures

and criteria for preconstruction review and shall make any additions and revisions that the permitting authority deems necessary to effectuate 63.40 through 63.44.

Proposed section 22a-174-3a(m) covers all applicable sources as defined under 40 CFR 63 Subpart B. Although the proposed regulation may use different language within the definitions, the proposed regulation meets the federal requirement that the state's Title V program regulate all sources subject to Section 112(g). For example, the proposed regulation requires any major source of federally defined HAP (or group of such major sources) that constructs or reconstructs to undergo a review under section 112(g) of the Act. On August 13, 2001 EPA proposed to approve the proposed revisions to the Connecticut Title V program as meeting the interim approval issues identified in earlier EPA rulemakings. Given that any significant changes to proposed section 22a-174-3a(m) could impact EPA's proposed final approval of the Connecticut Title V program and that EPA has indicated that proposed section 22a-174-3a(m) meets the requirements of 40 CFR 63 Subpart B and section 112(g) of the Act, the Department should not make any changes based upon this comment.

With respect to the comment that the proposed regulation does not allow the "good controls" exclusion, the Department should not make any changes based upon this comment. The Commissioner in making a previous BACT determination may not have considered the same factors that must be considered in an application submitted in accordance with proposed section 22a-174-3a(m).

Response to 76(B): With respect to these comments:

- The Department should not include the exemption for major sources that received all necessary air quality permits for construction before the effective date of Section 112(g)(2)(B). The effective date of Section 112(g) is defined in 63.41 to be no later than June 29, 1998. Such sources could not be subject to proposed section 22a-174-3a(m), therefore the Department should not make this proposed change.

- The Department should not include the exemption for electric utility steam generating units. By the terms of 40 CFR 63.40(c), this exclusion only applied "until such time as these units are added to the source category list." In a Federal Register notice dated December 20, 2000 (65 FR 79825), electric utility steam generating units were added to the source category list. Therefore, this exclusion is no longer available.

- The Department should include an exemption for research and development activities. The Department should exempt these activities by adopting a new subparagraph (C) within section 22a-174-3a(m)(2) as follows:

  (2) The owner or operator of the following sources are exempt from the requirements of this subsection:

  (A) A major source of hazardous air pollutants subject to the MACT standards of 40 CFR 63, provided that such owner or operator has met all requirements for preconstruction review and any other applicable requirements of 40 CFR 63, Subpart A;

(B) A major source of hazardous air pollutants de-listed by the Administrator pursuant to section 112(c)(9) of the Act; or

(C) A major source of hazardous air pollutants excluded for research and development activities pursuant to 40 CFR 63.40(f).

The commentor also states that under Section 22a-174-33a(m)(2)(A) no date is given for these requirements. No date is necessary here. Preconstruction review is required before construction and the MACT compliance dates are specified in the MACT rule. Therefore the Department should not make a change based upon this comment

Response to 76(C):

- The Department should not incorporate by reference the application requirements from the federal rule as suggested by this commentor. Because proposed section 22a-174-3a(m) implements a preconstruction review program, the general application requirements of proposed section 22a-174-3a apply in addition to the added requirements specified in proposed section 22a-174-3a(m). Proposed section 22a-174-3a(c) would require the information raised by the commentor. Thus, proposed section 22a-174-3(m) requires the same information as 40 CFR 63.42(e) although the language is worded differently.

- The Department disagrees with the commentor's assertion that proposed section 22a-174-3a(m) does not provide for administrative procedures for review of the various notices delineated in 40 CFR 63.43(f) and (g). Section 63.43(c)(2)(ii) allows a source to apply for a MACT determination under any other administrative procedures for preconstruction review established by the state which provide for public participation and ensure that no person may begin actual construction unless the permitting authority determines the MACT emission limitation will be met. The Department has established administrative procedures under Section 22a-174-2a that apply to 112(g) sources. Section 22a-174-2a(b)(7) requires public notice. In addition, Section 22-174-3a(b)(2) prohibits construction until permit issuance. Therefore, the Department has administrative procedures meeting the requirements of 40 CFR 63 Subpart B and should not change the proposed regulations based upon this comment.

Response to 76(D):

- The Department should add the word "the" before emission limitation in proposed section 22a-174-3a(m)(7) as follows:

(7) Any permit issued pursuant to this subsection will require the permittee to comply with the applicable emission standard promulgated by the Administrator under section 112(d) or 112(h) of the Act no later than eight (8) years after such standard is promulgated or eight (8) years after the date by which the permittee was first required to comply with the emission limitation established by such permit, whichever is earlier.

- The purpose of proposed section 22a-174-3a(m)(7) is to provide the Commissioner the authority to require a source to comply with MACT sooner than eight years from the date on which EPA promulgated such MACT. The Department should not further elaborate on the hypothetical issue raised in the comment as the commentor did not provide sufficient information on the regulatory authority that required the installation of the case-by-case MACT and the date of installation or the proposed promulgation dates of the later MACT.

Response to 76(E): See the Department's response to comment 75(A) above.

X. Summary of Specific Comments on Proposed RCSA Section 22a-174-3b:

1. Comment on sections 22a-174-3b and 22a-174-3c: As currently drafted, these two new sections of the proposed NSR regulations are very confusing. Obviously, these two sections are closely linked in their regulatory intent. Why is there a need to have two separate sections that essentially deal with the same issue of permit exemptions? It is especially important that these sections of the regulations be written clearly and understandably because they will apply to a large number of small facilities that have limited experience with environmental matters. Making the regulations confusing will only promote non-compliance. ERL recommends that Sections 22a-174-3b and -3c be combined into a single regulatory section that is more clearly and logically presented.

Response to comment 1: The Department should not make the suggested change. See the Department's response to comment 1 in Part IX of this report.

2. Comment on section 22a-174-3b: It is EPA's understanding that Connecticut is proposing the automotive refinishing regulation based on model rules developed by the Ozone Transport Commission (OTC) in order to achieve reductions to meet the Southwest Connecticut Severe Ozone Nonattainment Area shortfall. Accordingly, it is critical that this rule apply to a significant portion of the automotive refinishing operations that occur in the State and that the applicability of the rule be as clear and concise as possible. Any ambiguity in the applicability may result in the rule achieving less reductions (*sic*) than was originally anticipated.

Specifically, the applicability of Connecticut's rule as currently stated in Sections (b)(1), (2), and (3) is somewhat confusing. It is not clear why the rule only applies to facilities with potential emissions greater than 15 tons per year (tpy) but then Section (d)(1)(A) of the rule restricts a facility's usage of coatings and solvent to no more than 2,000 gallons per year. Considering that automotive refinishing coatings range from 4.6 to 7.0 lbs of VOC per gallon, the 2,000 gallon per year restriction means that facilities are not allowed to exceed approximately 7 tpy.

It is EPA's understanding that the Connecticut DEP intends the proposed requirements in Section 22a-174-3b(d) to apply to existing automotive refinishing operations that previously

did not receive a construction permit pursuant to Connecticut's existing Section 22a-174-3. The 15 tpy applicability threshold of the proposed automotive refinishing rule, however, does not coincide with the applicability of the state's existing Section 22a-174-3. The existing rule requires permits for several different types of new or modified stationary sources. Automotive refinishing operations would be subject to the permit requirement based on subsection (a)(1)(viii) of Section 22a-174-3 that includes "any other stationary source, including any process, operation, equipment, or activity except those sources which are below the thresholds established in subparagraphs (a)(1)(i) through (v), whose emissions of any air pollutant after the application of air pollution control equipment and where the emission rate is calculated using the maximum rated capacity is greater than 5 tons per year."

Therefore, EPA recommends that the term "automotive refinishing operation" in Sections (b)(1), (2), and (3) be deleted and a separate applicability section for automotive refinishing be included to read as follows:

> "(b)(4) Any automotive refinishing operation constructed or modified after July 1, 1979 whose VOC emissions after the application of air pollution control equipment and where the emission rate is calculated using the maximum rated capacity is greater than 5 tons of VOC per year is subject to the requirements of Section 22a-174-3b(d) as of [six months after the effective date of the regulation] unless such operation received a valid construction permit prior to [the effective date of this regulation]."

In addition, EPA recommends that the 2,000 gallon per year restriction in Section (d)(1)(A) be deleted.

Another aspect of the applicability of Connecticut's rule that should be revised is the definition of "automotive refinishing operation." This term is defined in Section 22a-174-3b(a) as "the processes for coating painting or repairing the pre-existing coat or paint applied to automobiles and automotive components at an automobile manufacturing plant. . ." In addition, the term "automobile" is defined in this section as "a passenger car, van, motorcycle, truck or any other motorized vehicle for transportation."

The OTC model rule for this category, however, applies more broadly to mobile equipment repair and refinishing with mobile equipment also including mobile cranes, bull dozers, camp shells, street cleaners, and farm equipment. In addition, Connecticut's rule only applies to work done at an automobile manufacturing plant which would exclude all auto body shops in Connecticut. The OTC model rule, on the other hand, applies more broadly to any person who applies mobile equipment repair or refinishing coatings, with exemptions provided for the case where the person applying the coatings does not receive compensation and for surface coating processes at automobile assembly plants. Therefore, Connecticut should revise its applicability definitions to be consistent with the OTC model rule, if the State plans on relying on the same amount of reductions as is presented in the OTC-Pechan report[7]. Alternatively, if Connecticut wants to more narrowly define the applicability of its rule, then the reductions claimed by the State will need to be appropriately adjusted.

[7] "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules," E.H. Pechan & Associates, March 31, 2001.

Finally, in order for EPA to approve and assess appropriate credit for Connecticut's automotive refinishing regulation, Connecticut should submit information on the total number of automotive refinishing shops in the State and how many of these will be covered by this regulation. Furthermore, EPA recommends that the State develop an outreach strategy to inform affected facilities of the new regulation in order to ensure appropriate rule effectiveness.

Response to comment 2: The Department should revise section 22a-174-3b as explained below in response to EPA's concerns. Before describing the specific responses to EPA's comments, the Department will place section 22a-174-3b in the context of: (1) the purpose of the section; (2) the proposed revision to Connecticut's minor new source review program; (3) Connecticut's minor source operating permit program; and (4) the potential role of proposed section 22a-174-3b in securing additional VOC reductions towards meeting the EPA identified emissions reduction shortfall within the Southwest Connecticut Severe Ozone Nonattainment Area.

Purpose of Section 22a-174-3b

Proposed section 22a-174-3b was **not** designed and developed for the primary purpose of achieving ozone reductions for SIP purposes. Rather, proposed section 22a-174-3b creates a standardized exemption from permitting for small sources with actual emissions that make an insignificant contribution to overall air pollutant emissions in the state if the sources are operated in accordance with the section. Proposed section 22a-174-3b, therefore, will result in increased staff efficiency and administrative cost savings by focusing resources on efforts intended to achieve the highest ratio of pollutant reduction (environmental benefit) per unit of staff effort. The section also reduces administrative requirements for the owners and operators of sources to which the section applies.

As an ancillary benefit, proposed section 22a-174-3b will achieve a certain level of ozone reductions. These reductions may assist the Department in meeting EPA's calculated shortfall for the Southwest Connecticut Severe Ozone Nonattainment Area. If the Department seeks to use any portion of section 22a-174-3b to meet he EPA identified emissions reductions shortfall, the Department should quantify these reductions and submit a SIP revision to EPA.

Structure of Connecticut's Current Permit Program for Automotive Refinishers

Under the current permit regulations in Connecticut, the owner or operator of a source must **apply** for a permit if the source (or modification) will have potential emissions of five tons per year or more. However, a source is not required to **obtain** a permit unless the source will have potential emissions of 15 tons per year or more. A typical automotive repair shop that operates a single spray gun can have potential emissions, based on theoretical operation at maximum rated capacity, of almost 40 tons per year. A typical automotive repair shop will have actual emissions between one and three tons per year. Due to the large number of these sources (approximately 600) and the low actual emissions associated therewith, the Department issued a general permit in 1996 to limit the potential emissions from registered automotive refinishers to less than five tons per year, i.e., less than the applicability threshold

set forth in section 22a-174-3 of the Regulations of Connecticut State Agencies, the Department's current permit regulations. The general permit for automotive refinishers will expire in five years unless re-issued by the Department. If the Department does not re-issue the general permit for automotive refinishing operations, the Department anticipates that the owners and operators of such sources will choose to operate under proposed section 22a-174-3b.

Structure of Connecticut's Proposed Permit Program for Automotive Refinishers

The primary revision to the Connecticut permit program is removal of the requirement to apply for, but not obtain a permit. The Department has proposed to increase the applicability threshold to fifteen tons per year or more of potential emissions. Sources with potential emissions at this level will be required to apply for **and** obtain a permit. With the increase of applicability levels to 15 tons per year, there is no administrative or policy reason to re-issue the general permit for automotive refinishing operations with an emissions cap of approximately five tons per year. Rather, the Department proposed section 22a-174-3b as a self-implementing regulation that would achieve the same environmental benefits of the automotive refinishing operations general permit - without the administrative costs and delays associated with the general permit registration approval process.

Response to EPA's specific comments:

- The Department anticipates the owners of approximately 600 automotive refinishing operations will seek coverage under proposed section 22a-174-3b. This group of owners sought coverage under the general permit for automotive refinishing operations sources in lieu of obtaining permits under section 22a-174-3 of the Regulations of Connecticut State Agencies. In the event the Department does not re-issue the automotive refinishing operations general permit, these sources would be subject to proposed section 22-174-3a. Proposed section 22a-174-3b would impose practicably enforceable operating restrictions sufficient to limit potential emissions below 15 tons per year (allowable emissions would be approximately seven tons per year). For example, the 2,000 gallons per year operational restriction on coating and solvent use will restrict allowable emissions from an automotive refinishing operation to approximately seven tons per year. This coating limit is an essential operational limitation, and the Department should not delete it.

- EPA recommends the Department amend the definition of "automotive refinishing operation" to use the five ton potential emissions threshold utilized in current section 22a-174-3 of the Regulations of Connecticut State Agencies. The Department should not make this suggested change since the applicability threshold in the proposed regulations is increased to 15 tons per year or more of potential emissions.

- EPA recommends the Department amend the definitions in subsection (a) of proposed section 22a-174-3b to indicate this regulation applies to automobile body refinishers, not automobile manufacturing plants. As drafted, the definition of "automotive refinishing operation" in subsection (a) applies to a broad reach of such refinishing operations, not automobile manufacturing plants. The term "automobile manufacturing plant" designates

the location at which an original coat of paint is applied to an automobile. An "automobile refinishing operation" includes any person who subsequently adds a new surface to the pre-existing paint. To clarify the meaning of "automobile manufacturing plant," the Department should revised that definition and add an additional definition of "pre-existing coat or paint" in subsection (a) as follows:

(3) "Automotive refinishing operation" means the processes ~~for coating, painting or repairing~~ performed to apply a new surface to the pre-existing coat or paint on an automobile or automotive component ~~applied to automobiles and automotive components at an automobile manufacturing plant,~~ including but not limited to surface preparation, primer application, topcoat application and applicator cleaning;

(13) "Pre-existing coat or paint" means a surface covering or coating applied to an automobile or automotive component at an automotive manufacturing facility;

- EPA recommends the Department revise its applicability definitions to be consistent with the Ozone Transport Commission (OTC) model rule. The Department has evaluated the measures that must be adopted to meet the EPA identified emission reduction shortfall for the Southwest Connecticut Severe Ozone Nonattainment Area in a separate action. The Department does not need to adopt the OTC automobile refinishing model rule to meet the EPA identified emission reduction shortfall. If the Department seeks to use any portion of proposed section 22a-174-3b to meet the EPA identified emission reduction shortfall, then Connecticut will adjust the amount of reductions claimed to reflect the universe of sources regulated by proposed section 22a-174-3b.

3. **Comment on section 22a-174-3b:** Connecticut's rule should be revised to include the VOC coating limits included the OTC model rule. The OTC rule limits are consistent with the federal limits stated in 40 CFR Part 59 Subpart B "National Volatile Organic Compounds Emission Standards for Automobile Refinish Coatings." The federal limits, however, apply to the manufacture and sale of automotive coatings, whereas the OTC rule limits apply to the application of these coatings. Therefore, EPA recommends that Connecticut's rule include these coating limits in Section (d)(1) of the rule to ensure that the coatings are not diluted with solvent prior to application. Also, Section (d)(3) should be revised to include records for determining compliance with these limits.

Response to comment 3: The Department should not make the suggested changes as the additional administrative requirements, particularly recordkeeping, would be contrary to the Department's goal that proposed section 22a-174-3b provide a streamlined compliance mechanism for smaller sources by means other than an individual permit under proposed section 22a-174-3a. See the Department's response to comment 2 above.

4. **Comment on section 22a-174-3b:** EPA recommends that Connecticut consider adding to its regulation the following pollution prevention and training measures that are included in the OTC model rule:

(d)(4) The owner or operator of an automotive refinishing operation shall implement the following pollution prevention and training measures:

(A) Ensure that a person who applies automotive refinishing coatings has completed training in the proper use and handling of the automotive repair coatings, solvents, and waste products in order to minimize the emission of air contaminants and to comply with this section.

(B) Fresh and used coatings, solvent, and cleaning solvents, shall be stored in nonabsorbent, nonleaking containers. The containers shall be kept closed at all times except when filling or emptying.

(C) Cloth and paper, or other absorbent applicators, moistened with coatings, solvents, or cleaning solvents, shall be stored in closed, nonabsorbent, nonleaking containers.

(D) Handling and transfer procedures shall minimize spills during the transfer of coating, solvents, and cleaning solvents.

In addition, in order to make the training requirements referenced above enforceable, Connecticut should also revise the recordkeeping requirements of Section (d)(2) to read as follows:

(2) The owner or operator of an automotive refinishing operation shall maintain records of the information necessary for the commissioner to determine compliance with the requirements of subdivisions (1) and (4)(a) of this subsection. . .

Response to comment 4: The Department should not make the suggested changes as the additional regulatory requirements would be contrary to the Department's goal that proposed section 22a-174-3b provide a streamlined compliance mechanism for smaller sources by means other than an individual permit under proposed section 22a-174-3a. See the Department's response to comments 2 and 3 above.

5. Comment on section 22a-174-3b: EPA understands the intent of this section is to provide an expedited permitting process for a specific group of well-defined emission units. Under the section, a source can avoid permitting if it agrees to follow the practically enforceable operational restrictions that limit the PTE for these source categories to below the section 22a-174-3a construction permit threshold level of 15 TPY. EPA understands the operational limits are derived from conservative emission factors to ensure PTE levels are well below 15 TPY. However, to provide the public and EPA with information on how the DEP developed these restrictions, the DEP should include a technical support document that includes the emission factors and other data used to determine the operational restrictions for each source category.

Response to comment 5: The Department has prepared the technical support document for proposed section 22a-174-3b as requested by EPA. See **Attachment 2** to this hearing report.

6. **Comment on section 22a-174-3b(b)(1)(A):** One commentor requests the Department lower the applicability levels to 10 tons or more per year.

Response to comment 6: As stated in response to comment 6 in Part IX of this report, the Department has decided as a matter of policy to increase the minor new source review applicability thresholds for small sources as proposed in section 22a-174-3a to 15 tons per year of actual emissions. The Department believes the 10 ton emissions level proposed by this commentor is taken from section 3a(a)(1)(C) of the proposed regulations. This provision contains the emission thresholds to address preconstruction review requirements for sources of federally listed hazardous air pollutants (HAPs). HAPs are of greater concern and warrant the lower threshold. With respect to the comment that the Department base its permitting program on potential, rather than actual emissions, the commentor should understand that the definition of actual emissions in some instances requires use of potential emissions in lieu of actual emissions in a manner consistent with the federal new source review program requirements. By adopting the federal approach (i.e., basing permit applicability on actual emissions first and potential emissions second), the Department will be better equipped to focus its limited resources on those sources of air pollution that will effect air quality to such a degree that warrants a case-by-case technology determination under BACT. As such, the Department should not make any changes to the proposed regulations based upon this comment.

7. **Comment on section 22a-174-3b(b)(1)(C):** One commentor requests the Department revise this subparagraph as follows:

> "The source is not a newly constructed, reconstructed or modified major source of hazardous air pollutants subject to the requirements of. . ."

Response to comment 7: The Department should not make the requested change as it will narrow the scope of the proposed regulation beyond that intended by the Department.

8. **Comment on section 22a-174-3b(g)(1)(A) & (B):** One commentor believes the VOC content specified in these subparagraphs are excessively lenient. In other [unidentified] non-attainment areas, VOC content for surface coating operations are limited to 4.5 pounds per gallon or less. The proposed limit of 6.3 pounds per gallon is excessively high and should be clarified. Does the limit include water and exempt solvents? This commentor requests the Department lower the VOC limit to 4.5 pounds per gallon excluding water and exempt solvents.

Response to comment 8: The Department should not make the requested change. The proposed VOC content limit of 6.3 pounds per gallon for surface coating operations is designed to work in conjunction with the 2,000 gallon coating use limit to restrict total emissions from sources operated in accordance with the section to below seven tons per year. The section is designed primarily to create a standardized exemption from permitting, not to achieve additional VOC reductions for ozone SIP purposes. See response to comment 1 above. Furthermore, in response to the comment, the proposed 6.3 pounds per gallon limit includes solvents and excludes water as stated in proposed section 22a-174-3b(g)(1)(C). The

commentor should note that VOC limits lower than those set forth in the proposed regulation now exist in section 22a-174-20 of the R.C.S.A. The Department should not make any changes based on this comment.

9A –9J. Comment on section 22a-174-3b: Exemptions from permitting for external combustion units, automotive refinishing operations, emergency engines, nonmetallic mineral processing equipment and surface coating operations.

(A) This new subsection provides a useful option for small sources to limit emissions without the need to obtain a permit. Since smaller and less environmentally sophisticated facilities are most likely to take advantage of this subsection, the DEP should make clear either in the regulation or in outreach activities that sources exempt from permits may still be subject to emission limitations and other requirements in the air pollution regulations. For example, most surface coating operations are also subject to subsection 22a-174-20 of the regulations, and depending upon the type of surface coating operation, a VOC limit of less than 6.3 pounds per gallon will likely apply. The simple statement in subsection 3b(j)(2) that nothing in the subsection relieves an owner or operator of its obligation to comply with "any other applicable federal, state or local law" will not provide sufficient notice to many of those regulated by this subsection of the regulations.

(B) The term "new stationary source" does not appear to be used in this regulation and therefore should be deleted. If there is a need for the definition, it should be revised since it could be interpreted to include older sources which did not require air permits when they were built. The definition should be revised as follows:

> (12) "New stationary source" means a stationary source**, OTHER THAN AN EXISTING STATIONARY SOURCE WHICH WAS NOT REQUIRED TO OBTAIN A PERMIT UNDER CHAPTER 446C OF THE GENERAL STATUTES,** for which a permit to control emissions to the air has not been issued by the Department;

(C) The definition of "spray booth" is very broad and appears to include any building in which spray painting is conducted. Is this the intent, or is a spray booth supposed to vent to the ambient air? Does the term "spray booth" include the use of aerosol cans of spray paint in a building?

(D) Subsection 3b(b)(3) has created some confusion among the regulated community because it states that section 3b does not apply to sources with "potential emissions of less than fifteen (15) tons per year ***of each*** individual air pollutant", while subsection 3b(1)(A), which establishes the applicability criteria refers to sources with "potential emissions of fifteen (15) tons or more per year ***of any*** individual air pollutant." It would seem that section 3b(b)(3) of the regulations is unnecessary and redundant. Given the confusion it has engendered, please either delete the provision or explain its intent in the Hearing Officer's Report.

(E) Subsection 3b(b)(2) addresses the applicability of the subsection to modifications of existing sources. The second criteria for applicability, subsection (B) requires that: "At the

time of modification, the source is not authorized to operate pursuant to an individual permit issued pursuant to subsection 22a-174-3a of the Regulations of Connecticut State Agencies." Does this mean that sources operating under a permit issued pursuant to subsection 22a-174-3 can use subsection 22a-174-3b?

(F) External combustion units. Since the sulfur content of distillate fuel oil cannot exceed 0.3%, DEP should consider identifying that requirement in subsection 3b(c)(1)(C) and 3b(c)(3).

(G) Surface Coating, 22a-174-3b (g)(1)(D). This subparagraph currently reads:

> (D) Any electrostatic dry powder coating operation or plasma spray operation shall be operated only with particulate control equipment that meets the following requirements:
>
> (i) is integrated in the coating or spray operation,
>
> (ii) includes a minimum collection efficiency of 90%, and
>
> (iii) is operated and maintained in good working condition.

As a matter of practice all dry powder coating and plasma spray operations are constructed and operated with particulate control equipment. However, the control equipment may not be "integrated" into the process equipment. A restrictive interpretation of the word "integrated" might render this exemption from permitting unusable. In addition, since (D) states "...shall be operated only with particulate control equipment..." it is unnecessary to require that the equipment be integrated. We request that subparagraph (i) be eliminated. This wording is redundant, and leaves open possible arguments on the definition of integration. In addition, particulate control equipment does not need to be "integrated" in the coating or spray operation for emissions to be effectively controlled. If subparagraph (i) cannot be eliminated, the proposed wording of that subparagraph should state:

> (i) is effective in controlling particulate matter in the coating or spray operation.

(H) Emergency engine, 22a-174-3b (e). This Section provides:

> (1) The owner or operator of an emergency engine shall properly maintain equipment and operate such engine in accordance with this subsection.
>
> (2) No owner or operator of an emergency engine shall cause or allow such engine to operate except in an emergency and unless the following conditions are met:
>
> (A) Operation of such engine shall not exceed 500 hours during any twelve (1' month rolling aggregate; and

(B) Any nongaseous fuel consumed by such engine shall not exceed a sulfur content of 0.3% by weight, dry basis.

The current wording could be construed not to allow for operation during periods of testing or scheduled maintenance, as mentioned in the current definition of Emergency Engine in 22a-174-22(a)(3). Therefore, we recommend the following language:

(1) No owner or operator of an emergency engine shall cause or allow such engine to operate except during periods of testing and scheduled maintenance or during an emergency and unless the following conditions are met:...

(I) Reporting. Subsection 3b(i) contains redundant language requiring copies of records to be submitted to the DEP. We suggest that DEP delete the language, as shown below:

The owner or operator of any source required to make and maintain records pursuant to this subsection shall provide any such records, or a copy thereof, to the commissioner upon request and shall make such records available to the commissioner to inspect at the location maintained ~~and shall make and provide copies of any records requested by the commissioner~~.

(J) Individual application. To clarify that this subsection 3b is an option available to sources, but that sources may determine that it is in their best interest to limit potential emissions beyond that provided for in this regulation, subsection 3b(k) should be amended to make clear that sources may apply for individual permits at their discretion. For example, a major stationary source may wish to have permits for engines and other sources which limit potential emissions to avoid nonattainment requirements for major modifications. We suggest revising subsection 3b(k)(1) as follows:

(1) Nothing in this subsection shall preclude the commissioner from requiring an owner or operator to obtain an individual permit pursuant to subsection 22a-174-3a of the Regulations of Connecticut State Agencies. **IN ADDITION, NOTHING IN THIS SUBSECTION SHALL PRECLUDE AN OWNER OR OPERATOR FROM APPLYING FOR AN INDIVIDUAL PERMIT PURSUANT TO SUBSECTION 22A-174-3A OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES FOR A SOURCE ELIGIBLE FOR COVERAGE UNDER THIS SUBSECTION.**

Response to comments 9(A) through (J), inclusive:

(A) The Department should make every effort to inform the regulated community of new regulatory requirements and the extent to which any sources covered by new regulatory requirements may be still be subject to other air pollution control requirements. This comment will be passed to the appropriate staff concerning outreach activities. The Department should not change the proposed regulation based on this comment.

(B) The Department agrees that the term "new stationary source" does not appear in proposed section 22a-174-3b and should be deleted from subsection (a) in the final wording of section 22a-174-3b.

(C) The definition of "spray booth" is intended to apply broadly to any partition in which coatings are applied using spray equipment. A spray booth is not defined based on venting but on the presence of spray application equipment within an area designated either permanently or temporarily for spray application. A spray booth may include a room with installed spray equipment that is dedicated to the application of coatings or a portion of a room temporarily set off with plastic sheets hung from ceiling to floor in which coatings are applied with spray equipment. To clarify the definition based on the comment, the Department should revise the definition of spray booth in the final wording of section 22a-174-3b(a)(14) as follows:

> (14) "Spray booth" means a ~~structure~~ building, a room within a building or a partitioned area in a room, housing automatic or manual spray application equipment, that is used to apply coatings;

(D) The Department concurs with the commentor that proposed section 22a-174-3b(b)(3), as drafted, is redundant, except to the extent it clarifies the interaction between proposed sections 22a-174-3b and 22a-174-3c. In the final wording of section 22a-174-3b, the Department should revise the proposed section 22a-174-3b(b)(3) as follows:

> (3) The requirements of this section do not apply to ~~the owner or operator of a stationary source that is an external combustion unit, an automotive refinishing operation, a nonmetallic mineral processing equipment, an emergency engine or a surface coating operation if such source has potential emissions of less than fifteen (15) tons per year of each individual air pollutant, including~~ those sources operating in compliance with section 22a-174-3c of the Regulations of Connecticut State Agencies.

(E) Proposed section 22a-174-3b(b)(2)(B) requires that: "At the time of modification, the source is not authorized to operate pursuant to an individual permit issued pursuant to subsection 22a-174-3a of the Regulations of Connecticut State Agencies." This does mean that sources operating under a permit issued pursuant to section 22a-174-3 can not use section 22a-174-3b to otherwise engage in the permitted activity and disregard the existing individual permit. The Department should revise proposed section 22a-174-3b(b)(2)(B) as follows:

> (B) At the time of modification, the source is not authorized to operate pursuant to an individual permit issued pursuant to section 22a-174-3a or former section 22a-174-3 of the Regulations of Connecticut State Agencies;

(F) The Department should not make the suggested changes. The addition of such requirements are not necessary since the 0.3% sulfur content restriction on distillate fuel oil is a requirement outside the scope of proposed section 22a-174-3b.

(G) The Department should agree with the commentor that subparagraph (i) of proposed section 22a-174-3b(g)(1)(D) is not necessary. The Department should revise proposed section 22a-174-3b(g)(1)(D) as follows:

(D) Any electrostatic dry powder coating operation or plasma spray operation shall be operated only with particulate control equipment that meets the following requirements:

~~(i) is integrated in the coating or spray operation,~~

~~(ii)~~(i) includes a minimum collection efficiency of 90%, and

~~(iii)~~(ii) is operated and maintained in good working condition.

(H) The Department calculated the 500 hour operating restriction on emergency engines based on EPA guidance. Furthermore, the 500 hours is designed to address all hours of emergency engine operation. The Department should revise proposed section 22a-174-3b(e)(2) as follows:

(2) No owner or operator of an emergency engine shall cause or allow such engine to operate except ~~in~~ during periods of testing and scheduled maintenance or during an emergency and unless the following conditions are met:

(A) Operation of such engine shall not exceed 500 hours during any twelve (12) month rolling aggregate; and

(B) Any nongaseous fuel consumed by such engine shall not exceed a sulfur content of 0.3% by weight, dry basis.

(I) In accordance with this comment, the Department should revise proposed section 22a-174-3b(i)(1) as follows:

(1) The owner or operator of any source required to make and maintain records pursuant to this section shall provide any such records, or a copy thereof, to the commissioner upon request and shall make such records available to the commissioner to inspect at the location maintained ~~and shall make and provide copies of any records requested by the commissioner~~.

(J) Proposed section 22a-174-3b(k) should be amended to make clear that sources may apply for individual permits at their discretion. The Department should revise proposed section 22a-174-3b(k)(2) as follows: .

(2) Nothing in this section shall preclude an owner or operator from applying for an individual permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies, if applicable.

~~(2)~~ (3) An owner or operator who has filed an application for an individual permit pursuant to subdivision (1) of this subsection shall comply with the requirements of this section while such application is pending.

10 (A) – (C). Comments on section 22a-174-3b.

(A) Subsection 3b(b)(2) addresses the applicability of the section to modifications of existing sources. The second criteria for applicability, subsection (B) requires that: "At the time of modification, the source is not authorized to operate pursuant to an individual permit issued pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies." Does this mean that sources operating under a permit issued pursuant to section 22a-174-3 can use section 22a-174-3b?

(B) Reporting. Subsection 3b(i) contains redundant language requiring copies of records to be submitted to the DEP. A commentor suggests that DEP delete the language, as shown below:

> The owner or operator of any source required to make and maintain records pursuant to this section shall provide any such records, or a copy thereof, to the commissioner upon request and shall make such records available to the commissioner to inspect at the location maintained ~~and shall make and provide copies of any records requested by the commissioner~~.

(C) Individual application. To clarify that this section 3b is an option available to sources, but that sources may determine that it is in their best interest to limit potential emissions beyond that provided for in this regulation, subsection 3b(k) should be amended to make clear that sources may apply for individual permits at their discretion. For example, a major stationary source may wish to have permits for engines and other sources which limit potential emissions to avoid nonattainment requirements for major modifications. A commentor suggests revising subsection 3b(k)(1) as follows:

> (1) Nothing in this section shall preclude the commissioner from requiring an owner or operator to obtain an individual permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies. In addition, nothing in this section shall preclude an owner or operator from applying for an individual permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies for a source eligible for coverage under this section.

Response to comments 10(A) through (C), inclusive:

(A) See the Department's response to comment 9(E) above.

(B) See the Department's response to comment 9(I) above.

(C) See the Department's response to comment 9(J) above.

XI. Summary of Specific Comments on Proposed RCSA Section 22a-174-3c:

Comment on sections 22a-174-3b and 22a-174-3c: As currently drafted, these two new sections of the proposed NSR regulations are very confusing. Obviously, these two sections are closely linked in their regulatory intent. Why is there a need to have two separate sections that essentially deal with the same issue of permit exemptions? It is especially important that these sections of the regulations be written clearly and understandably because they will apply to a large number of small facilities that have limited experience with environmental matters. Making the regulations confusing will only promote non-compliance. ERL recommends that Sections 22a-174-3b and -3c be combined into a single regulatory section that is more clearly and logically presented.

Response: The Department should not make the suggested change.

As explained in the public notice, proposed section 22a-174-3b establishes practicably enforceable emission limitations and operational restrictions for several source categories. Compliance with the emission limitations and operational restrictions will limit the actual emissions of these small stationary sources to levels for which an individual permit under proposed section 22a-174-3a will not be required in most cases. Unlike proposed section 22a-174-3c section 3b also establishes more extensive record keeping requirements appropriate for these small stationary sources to demonstrate compliance with the applicable standards.

Proposed section 22a-174-3c also establishes limitations on potential emissions for a subset of the sources that may be operated under proposed section 22a-174-3b. But unlike proposed section 22a-174-3b, with minor record keeping, owners and operators of equipment at facilities with premises-wide fuel, coating and solvent purchase levels, below the limits specified in proposed section 22a-174-3c, would not be required to obtain a permit under Section 22a-174-3a nor operate under the restrictions set forth in proposed section 22a-174-3b.

XII. Summary of Specific Comments on Proposed RCSA Section 22a-174-33

1. **Comment:** For comment on the state's operating permit program regulations, EPA submitted a copy of the federal register notice, "Full Approval of Operating Permit Program: State of Connecticut", Federal Register Vol.66, No.156, Monday, August 13, 2001, pages 42496 – 42499, that proposes granting full approval of the state's program. The notice discusses how the state's proposed rule has been changed to address EPA's interim approval conditions. Interim approval conditions Nos. 10 and 28 rely on EPA interpreting the state rules in a certain manner as discussed in the attached federal register notice. It is EPA's understanding that Connecticut agrees with this interpretation.

Response to comment 1:

- The federal register notice, "Full Approval of Operating Permit Program: State of Connecticut", Federal Register Vol.66, No.156, Monday, August 13, 2001, pages 42496 – 42499, that proposes granting full approval of the state's program is attached to this report as Attachment 3 and incorporated by reference herein. With respect to Issue Number 10, EPA has correctly stated that the Department intends the phrase "emissions allowable under the permit" have the same meaning as provided through the incorporation by reference of 40 CFR 70.4(b)(12)(i) into proposed section 22a-74-33.

- With respect to Issue Number 28, EPA has correctly stated that the Department is not mandating that periodic monitoring shall be record keeping in all cases, but only in those cases where the Department affirmatively determines record keeping to be sufficient to collect data representative of a source's compliance status.

2. Comment on Subsection 33(a)(1) - Definition of "alternative operating scenario". DEP's definition of "alternative operating scenario," as currently drafted, is unclear and could be construed extremely broadly, so as to be unworkable. In particular, DEP's proposed definition could be said to require Title V Permits to include every conceivable alternative operating scenario. For manufacturers in highly dynamic industries, this is impossible as a practical matter. This problem is further compounded by the fact that each operating scenario must have separate monitoring, testing and record keeping to ensure enforceability. See proposed subsection 33(o)(3); 40 CFR subsection 70.6(a)(9).

Moreover, such an expansive interpretation of the proposed definition would be inconsistent with EPA guidance on the issue. At least one EPA Region has confirmed that the identification of alternate operating scenarios is required only in very limited circumstances, when an emission unit may be subject to different standards depending upon the use (e.g., different NOx emissions are applicable to a boiler depending upon whether the boiler burns No. 2 or No. 6 fuel oil):

> "1. What is a reasonable number of alternative operating scenarios? Can a "bookend" (i.e., normal and extreme scenario) approach be used?
>
> It is not necessary or practical to contemplate every possible scenario in the application, and not every scenario will require alternative permit terms and conditions. Permitting in the worst case avoids listing many scenarios that would be allowed under the worst scenario. As long as all applicable requirements are met, the permit may rely on the worst case scenario and need not also reflect normal operations. Moreover, alternative operating scenarios are not needed at all if alternative operations do not violate permit terms or conditions or create new applicable requirements. For instance, a source subject to an emission rate limit may operate at varying capacities as long as the rate is not exceeded."

See Title V Implementation Q & A, EPA Region IX (December 1995); http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/q&ar92.pdf.

Based upon the foregoing, this commentor requests that DEP confirm the above understanding of the term "alternative operating scenario" and its meaning for Title V applications and permits, and if necessary, amend the proposed definition to reflect this understanding.

Response to comment 2: See the Department's response to comment 3 below.

3. Comments on Proposed § 33(a)(1)

DEP Should Clarify that its Definition for "Alternative Operating Scenario" in Proposed § 33(a)(1) is Consistent with Federal Guidance

We are concerned that DEP's definition of "alternative operating scenario", as currently drafted, is susceptible to being construed extremely broadly so as to require Title V permits to include every conceivable alternative operating scenario. Requiring an alternative operating scenario to be defined for different equipment configurations is not practicable. This commentor noted they operate equipment that is non-dedicated and designed for multipurpose use. For manufacturers in highly dynamic industries, this is impossible as a practical matter. This problem is further compounded by the fact that each operating scenario must have separate monitoring, testing and record keeping to ensure enforceability. See proposed § 33(o)(3); 40 C.F.R. § 70.6(a)(9). Moreover, such an expansive interpretation of the proposed definition would be inconsistent with EPA guidance on the issue. At least one EPA Region has confirmed that the identification of alternate operating scenarios is required only in very limited circumstances: when an emission unit may be subject to different standards depending upon the use (e.g., different NOx emissions are applicable to a boiler depending upon whether the boiler burns No. 2 or No. 6 fuel oil.)

> "1. What is a reasonable number of alternative operating scenarios? Can a "bookend" (i.e., normal and extreme scenario) approach be used?
>
> It is not necessary or practical to contemplate every possible scenario in the application, and not every scenario will require alternative permit terms and conditions. Permitting in the worst case avoids listing many scenarios that would be allowed under the worst scenario. As long as all applicable requirements are met, the permit may rely on the worst case scenario and need not also reflect normal operations. Moreover, alternative operating scenarios are not needed at all if alternative operations do not violate permit terms or conditions or create new applicable requirements. For instance, a source subject to an emission rate limit may operate at varying capacities as long as the rate is not exceeded."

Title V Implementation Q & A, EPA Region IX (December 1995) (emphasis supplied). Also, EPA headquarters has proposed a definition for "alternative operating scenario" consistent with EPA Region IX's guidance. See 60 Fed. Reg. 45530, 45565 (August 31, 1995).

To avoid potential mis-interpretations of "alternative operating scenario" in proposed §33, the commentor requests DEP confirm their understanding of the term and its meaning for Title V applications and permits, and to amend proposed § 33(a)(1) to reflect this understanding.

When amending proposed § 33(a)(1), the commentor encouraged DEP to incorporate EPA's proposed definition for "alternative operating scenario". See 60 Fed. Reg. at 45565.

Accordingly, the commentor requests that proposed § 33(a)(1) be amended as follows:

> "[(4)] (1) "Alternative operating scenario" ~~means a condition, including equipment configurations, process parameters, or materials used in a process under which the owner or operator of a Title V source may be allowed to operate~~. MEANS TERMS OR CONDITIONS IN A TITLE V PERMIT WHICH ASSURE COMPLIANCE WITH DIFFERENT MODES OF OPERATION FOR WHICH A DIFFERENT APPLICABLE REQUIREMENT APPLIES AND FOR WHICH THE SOURCE IS DESIGNED TO ACCOMMODATE.

Response to comments 2 and 3: The definition of "Alternative Operating Scenario" does not indicate when an applicant should identify an alternative operating scenario within a Title V permit application. The burden to identify alternative operating scenarios within a Title V permit application falls to the applicant under proposed section 22a-174-33(g)(1)(E). The Department does not identify alternative operating scenarios. The guidance discussed above may be helpful in assisting Title V permit applicants to identify, develop and describe alternative operating scenarios. However, the definition of alternative operating scenario does not change the requirement for Title V permit applicants to identify alternative operating scenarios within their permit application. The Department should not make any changes to the proposed definition of alternative operating scenario based upon this comment.

4. Comment on Section 22a-174-33(a)(8) "Research and Development Operation". The proposed definition, which generally tracks the language in Section 22a-174-33(c)(4) of the current regulations, could be construed in a way that would not allow for a "de minimis" level of production activity in a laboratory. Although the current Part 70 rule does not have a definition for Research &Development (R&D), EPA's proposed Part 70 rule (section 70.2) does define definition of Research and Development activities as follows:

> Research and development activities means activities: (1) operated under the close supervision of technically trained personnel; (2) conducted for the primary purpose of theoretical research or research and development into new or improved processes and products; (3) that do not manufacture more than de minimis amounts of commercial products; and (4) that do not contribute to the manufacture of commercial products by collocated sources in more than a de minimis manner.

The proposed Part 70 rule also mentions R&D in the definition of Major Source.

> Major source means any stationary source or group of stationary sources as described in paragraphs (1), (2), or (3) of this definition. ~~(or,~~ For purposes of paragraphs (2) and (3), a major stationary source includes any group of stationary sources that are located on one or more contiguous or adjacent

properties, ~~and~~ that are under common control of the same person (or persons under common control), and that belong ~~belonging~~ to a single major industrial grouping. ~~and that are described in paragraphs (1), (2), or (3) of this definition. For the purposes of defining "major source," and that are described in paragraphs (1), (2), or (3) of this definition a~~ A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987 except that research and development activities shall be treated as belonging to a separate industrial grouping. In addition, for purposes of paragraphs (2) and (3) of this definition, any stationary source (or group of stationary sources) that conveys, stores, or otherwise assists in the production of a principal product at another stationary source (or group of stationary sources), may be considered a support facility. A support facility shall be considered to be part of the same source as the stationary source (or group of stationary sources) which it supports regardless of the 2-digit SIC code for the support facility.

We suggest that DEP use the proposed Part 70 definition of research and development activities, since it more clearly allows for a de minimis level of production activities at research and development laboratories.

Response to comment 4: The Department should not make the change suggested by this commentor for the following reasons:

- The definition of 'research and development' provided by this commentor is from a proposed EPA rule, not a final rule, and is therefore not binding upon the State of Connecticut;

- Should EPA finalize the proposed revisions to 40 CFR 70, the Department will be granted a period of time to revise the state regulations in accordance with the revised federal regulations; and

- EPA has indicated that proposed section 22a-174-33, if adopted, would meet the requirements of 40 CFR 70. See 66 Federal Register 42496 (August 13, 2001). Therefore, any significant changes to proposed section 22a-174-33 could impact EPA's proposed final approval of the Connecticut Title V program.

5. **Comment on Proposed § 33(a)(8)(C):** The Department should retain the existing definition of "research and development operation" or adopt the proposed federal definition

Current § 33(c)(4) defines a "research and development operation" to include, among other things:

any activity which... (C) does not include (i) production for sale of established products through established processes, or (ii) production of a product for distribution through market testing channels.

Id. (emphasis supplied). Under these criteria, a "pilot plant" producing de minimis quantities of a new product (i.e., non-established product) or an existing product from new processes (i.e., non-established processes) is currently part of a "research and development operation" for the purposes of determining the applicability of § 33. This is the case even if the resulting product is later sold. These provisions provide reasonable flexibility and appropriate upper-boundary safeguards.

Proposed § 33(a)(8), as drafted, could be interpreted to remove this flexibility. In particular, the provision excludes from the definition of "research and development operation" any activity that includes the "production of a product for sale". Proposed § 33(a)(8)(C)(i). If interpreted literally, any sale of any amount of material produced from an operation otherwise qualifying as R&D would disqualify the operation from such status. This would effectively prohibit a pharmaceutical company from selling de minimis quantities of otherwise useful products produced by a pilot plant, for no apparent purpose.

Moreover, EPA's regulatory programs (including Part 70) have always considered pilot plants to be part of "research and development" as opposed to "production", even if de minimis quantities are later sold. See 40 C.F.R. § 63.125 and 60 Fed. Reg. 45530, 45556 – 45558 and 45565. For example, EPA recognized this distinction and excluded "research and development facilit[ies]" from the Pharmaceuticals Production MACT. See 40 C.F.R. § 63.1250(d). In the MACT, EPA defines a "research and development facility" to include:

"any stationary source whose primary purpose is to conduct research and development into new processes and products...and is not engaged in the manufacture of products for commercial sale in commerce, except for de minimis purposes."

See 40 C.F.R. § 63.1251 (emphasis supplied); see also CAAA § 112(c)(7).

EPA has also extensively discussed the scope of the term "research and development operation" for purposes of the Title V Permit Program. See e.g. 60 Fed. Reg. 45530, 45556 – 45558 and Draft Preamble to Revised Part 51 and Part 70 at 41 – 58 (February 18, 1998). In all of these discussions, EPA has concluded that a "research and development operation" includes facilities that manufacture products for commercial sale in commerce, provided the quantities sold are de minimis. EPA has even gone so far as to propose a definition for "research and development operation" in 40 C.F.R. Part 70. 60 Fed. Reg. 45530.

As a practical matter, the determination of whether an activity is a "research and development operation" should not hinge on whether the product is eventually sold, particularly in light of the fact that "pilot plants" are typically only capable of producing de minimis quantities of a product. There is no incentive, from a financial standpoint (i.e., producing products in a small-scale pilot plant is extremely expensive) or regulatory standpoint (i.e., subjecting a pilot

plant to the MACT) to produce and sell products from a "pilot plant" on any scale but a de minimis scale.

Finally, this proposed change is not necessary to obtain EPA final approval of Connecticut's Title V program, and therefore, goes beyond the changes identified in the public notice regarding § 33. See Conn. L. J. at 2B-3B (July 17, 2001) (stating that the proposed amendment package for § 33 "addresses the remainder of issues raised in EPA's Title V Interim Approval", as well as deletes certain provisions to be transferred to proposed revised § 1 and proposed new § 2a).

Based upon the foregoing, we strongly encourage DEP to retain the language of current § 33(c)(4)(C)(i) in proposed § 33(a)(8)(C)(i), or, in the alternative, adopt the definition of "research and development operation" proposed by EPA. Both suggested revisions are set forth below:

"(8) "RESEARCH AND DEVELOPMENT OPERATION" MEANS ANY ACTIVITY WHICH:

(A) OCCURS IN A LABORATORY;

(B) IS INTENDED TO (i) DISCOVER SCIENTIFIC FACTS, PRINCIPLES OR SUBSTANCES, OR (ii) ESTABLISH METHODS OF MANUFACTURE OR DESIGN OF SALEABLE SUBSTANCES, DEVICES OR OTHER PRODUCTS, BASED UPON PREVIOUSLY DISCOVERED SCIENTIFIC FACTS, PRINCIPLES OR SUBSTANCES; AND

(C) DOES NOT INCLUDE (i) PRODUCTION **FOR SALE** OF ~~A PRODUCT~~ **ESTABLISHED PRODUCTS THROUGH ESTABLISHED PROCESSES,**~~FOR SALE,~~ OR (ii) PRODUCTION OF A PRODUCT FOR DISTRIBUTION THROUGH MARKET TESTING CHANNELS. ".

Alternatively, the DEP could use the proposed language with the following change:

(C) DOES NOT INCLUDE (i) PRODUCTION OF A PROCUCT FOR SALE **EXCEPT IN DEMINIMUS QUANTITIES,** ...

Response to comment 5: Based upon the comment above, the Department should revise proposed section 22a-174-33(a)(8) as follows:

(8) "RESEARCH AND DEVELOPMENT OPERATION" MEANS ANY ACTIVITY WHICH:

(A) OCCURS IN A LABORATORY;

(B) IS INTENDED TO (i) DISCOVER SCIENTIFIC FACTS, PRINCIPLES OR SUBSTANCES, OR (ii) ESTABLISH METHODS OF MANUFACTURE OR DESIGN OF SALEABLE SUBSTANCES, DEVICES OR OTHER PRODUCTS, BASED UPON PREVIOUSLY DISCOVERED SCIENTIFIC FACTS, PRINCIPLES OR SUBSTANCES; AND

(C) DOES NOT INCLUDE (i) PRODUCTION FOR SALE OF ESTABLISHED ~~A PRODUCT FOR SALE~~ PRODUCTS THROUGH ESTABLISHED PROCESSES, OR (ii) PRODUCTION OF A PRODUCT FOR DISTRIBUTION THROUGH MARKET TESTING CHANNELS.

6. Comment on the Definition of Title V Source.

(A) Proposed subsection 22a-174-33(a)(10)(D) has been revised to include any source subject to "any final plan under subsection 111(d) of the Act." Please explain how this would apply to a source which may be within the category of sources subject to a subsection 111(d) plan, but which may be exempt from substantive provisions of the plan. For example, certain closed MSW landfills with a capacity greater than 2.5 million Megagrams and 2.5 million cubic meters are subject to certain aspects of the subsection 111(d) plan for landfills, but they are specifically exempt from Title V permitting under the federal plan. See, 40 CFR 62.14352(f). The proposed regulations should make clear that sources subject to a subsection 111(d) plan, which EPA has exempted from Title V permitting, are not required to obtain a Title V permit. What is the intent of this subsection with respect to such types of sources? In addition, the reference to "any final plan under subsection 111(d) of the Act" appears to be redundant, since the approved subsection 111(d) plans are contained in 40 CFR Part 62, and subsection 22a-174-33(a)(10)(B) includes as Title V sources, "any stationary source subject to 40 CFR 62."

(B) Furthermore, proposed section 22a-174-33(a)(10)(G) exempts certain MSW landfills from the definition of Title V source. Is the purpose of this to clarify that only landfills that are either subject to a subsection 111(d) plan or 40 CFR 63 will be considered Title V sources?

(C) Proposed section 22a-174-33(a)(10)(E) appears to require an owner or operator to include all fugitive emissions, regardless of whether those fugitive emissions are quantifiable, when determining whether the stationary source is a Title V source. This would eliminate the existing caveat that a source must assess fugitive emissions "to the extent quantifiable". R.C.S.A. subsection 22a-174-33(a)(15)(E). We believe proposed section 22a-174-33(a)(10)(E) will interject unnecessary complexity into the applicability determinations with very little environmental benefit. Not all fugitive emissions are quantifiable. For example, quantifying fugitive emissions from lab hoods is, as a practical matter, impossible and/or cost-prohibitive. Owners or operators would be forced to take their "best guess" as to the amount of fugitives attributable to such non-quantifiable sources. The consequences associated with such a "guess" would be severe. Finally, proposed section 22a-174-33(a)(10) is wholly

inconsistent with the proposed definitions for "potential to emit" and "actual emissions" in proposed section 22a-174-1, which only require the quantifiable fugitive emissions.

Based upon the foregoing, the following revision to section 22a-174-33(a)(10)(E) is proposed:

(E) ANY one or more stationary sources, which are located on one or more contiguous or adjacent properties under [common] THE control of the same person or persons and which IN THE AGGREGATE emit, or have the potential to emit, including fugitive emissions TO THE EXTENT QUANTIFIABLE, ~~in the aggregate,~~ ten (10) tons or more per year of any hazardous air pollutant, twenty-five (25) tons or more per year of any combination of hazardous air pollutants[, or the quantity established by the Administrator pursuant to 40 CFR Part 63]; or

Response to comment 6:

- **Response to comments 6(A) and 6(B):** See the Department's response to comments 7(A) and 7(B) below.

- **Response to comment 6(C):** The Department included the concept of fugitive emissions within the definition of Title V source for those instances where quantifying fugitive emissions at a premises would be the determining factor in the applicability of section 22a-174-33. The Department needs to be informed of any emissions from a premises, fugitive or otherwise, that would impact the applicability of Title V and/or associated applicable requirements. The Department should not make a change based upon this comment.

7. Comments on the Definition of Title V Source:

(A) Proposed section 22a-174-33(a)(10)(D) has been revised to include any source subject to "any final plan under section 111(d) of the Act." Please explain how this would apply to a source which may be within the category of sources subject to a section 111(d) plan, but which may be exempt from substantive provisions of the plan. For example, certain closed MSW landfills with a capacity greater than 2.5 million Megagrams and 2.5 million cubic meters are subject to certain aspects of the section 111(d) plan for landfills, but they are specifically exempt from Title V permitting under the federal plan. See, 40 CFR §62.14352(f). The proposed regulations should make clear that sources subject to a section 111(d) plan, which EPA has exempted from Title V permitting, are not required to obtain a Title V permit. What is the intent of this section with respect to such types of sources? In addition, the reference to "any final plan under section 111(d) of the Act" appears to be redundant, since the approved section 111(d) plans are contained in 40 CFR Part 62, and section 22a-174-33(a)(10)(B) includes as Title V sources, "any stationary source subject to 40 CFR 62."

(B) Furthermore, proposed subsection 22a-174-33(a)(10)(G) exempts certain MSW landfills from the definition of Title V source. Is the purpose of this to clarify that only

landfills that are either subject to a section 111(d) plan or 40 CFR Part 63 will be considered Title V sources?

Response to comments 6(A) and (B), and 7(A) and (B):

- **6(A) and 7(A):** Proposed section 22a-174-33(c)(2) addresses the issue raised by this commentor concerning federal exemptions or deferrals from the Title V program. Therefore, the proposed regulations do not need to be changed to make clear that sources subject to a section 111(d) plan, which EPA has exempted from Title V permitting, are not required to obtain a Title V permit. However, the Department should revise proposed section 22a-174-33(a)(10)(D) because that language is redundant with 40 CFR Part 62. Proposed section 22a-174-33(a)(10(D) should be revised as follows:

  (D) [any] ANY stationary source subject to section 129(e) of the Act ~~OR ANY FINAL PLAN UNDER SECTION 111(d) OF THE ACT~~;

- **6(B) and 7(B):** Proposed section 22a-174-33(a)(10)(G) does exempt certain MSW landfills from the definition of Title V source. The purpose of this is to clarify that only landfills that are either subject to a section 111(d) plan or 40 CFR Part 63 will be considered Title V sources. The Department should not make a change based upon this comment.

8. Comments on Subsections 33(c)(4), (c)(5) and (d)(9), (d)(10) - Consequences of Violation or Ineligibility Under the GPLPE or a Title V Permit

(A) Redundant Provisions. Proposed Subsection 33(d)(9) and 33(d)(10) are redundant and unnecessary. They repeat the language set forth in proposed subsections 33(c)(5) and 33(c)(5). [note: The commentor may mean (c)(4) and (c)(5)] We believe these provisions are more appropriately included in the applicability subsection (i.e., section 33(c)) as opposed to the subsection addressing limitations on a source's potential to emit (i.e., section 33(d)). As a result, we request that DEP deleted proposed subsections 33(d)(9) and 33(d)(10).

(B) Unduly Burdensome Provisions. Our understanding is proposed subsections 33(c)(5) and 33(d)(9) are intended to meet EPA requirements for final approval of the Connecticut Title V program. See 40 C.F.R. § 70.6(d)(1). However, these federal requirements do not require DEP to treat permittees who violate any condition of the GPLPE to "have been operating a Title V Source without a Title V Permit". Rather, 40 C.F.R. subsection 70.6(d)(1) provides:

> "...the source shall be subject to enforcement action for operation without a part 70 permit if the source is later determined not to qualify for the conditions and terms of the general permit."

Subsections 33(c)(5) and 33(d)(9) address this requirement. However, subsections 33(c)(4) and 33(d)(10) go beyond the federal requirements by providing that violations of the terms and conditions of the GPLPE which do not impact the applicability of the GPLPE shall be

deemed "operating a Title V source without a Title V permit." Based on the foregoing, we recommend that CT DEP delete proposed subsections 33(c)(4) and 33(d)(10).

Response to comments 8(A) and (B):

- **8(A):** The provisions identified by this commentor are not redundant. Proposed section 22a-174-33(c)(4) and (c)(5) refers to Title V general permits whereas proposed section 22a-174-33(d)(9) and (d)(10) refer to general permits to limit potential emissions. The provisions of section 22a-174-33(d) embody the key elements of a federally enforceable state operating permit (FESOP) program. A FESOP program is intended to provide a means by which the Department issues federally enforceable emission caps for "synthetic" minor sources (i.e,. sources with potential emissions above major source thresholds and actual emissions below major source thresholds). Any permit issued under section 22a-174-33(d), be it a general or individual permit, is not a Title V permit and should not be construed as such. A current example of a FESOP is the General Permit to Limit Potential Emissions (GPLPE).

  Section (c)(4) and (c)(5) applies to Title V sources that are registered under a Title V general permit. To date the Department has not issued any Title V general permits and does not anticipate doing so. However, commentors should continue to be aware that: (1) the GPLPE, issued under section 22a-174-33(d), is a FESOP and should not be considered a Title V general permit; and (2) while the Department has not issued any Title V general permits under section 22a-174-33(c), the authority to do so exists. The Department should not make any changes based upon this comment.

- **8(B):** The Department should not delete proposed sections 22a-174-33(c)(4) and 22a-174-33(d)(10). These provisions are more stringent than 40 CFR 70.6(d)(1) so that applicants, permittees and registrants will be on notice and take very seriously their obligation to comply with requirements which are imposed either in lieu of or to meet 40 CFR Part 70 and the Clean Air Act Amendments.

9. Comments on Title V General Permits. Proposed sections 22a-174-33(c)(9) and (10) refer to a "general permit issued under this section." By this phrase, does DEP mean the General Permit to Limit Potential to Emit? [Ed. Note, since there are no subsections (c)(9) and (c)(10, the Department believes this commentor intended to refer to subsections (d)(9) and (d)(10).]

Response to comment 9: See the Department's response to comment 8(A) above. While the General Permit to Limit Potential to Emit is a general permit issued to fulfill the requirements of section 22a-174-33(d), the Department may issue other general or individual permits under this FESOP.

10. Comment on Timetable for filing Title V Applications.

(A) There appears to be a typo in subsection 22a-174-33(f)(3). See proposed strike-out below:

(3) The owner or operator of a Title V source which is subject to this subsection solely pursuant to a standard in [subparagraph (A) of subdivision (a)(15) of this subsection, if such standard became effective prior to July 21, 1992,] 40 CFR 60 OR 61, shall apply for a Title V permit within ninety (90) days of receipt of notice from the commissioner that such application is required [or five (5) years after the implementation date of this subsection, whichever is earlier] OR AS PROVIDED FOR BY THE ADMINISTRATOR ~~MAY ISSUE~~, WHICHEVER IS EARLIER.

(B) For new major sources, subsection 22a-174-33(f)(4) requires an application to be filed within 12 months after the NSR application is filed. That subsection provides:

(4) The owner or operator of a PROPOSED MAJOR STATIONARY [Title V] source to whom a Title V permit has not been issued and who is required to obtain a permit [to construct pursuant to subparagraph (B) or (D) of subsection 22a-174-3(b)(1) of the Regulations of Connecticut State Agencies] UNDER SUBSECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES shall apply for a Title V permit [upon] WITHIN NINETY (90) DAYS OF RECEIPT OF notice from the commissioner that such Title V permit is required or within twelve (12) months of applying for [such] A permit [to construct] UNDER SUBSECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, whichever is earlier.

Since it can take 9 to 12 months to obtain an NSR permit, this does not provide much time to prepare an application that identifies the applicable requirements from the NSR permit. The time to apply for a Title V permit should be triggered from commencement of operations. In fact, the federal regulations, 40 CFR 70.5(a)(1)(ii) require major sources seeking preconstruction permits to apply within "12 months of commencing operation." We suggest that DEP adopt language consistent with the federal regulation, as follows:

(4) The owner or operator of a PROPOSED MAJOR STATIONARY [Title V] source to whom a Title V permit has not been issued and who is required to obtain a permit [to construct pursuant to subparagraph (B) or (D) of subsection 22a-174-3(b)(1) of the Regulations of Connecticut State Agencies] UNDER SUBSECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES shall apply for a Title V permit [upon] WITHIN NINETY (90) DAYS OF RECEIPT OF notice from the commissioner that such Title V permit is required or within twelve (12) months ~~of applying for [such] A permit [to construct] UNDER SUBSECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES,~~ AFTER COMMENCING OPERATIONS, whichever is earlier.

Response to comment 10: See the Department's response to comment 11 below.

11. Comment on Timetable for filing Title V Applications.

(A) There appears to be a typo in section 22a-174-33(f)(3). See proposed strike-out below:

> (3) The owner or operator of a Title V source which is subject to this section solely pursuant to a standard in [subparagraph (A) of subdivision (a)(15) of this section, if such standard became effective prior to July 21, 1992,] 40 CFR 60 OR 61, shall apply for a Title V permit within ninety (90) days of receipt of notice from the commissioner that such application is required [or five (5) years after the implementation date of this section, whichever is earlier] OR AS PROVIDED FOR BY THE ADMINISTRATOR ~~MAY ISSUE~~, WHICHEVER IS EARLIER.

(B) For new major sources, section 22a-174-33(f)(4) requires an application to be filed within 12 months after the NSR application is filed. That section provides:

> (4) The owner or operator of a PROPOSED MAJOR STATIONARY [Title V] source to whom a Title V permit has not been issued and who is required to obtain a permit [to construct pursuant to subparagraph (B) or (D) of section 22a-174-3(b)(1) of the Regulations of Connecticut State Agencies] UNDER SECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES shall apply for a Title V permit [upon] WITHIN NINETY (90) DAYS OF RECEIPT OF notice from the commissioner that such Title V permit is required or within twelve (12) months of applying for [such] A permit [to construct] UNDER SECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, whichever is earlier.

Since it can take 9 to 12 months to obtain an NSR permit, this does not provide much time to prepare an application that identifies the applicable requirements from the NSR permit. The time to apply for a Title V permit should be triggered from commencement of operations. In fact, the federal regulations, 40 CFR 70.5(a)(1)(ii), require major sources seeking preconstruction permits to apply within 12 months of commencing operation. CRRA suggests that DEP adopt language consistent with the federal regulation, which provides as follows:

> Title V sources required to meet the requirements under section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the Title V permit or permit revision with 12 months after commencing operation or on or before such earlier date as the Commissioner may establish. Where an existing Title V permit would

prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

Response to comments 10 and 11:

- **Response to 10(A) and 11(A):** The Department should correct the typographical error in proposed section 22a-174-33(f)(3) as follows:

  (3) The owner or operator of a Title V source which is subject to this section solely pursuant to a standard in [subparagraph (A) of subdivision (a)(15) of this section, if such standard became effective prior to July 21, 1992,] 40 CFR 60 OR 61, shall apply for a Title V permit within ninety (90) days of receipt of notice from the commissioner that such application is required [or five (5) years after the implementation date of this section, whichever is earlier] OR AS PROVIDED FOR BY THE ADMINISTRATOR ~~MAY ISSUE~~, WHICHEVER IS EARLIER.

- **Response to 10(B) and 11(B):** Based on these comments, the Department should revise proposed section 22a-174-33(f)(4) as follows:

  (4) The owner or operator of a ~~PROPOSED~~ NEW MAJOR STATIONARY [Title V] source OR A MAJOR MODIFICATION TO AN EXISTING MAJOR STATIONARY SOURCE to whom a Title V permit has not been issued and who is required to obtain a permit [to construct pursuant to subparagraph (B) or (D) of section 22a-174-3(b)(1) of the Regulations of Connecticut State Agencies] UNDER SECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES shall apply for a Title V permit [upon] WITHIN NINETY (90) DAYS OF RECEIPT OF notice from the commissioner that such Title V permit is required or within twelve (12) months OF COMMENCING OPERATION UNDER ~~of applying for~~ [such] A permit [to construct] ~~UNDER~~ ISSUED PURSUANT TO SECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, whichever is earlier.

12. Comment on Pending Title V Applications: Please clarify how sources which have applied for, but not been issued a Title V permit, will be treated with respect to minor and non-minor permit modifications. Also identify how these sources will be treated before issuance of the permit, delineating how this differs before and after promulgation of the Regulations.

Response to comment 12: Sources that do not have a Title V permit are required to update their applications on a regular basis, see Section 22a-174-33(h)(2), including submission of information pertaining to a change that qualifies as a non-minor permit modification, minor modification or permit revision. If such additional information is deemed timely and

sufficient the application shield will apply to such additional information. However, note, for example, this does not preclude the possibility of enforcement action if a Title V source makes a physical change at a premises that constitutes a non-minor permit modification under new source review without prior approval. The proposed regulation does not specify whether or not an application received prior to promulgation of such provisions will be subject to the old regulations or new regulations. The Department should process the pending applications in accordance with the new regulations to ensure proper implementation of the program in light of the newly addressed federal interim approval issues. With respect to the federal interim approval issues see the Department's response to comment 1, above.

13. Comment on Subsection 22a-174-33(h) TITLE V Application Processing. The first sentence of this subsection is ambiguous because it is written in a double negative. The subsection provides:

> (1) Unless the commissioner notifies the applicant WITHIN SIXTY (60) DAYS OF RECEIPT OF A SUFFICIENT AND TIMELY FILED APPLICATION that THE application FAILS TO MEET THE REQUIREMENTS IN subsection (g) of this subsection and subsection 22a-3a-5(a)(1) of the Regulations of Connecticut State Agencies, THE OWNER OR OPERATOR SHALL NOT BE LIABLE FOR FAILING TO OBTAIN SUCH PERMIT. If, subsequent to such SIXTY (60) days, while processing an application for a Title V permit, the commissioner determines that additional information is necessary to take final action regarding such application, the commissioner may notify the applicant in writing that particular information is necessary. The applicant shall submit such information in writing within forty-five (45) days of such notification.

An applicant who files a "sufficient and timely" application should not be found liable for failing to obtain a Title V permit upon a notice that the Commissioner believes the application fails to meet a requirement of subsection (g). The applicant should be provided with a reasonable opportunity to amend its application before the applicant is found liable. Please clarify the meaning of this subsection, and revise it to provide a reasonable opportunity to correct any application deficiencies.

Response to comment 13: The Department should revise proposed section 22a-174-33(h)(1) as follows:

> (1) AN APPLICANT FOR A TITLE V PERMIT SHALL NOT BE LIABLE FOR FAILING TO OBTAIN SUCH PERMIT, UNLESS: ~~[Unless]~~
>
> (A) [the] THE commissioner notifies the applicant IN WRITING WITHIN SIXTY (60) DAYS OF RECEIPT OF A SUFFICIENT AND TIMELY FILED APPLICATION that [an] THE application [is not sufficient, in accordance with] FAILS TO MEET THE REQUIREMENTS IN subsection (g) of this

section [and] OR section 22a-3a-5(a)(1) of the Regulations of Connecticut State Agencies;~~, THE OWNER OR OPERATOR SHALL NOT BE LIABLE FOR FAILING TO OBTAIN SUCH PERMIT~~. [within sixty (60) days of receipt of the application, such application shall be deemed sufficient.] OR

(B) [If,] THE COMMISSIONER NOTIFIES THE APPLICANT IN WRITING subsequent to such [60] SIXTY (60) days, while processing an application for a Title V permit [that has been determined or deemed sufficient, the commissioner determines] that additional information is necessary to take final action regarding such application, [the commissioner may notify the applicant in writing that particular information is necessary. The] AND THE applicant [shall] FAILS TO submit such information in writing within forty-five (45) days of such notification.

14. **Comment on Subsection (j)(1)(F)(ii)** appears to be missing part of a sentence:

(F) If the subject source is required by an applicable requirement to limit emissions of a regulated air pollutant, the permit imposes such limits, provided that, where allowed by such applicable requirement:

(i) such limits [shall be] ARE no less than 1,000 pounds per year or any quantity prescribed by 40 CFR [Part] 63, WHICHEVER IS MORE STRINGENT, for each emission unit, for any hazardous air pollutant[.], AND

(ii) FOR ALL OTHER REGULATED AIR POLLUTANTS SUCH LIMITS ARE NO [???]

Response to comments 14: The official version of the regulation as proposed for hearing contains the following language in proposed section 22a-174-33(j)(1)(F)(ii):

(ii) FOR ALL OTHER REGULATED AIR POLLUTANTS SUCH LIMITS ARE NO LESS THAN ONE (1) TON PER POLLUTANT PER YEAR FOR EACH EMISSION UNIT; (emphasis added)

The Department believes that a software malfunction may have caused the deletion of the proposed language. The Department should not propose any changes based upon this comment.

15. Comment on Permit Shield. The changes to the permit shield provision are unnecessary and more stringent than the federal Clean Air Act authorizes. The changes appear to require each individual applicable requirement for which a permit shield is approved to be separately listed. The current regulations and EPA's regulations allow a shield for "any applicable requirement" as long as the applicable requirement and its legal authority is stated in the permit. The proposed regulations refer to "AN IDENTIFIED applicable requirement" in section 22a-174-33(k)(1), and "A SPECIFIED applicable requirement" in section 22a-174-

33(k)(2). The addition of these qualifiers is unnecessary and different from federal Title V regulations.

Moreover, it has been disappointing that DEP has thus far refused to include permit shields in any Title V permits, and the proposed language makes it less likely that DEP will ever issue a permit with a meaningful permit shield. An important benefit of Title V of the Clean Air Act to the regulated community was that permit shields would be provided for any applicable requirements set forth in the Title V permit. Please reconsider the changes proposed for this section, and if the federal language is not used in the final regulation, please provide an explanation for the need to vary the state permit shield provisions from the federal provisions.

Response to comment 15: The issuance of permit shields by the permit authority, as stated in both 40 CFR 70.6(f) and proposed section 22a-174-33(k), is discretionary and not mandated by Title V of the federal Clean Air Act as may be inferred by this comment. The proposed regulations continue to authorize the issuance of permit shields and actual determination regarding whether permit shields are, or are not, included with specific Title V permits is beyond the scope of this hearing report. The Department should make a change to the proposed language in Section 22a-174-33(k)(1) and (2) to be consistent with the terminology used in 40 CFR 70.6(f), and that is "specifically identified", as follows:

(1) EXCEPT AS OTHERWISE PROVIDED, [The] THE commissioner may [include a condition] STATE in a new [or modified] Title V permit OR MODIFIED TITLE V PERMIT UNDER SECTION 22a-174-2a(d)(3) OR (4) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, [stating] that compliance with the TERMS AND conditions of such permit shall be deemed compliance with [any] A SPECIFICALLY IDENTIFIED applicable requirement, provided that:

(A) [such] SUCH applicable requirement is stated in such permit APPLICATION AND PERMIT and the legal authority for such requirement is specifically identified in the permit; or

(B) [such] SUCH requirement is specifically identified in the permit and determined by the commissioner not to be applicable to such Title V source, and the permit includes such determination or a concise summary thereof.

(2) Any Title V permit that does not expressly state that compliance with the conditions of such permit shall be deemed compliance with [any] A SPECIFICALLY IDENTIFIED applicable requirement shall be presumed not to provide [such] a [condition] PERMIT SHIELD as provided for by subdivision (1) of this subsection.

16. Comment on Subsection 33(p) - Reporting of Deviation. The proposed revisions to this section are intended to respond to EPA's concern that the state regulations did not define "prompt" reporting of deviations consistent with EPA's regulations. In EPA's conditional approval of Connecticut's program, "EPA [suggested] that Connecticut require a reporting time frame of 2 to 10 days." 61 Fed. Reg. 64651, 64654 (col. 2) (December 6, 1996). The proposed rule adopts a time frame of 24 hours for federal hazardous air pollutants, and 10 days for other regulated pollutants. We have several concerns with the proposal.

First, the time frame for reporting deviations related to federal hazardous air pollutants is too short and is not necessary for most HAP deviations. A 72 hour notification period would be more reasonable to allow for over the weekend deviations. EPA's 1996 suggestion was for notification within 2 days. Therefore, the shortest time that should be considered for notifications should be 48 hours, although, as stated above, a 72 hour period would be more reasonable.

Second, EPA's proposed Part 70 language [see 70.6(a)(3)(iii)(B)] provides that prompt reporting requirements set forth in underlying applicable requirements should take precedence over any generic prompt reporting requirements in the Title V regulations:

> "Prompt reporting of deviations from permit requirements, including those attributable to upset conditions, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in its part 70 program regulations for each situation which is not already defined in the underlying applicable requirement, and do so in relation to the degree and type of deviation likely to occur and the applicable requirements. Upset conditions shall be defined in the permit."

The commentor suggests that section 22a-174-33(p) should only be applicable to deviations from applicable requirements that do not already have their own deviation notification requirement.

Third, as drafted, proposed subsection 33(p) would be extremely burdensome, likely impossible to consistently meet, and inconsistent with due process. Existing subsection R.C.S.A. subsection 22a-174-33(p) requires reporting within a certain time after the discovery of the deviation. However, proposed subsection 33(p) would set the reporting deadline in relation to the occurrence of the deviation, regardless of when (and if) it is discovered. As a practical matter, permittees will not always know when a deviation has occurred. In fact, despite best efforts, it may take several days for permittees to discovery and verify that a deviation has occurred. Permittees will be faced with an impossible compliance situation. In addition, this proposed change is not necessary to obtain EPA final approval of the state's Title V program, and so goes beyond the changes identified in the public notice. See Conn. L. J. at 2B-3B (July 17, 2001). As a result, we strongly encourage DEP to revise proposed subsection 33(p) to preserve the existing deadline for reporting from the ***date of discovery and verification*** rather than the date of the occurrence. This could be accomplished as follows:

(A) [any such violation, including an exceedance of a technology-based emission limitation, that poses an imminent and substantial danger to public health, safety, or the environment shall be reported immediately but no later than twenty-four (24)-hours after the permittee learns, or in the exercise of reasonable care should have learned, of such violation] FOR ANY HAZARDOUS AIR POLLUTANT, NO LATER THAN ~~TWENTY-FOUR (24)~~ SEVENTY-TWO (72)-HOURS AFTER THE PERMITTEE

DISCOVERS AND VERIFIES THE DEVIATION ~~SUCH DEVIATION COMMENCED~~; AND

(B) [any exceedance of a technology-based emission limitation imposed by the subject permit, which does not pose an imminent and substantial danger to public health, safety, or the environment, shall be reported within two working days after the permittee learns of such exceedance; and] FOR ANY OTHER REGULATED AIR POLLUTANT, NO LATER THAN TEN (10) DAYS AFTER THE PERMITTEE DISCOVERS AND VERIFIES THE DEVIATION ~~SUCH DEVIATION COMMENCED~~;

Response to comment 16: See the Department's response to comment 17 below.

17. **Comments on Proposed § 33(p)(1):** The Existing "Reasonable Discovery" Standards In § 33(p)(1) Should Be Retained To Avoid Due Process Issues Raised By The Proposed "Occurrence" Standard Of The Proposed Revision.

Proposed § 33(p)(1) would be extremely burdensome, sometimes impossible to meet, and inconsistent with due process. Current § 33(p)(1) set a permittee's reporting deadlines from the time the permittee discovers, or reasonably should have discovered the relevant violation. See § 33(p)(1). However, proposed § 33(p)(1) would set the reporting deadline in relation to the occurrence of the deviation, regardless of when (and if) that deviation is discovered, or was even reasonably discoverable. Such an approach would conflict with basic due process. As a practical matter, Title V permittees will not always know when a deviation has occurred. In fact, despite best efforts, it may take several days for permittees to discovery and verify that a deviation has occurred. Permittees would then be faced with an impossible compliance situation. In addition, this proposed change is not necessary to obtain EPA final approval of Connecticut's Title V program, and therefore goes beyond the changes identified in the public notice. See Conn. L. J. at 2B-3B (July 17, 2001).

As a result, we strongly urge DEP to revise proposed § 33(p)(1) to preserve the existing deadline for reporting from the date of discovery or reasonable discovery, rather than the date of occurrence:

"(A) [any such violation, including an exceedance of a technology-based emission limitation, that poses an imminent and substantial danger to public health, safety, or the environment shall be reported immediately but no later than twenty-four (24) hours after the permittee learns, or in the exercise of reasonable care should have learned, of such violation] FOR ANY HAZARDOUS AIR POLLUTANT, NO LATER THAN TWENTY-FOUR (24) HOURS AFTER THE PERMITEE LEARNS, OR IN THE EXERCISE OF REASONABLE CARE SHOULD HAVE LEARNED OF SUCH DEVIATION ~~SUCH DEVIATION COMMENCED~~; AND

(B) [any exceedance of a technology-based emission limitation imposed by the subject permit, which does not pose an imminent and substantial danger to

public health, safety, or the environment, shall be reported within two working days after the permittee learns of such exceedance; and] FOR ANY OTHER REGULATED AIR POLLUTANT, NO LATER THAN TEN (10) DAYS AFTER THE PERMITEE LEARNS, OR IN THE EXERCISE OF REASONABLE CARE SHOULD HAVE LEARNED OF SUCH DEVIATION ~~SUCH DEVIATION COMMENCED~~;".

Response to comments 16 and 17:

- The Department disagrees with the commentors' assertion (from comment 17 and part 3 of comment 16) that the proposed revisions to section 22a-174-33(p)(1)(A) are not necessary to obtain EPA final approval of Connecticut's Title V program and exceed the scope of the changes identified in the Department's public notice on the proposed regulations. See "Full Approval of Operating Permit Program: State of Connecticut – Proposed Rule", 66 Fed. Reg. 42495 (August 13, 2001), where in response to Interim Approval Issue 8 EPA states, "Forty CFR 70.6(a)(3)(iii)(B) requires prompt reporting of permit deviations. Section 22a-174-33(o)(1) and (p)(1) of the state's proposed rule defines "prompt" consistent with how the EPA defines prompt for the federal operating permit program at 40 CFR 71.6(a)(iii)(B)." Therefore, the Department should not make any changes to proposed section 22a-174-33(p)(1)(A) and (B) based upon these comments.

- With respect to the suggestion that the Department adopt EPA's language from the proposed revisions to 40 CFR 70.6(a)(3)(iii)(B) for establishing "prompt" reporting requirements, this suggestion is not feasible at this juncture. EPA must evaluate the Department's proposed response to the interim approval issues under 40 CFR 70, not under the proposed revisions to 40 CFR 70. The Department recognizes that this will not always lead to the ideal outcome and that the Department will be required to amend section 22a-174-33 if, and when, EPA revises 40 CFR 70.

- With respect to due process concerns expressed by the commentors, the Department believes that proposed section 22a-174-33(p), taken in its entirety with section 22a-174-33, is consistent with the fundamental notions of substantive due process. Specifically, this proposed regulation and section 22a-174-33(p) is not altering the fact that sources must maintain compliance with all applicable emission limits at all times. Neither does this proposed regulation or section 22a-174-33(p) alter the affirmative defenses available to sources that have exceeded an applicable emission limitation.

18. Comment on Chrome Emissions. We understand that DEP has adopted the federal five-year deferral on chrome emissions with respect to the Title V permits. Could you please confirm this understanding and explain how the deferral impacts the New Source Review program under the proposed regulations?

Response to comment 18: Title V exemptions and deferrals as allowed by 40 CFR Part 70 are provided for in proposed section 22a-174-33(c)(2). Further comment on specific deferrals are outside the scope of this hearing report. The commentor should note, however, that a Title V exemption or deferral alone does not impact the applicability of new source review for a subject source and an independent applicability evaluation will need to be made under section 22a-174-3 or section 22a-174-3a, as appropriate.

19. Comment on section 22a-174-33(r)(1): A commentor requested the Department consider the following change to proposed section 22a-174-33 (r)(1):

> (1) NON-MINOR PERMIT MODIFICATIONS, MINOR PERMIT MODIFICATIONS AND REVISIONS TO TITLE V PERMITS SHALL BE MADE IN ACCORDANCE WITH SECTION 22a-174-2a(d), (e) OR ~~AND~~ (f) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

Response to comment 19: The Department should make the suggested change to clarify that new source review or Title V permit non-minor permit modifications, minor permit modifications or permit revisions must be made in accordance with the governing provision set forth in proposed section 22a-174-2a(d), (e) or (f). The Department should revise proposed section 22a-174-33(r)(1) as follows:

> (1) NON-MINOR PERMIT MODIFICATIONS, MINOR PERMIT MODIFICATIONS ~~AND~~ OR REVISIONS TO TITLE V PERMITS SHALL BE MADE IN ACCORDANCE WITH SECTION 22a-174-2a(d), (e) ~~AND~~ OR (f) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

XIII. Additional Comments of the Hearing Officers

The Department should make the following technical corrections to the proposed regulations:

1. **Section 22a-174-1.** With respect to proposed section 22a-174-1, the Department should revise this section to include a definition of "process changes to control air pollution" as set forth in section 22a-174-3(n)(1)(B) of the Regulations of Connecticut State Agencies. The relocation of this definition will clarify the implementation of BACT pursuant to proposed section 22a-174-3a(j). The definition of "process changes to control air pollution" should be:

> (89) "PROCESS CHANGES TO CONTROL AIR POLLUTION" MEANS ANY MODIFICATION THAT ALTERS OR IMPLEMENTS PRODUCTION PROCESSES OR AVAILABLE METHODS, INCLUDING FUEL SWITCHING, SYSTEMS, TECHNIQUES, WORK PRACTICE STANDARDS, OPERATIONAL STANDARDS OR A COMBINATION THEREOF WHICH IS DESIGNED AND IMPLEMENTED FOR THE PRIMARY PURPOSE OF REDUCING EMISSIONS OF AIR POLLUTANTS FROM A STATIONARY SOURCE.

2. **Section 22a-174-2a(a)(6):** The Department should revise proposed section 22a-174-2a(a)(6)

(6) Notwithstanding ~~subdivision~~ subdivisions (1)(B) or (2)(A)(ii) of this subsection an individual having overall responsibility for environmental matters for a Title V source shall not sign Title V permit applications or Title V associated certifications unless such individual has responsibility for the overall operation of the Title V source or such source.

3. Section 22a-174-2a(k): For clarity of meaning, the designation of this subsection should be changed from "Individual Applications" to "Application for Individual Permits".

4. Section 22a-174-3a(k)(2): The Department should clarify proposed section 22a-174-3a(k)(1) and (2) as follows:

> (1) The provisions of this subsection shall apply to the owner or operator of a any new major stationary source for each criteria air pollutant that is significant from such new major stationary source ~~which emits a criteria air pollutant and is~~ located in an attainment area or unclassified area for such pollutant.
>
> (2) The provisions of this subsection shall apply to the owner or operator of any major modification for each criteria air pollutant from such ~~a~~ major modification ~~which emits a criteria air pollutant and, is~~ located in an attainment area or unclassified area for such pollutant[.], that has: ~~For purposes of this subsection a major modification has:~~
>
> (A) Actual emissions that are equal to or greater than the significant emission rate thresholds in Table 3a(k)-1 of this subsection; and
>
> (B) A net emissions increase that is equal to or greater than the significant emission rate thresholds in Table 3a(k)-1 of this subsection. "

5. Section 22a-174-3a(a)(8) The Department should revise proposed section 22a-174-3a(a)(8) to clarify that permits to operate issued after June 1, 1972 and before April 2, 1986 need not be renewed even such permit contains an expiration date. Therefore, the Department should amend 22a-174-3a(a)(8) as follows:

> (8) Any permit issued under former section 22a-174-3 of the Regulations of Connecticut State Agencies shall remain in full force and effect, in accordance with Section 22a-174-2a(i) of the Regulations of Connecticut Agencies, unless otherwise determined by the commissioner.

6. Section 22a-174-3a(j)(1). The Department should clarify the applicability of BACT under the state's minor source program as applying to only those individual air pollutants that exceed the applicability threshold in proposed section 22a-174-3a(j)(1)(C) and (D). The Department should revise proposed section 22a-174-3a(j)(1) as follows:

> (2) An owner or operator shall incorporate BACT for:

(E) Potential emissions of each regulated air pollutant above the significant emission rate thresholds in Table 3a(k) –1 of subsection (k) of this section, from each major stationary source;

(F) Potential emissions of each regulated air pollutant above the significant emission rate thresholds in Table 3a(k) –1 of subsection (k) of this section, from each major modification. This requirement applies to each individual emission unit that is being modified as part of such major modification;

(G) Potential emissions of fifteen (15) tons or more per year of any individual air pollutant, from each new emission unit and

(H) Potential emissions of fifteen (15) tons or more per year of any individual air pollutant, from ~~each~~ a modification to ~~an~~ each existing emission unit.

7. Section 22a-174-3b. With respect to proposed section 22a-174-3b(f), concerning nonmetallic mineral processing equipment, the department should clarify that the fuel combustion/power generating equipment is the subject of the regulatory requirements. The Department should revise proposed section 22a-174-3b(f)(1)(A)-(C) as follows:

(1) The owner or operator of nonmetallic mineral processing equipment shall properly maintain ~~equipment~~ and operate such equipment and the engine powering it in accordance with the following conditions ~~on fuel use and content~~:

(A) ~~Equipment powered by an~~ An internal combustion engine greater than or equal to 600 horsepower, that powers nonmetallic mineral processing equipment, shall not exceed 67,400 gallons of fuel oil usage in any twelve (12) month rolling aggregate;

(B) ~~Equipment powered by an~~ An internal combustion engine less than 600 horsepower, that powers nonmetallic mineral processing equipment, shall not exceed 48,900 gallons fuel oil usage in any twelve (12) month rolling aggregate; and

(C) Any nongaseous fuel ~~oil~~ consumed by ~~such equipment~~ engines powering nonmetallic mineral processing equipment shall not exceed a sulfur content of 0.05% by weight, dry basis.

8. Forms as prescribed by the commissioner. To make it clear that forms submitted to the Department must be as prescribed by the commissioner the following changes should be made:

- Section 22a-174-2a(d)(5)(A) "(A) An application for a non-minor permit modification shall be made on forms [provided] prescribed by the commissioner. Such application

shall include a description of any proposed changes, a proposed permit, any proposed monitoring procedures, any changes in potential emissions resulting from the proposed changes, and an identification of all regulatory, statutory, or otherwise applicable requirements that would become applicable as a result of such changes;"

- Section 22a-174-2a(e)(3)(A) "(A) An application for a minor permit modification shall be made on forms [provided] prescribed by the commissioner and signed in accordance with subsection (a) of this section;"

- See the first proposed change in Section 22a-174-2a(i)(1) "(1) In addition to the requirements of section 22a-3a-5(c) of the Regulations of Connecticut State Agencies, except as provided in subdivision (2) of this subsection, the permittee shall apply for a permit renewal, if the subject permit contains an expiration date, at least one hundred twenty (120) days prior to the permit expiration date. Such application shall be made on forms prescribed by the commissioner, and shall include a description of any proposed modifications, ~~a proposed permit~~ proposed permit language, any proposed monitoring procedures, any ~~modifications~~ increases or decreases in potential emissions resulting from ~~the~~ any proposed modifications, and an identification of all regulatory, statutory, or otherwise applicable requirements that would become applicable as a result of such proposed modifications."

- Section 22a-174-3a(c)(1) "(1) The owner or operator of a stationary source or modification subject to the provisions of this section shall apply for a permit on forms [provided] prescribed by the commissioner. All permit applications shall include:"

- Section 22a-174-33(g)(1) "(g)[(A)]An application for a Title V permit shall be made on forms [provided] PRESCRIBED by the [department] COMMISSIONER. The application shall [comply with subparagraphs (B) through (G) of this subdivision and with subdivisions (2), (3) and (4)of this subsection] CONTAIN THE FOLLOWING[.]:"

- Section 22a-174-33(g)(5) "(5) AN APPLICATION TO RENEW OR MODIFY A TITLE V PERMIT SHALL BE MADE ON FORMS [PROVIDED] PRESCRIBED BY THE COMMISSIONER AND IN ACCORDANCE WITH SECTION 22a-174-2a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. SUCH APPLICATION SHALL INCLUDE A DESCRIPTION OF ANY PROPOSED CHANGES, A PROPOSED PERMIT, ANY PROPOSED MONITORING PROCEDURES, ANY CHANGES IN ACTUAL EMISSIONS RESULTING FROM THE PROPOSED CHANGES, AND AN IDENTIFICATION OF ALL REGULATORY, STATUTORY, OR OTHERWISE APPLICABLE REQUIREMENTS THAT WOULD BECOME APPLICABLE AS A RESULT OF SUCH CHANGES."

- Section 22a-174-(o)(1) "(1) MONITORING REPORTS. A permittee required to perform monitoring pursuant to [the subject] A TITLE V permit shall submit to the commissioner, ON FORMS PRESCRIBED BY THE COMMISSIONER, written monitoring reports ON JANUARY 30 AND JULY 30 OF EACH YEAR OR on [the] A MORE FREQUENT schedule IF specified in such permit [but in no event less frequently than once each six

months]. Such [a] monitoring [report shall provided the following:] REPORTS SHALL INCLUDE THE DATE AND DESCRIPTION OF EACH DEVIATION FROM A PERMIT REQUIREMENT INCLUDING, BUT NOT LIMITED TO:"

- Section 22a-174-(p)(1) "(1) A permittee shall notify the commissioner in writing, ON FORMS PRESCRIBED BY THE COMMISSIONER, of any [violation at the subject source] DEVIATION FROM [of an applicable requirement, including any term or condition of the subject permit] AN EMISSIONS LIMITATION, and shall identify the cause or likely cause of such DEVIATION, [violation and] all corrective actions and preventive measures taken with respect thereto, and the dates of such actions and measures, as follows:" and

- Section 22a-174-33(q)(1) "(1) PROGRESS REPORTS. A permittee shall, on [the schedule specified in the subject permit or every six months and] JANUARY 30 AND JULY 30 OF EACH YEAR, OR ON A MORE FREQUENT SCHEDULE IF SPECIFIED IN SUCH PERMIT [whichever is more frequent], submit to the commissioner A progress [reports] REPORT [which are] ON FORMS PRESCRIBED BY THE COMMISSIONER, AND certified in accordance with [subdivision (b)(4) of this section] SECTION 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. [and which report the] SUCH REPORT SHALL DESCRIBE THE permittee's progress in achieving compliance under the compliance PLAN schedule CONTAINED in [such] THE permit. Such progress report shall:"

9. **Section 22a-174-1(19) of Code of Federal Regulations:** Code of Federal regulations, if not otherwise indicated to mean as amended from time to time as authorized by Conn. Gen. Stat. 22a-174(c)(9), is read to mean the Code of Federal Regulations as of the date the provision went to notice. As such the Department should change the following provisions in Section 22a-174-2a pertaining to the Title V program to indicate the Code of Federal Regulations as amended from time to time:

- 22a-174-2a(b)(7) "For any permit application under section 22a-174-3a of the Regulations of Connecticut State Agencies other than an application for a new major stationary source or a major modification at a major stationary source, the commissioner shall forward a copy of the notice of tentative determination, published in accordance with 40 CFR 51.161, as amended from time to time, to those individuals or entities identified in subparagraphs (A), (B), (C), and (G) of subdivision (5) of this subsection."

- 22a-174-2a(c)(2) "If the commissioner does not accept the recommendations of any director of the air pollution control program in any affected state or federally recognized Indian governing body with respect to any Title V permit issued pursuant to section 22a-174-33 of the Regulations of Connecticut State Agencies, the commissioner shall inform such director or federally recognized Indian governing body and the Administrator of the reasons therefore in accordance with the provisions of 40 CFR 70.8(b), as amended from time to time."

- 22a-174-2a(d)(4)(D) "To incorporate a change to an applicable requirement not otherwise subject to subsections (e) or (f) of this section or not otherwise allowed as an off-permit change pursuant to 40 CFR 70.4(b)(14), as amended from time to time, or as operational flexibility pursuant to 40 CFR 70.4(b)(12), as amended from time to time."

10. Section 22a-174-3a(k)(5)(E) In order clarify intent the Department should add an "and" to the end of the provision.

11. Section 22a-174-2a(b). In accordance with the Department's response to comment 10 in Part VIII of this report, the certification language set forth in proposed section 22a-174-2a(b)(3) should be revised as follows:

(3) With respect to notice of tentative determination for any application for a permit, other than a general permit, the applicant shall comply with the requirements of section 22a-6h of the Connecticut General Statutes. In addition to the requirements of section 22a-6h of the Connecticut General Statutes, such notice shall include the following statement, unless such notice is for a minor permit modification pursuant to subsection (e) of this section, that:

> "Interested persons have thirty (30) days from publication of such notice to submit comments in writing to the Department of Environmental Protection, Bureau or Air Management or request a public adjudicatory hearing concerning the commissioner's tentative determination to approve or deny the permit application, in accordance with the section 22a-3a-5(b) of the Regulations of Connecticut State Agencies and section ~~22a-174-2a(c)(3)~~ **22a-174-2a(c)** of the Regulations of Connecticut State Agencies."

12. Section 22a-174-3a(j)(2)(A) In order clarify intent the Department should delete the period and add an "; and" to the end of the provision.

XIV. Final Wording of the Proposed Regulations

A. Final Wording of Proposed R.C.S.A. 22a-174-1:

Section 1. Section 22a-174-1 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-174-1. Definitions.

[For the purposes of sections 22a-174-1 through 22a-174-200 the following definitions shall be used:] EXCEPT AS MAY OTHERWISE BE PROVIDED, AS USED IN SECTIONS 22a-174-1 TO 22a-174-200, INCLUSIVE, OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES:

[(1) "Actual emissions" means the rate of emissions from a source, including fugitive emissions quantified by permit, order or by registration information, after application of air pollution control equipment, of a particular air pollutant where the rate of emissions is calculated using:

(A) Real or expected production rates, hours of operation, and types of materials processed, stored or combusted for the period specified; and

(B) Information from the "Compilation of Air Pollutant Emission Factors" (AP-42) published by the U. S. Environmental Protection Agency, relevant source test data or other information deemed more representative by the Commissioner.

For the purposes of determining actual emissions in subsections (k) and (l) of section 22a-174-3 and in the definitions of excessive concentration, commence or commencement and potential emissions, the Commissioner shall determine the actual emissions of a stationary source over the two (2) year period prior to the date of an application under subsection 22a-174-3(a). The Commissioner may allow or require the use of another period which is deemed more representative, but in no event can it be before the design year of an applicable attainment plan.]

(1) "ACT" MEANS THE FEDERAL CLEAN AIR ACT, 42 USC SECTIONS 7401 TO 7671q AND PUBLIC LAW 101-549.

(2) "ACTUAL EMISSIONS" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xii)(A) THROUGH (E), INCLUSIVE.

[(2)] (3) "Administrator" means the [administrator] ADMINISTRATOR of the United States Environmental Protection Agency.

(4) "AFFECTED STATE OR STATES" MEANS THE COMMONWEALTH OF MASSACHUSETTS, THE STATES OF NEW YORK, RHODE ISLAND AND ANY OTHER STATE LOCATED WITHIN FIFTY (50) MILES OF A CONNECTICUT TITLE V SOURCE.

[(3)] (5) "Air pollutant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, aerosol, odorous substances, or any combination thereof, but does not include carbon dioxide, uncombined water vapor or water droplets, or molecular oxygen EXPRESSED AS O_2 or nitrogen.

[(4)](6) "Air pollution" means the presence in the [outdoor atmosphere] AMBIENT AIR of one or more air pollutants or any combination thereof in such quantities and of such characteristics and duration as to be, or [be] likely to be, injurious to public welfare OR THE ENVIRONMENT, to the health of human, plant or animal life, or to property, or as unreasonably to interfere with the enjoyment of life and property.

(7) "AIR POLLUTION CONTROL EQUIPMENT" MEANS ANY EQUIPMENT WHICH IS DESIGNED TO REDUCE EMISSIONS OF AIR POLLUTANTS FROM A STATIONARY SOURCE.

[(5)](8) "Allowable emissions" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xi). [means the rate of emissions from a stationary source of a particular air pollutant where the emission rate is calculated using the maximum rated capacity of the source, unless the source is subject to permit conditions or other order of the Commissioner which limit the maximum rated capacity by restricting the operating rate or hours of operation of the source, and the most stringent of the following:

(A) Applicable standards as set forth in Title 40 of the Code of Federal Regulations Part 60 and Part 61, as from time to time may be amended;

(B) The applicable emission limitation under these regulations including those with a future compliance date;

(C) The emission rate specified as a condition of a permit or order issued by the Commissioner, including any such condition with a future compliance date; or

(D) The applicable emission limitation under the State Implementation Plan, including any such limitation with a future compliance date.

For the purpose of calculating allowable emissions in subparagraph 22a-174-3(c)(1)(B), subdivisions (k)(5), (k)(6), (l)(1) or (l)(5) in section 22a-174-3 or in the definitions of dispersion technique and excessive concentration, the emission limitation in (B) above, emission rate in (C) above and the permit conditions or other order of the Commissioner which limit the maximum rated capacity by restricting the operating rate or hours of operation of the source must be federally enforceable.]

[(6)](9) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

[(7)](10) "AAQS" OR "Ambient air quality standard" [or "AAQS"] means any standard which establishes the largest allowable concentration of a specific pollutant in the ambient air [or] OF a region or subregion as established by the United States Environmental Protection Agency or by the [Commissioner] COMMISSIONER and which is listed in section 22a-174-24[.] OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(8)](11) "Architectural coating" means a coating used for residential or commercial buildings and their appurtenances, or industrial buildings, or other outdoor structures.

[(9)](12) "Attainment" means that the quality of the ambient air, as determined by the [Commissioner] ADMINISTRATOR, meets [National] THE Ambient Air Quality Standards for a given air pollutant. [for which such standards have been established by the United States Environmental Protection Agency.]

[(10)](13)"Attainment area" means a geographic area which has been designated BY THE ADMINISTRATOR as attainment under [Title] 40 [Code of Federal Regulations] CFR [Part] 81 in accordance with the provisions of 42 [U.S.C.] USC [Section] 7407 [(section 107 of the Clean Air Act)].

(14) "BASELINE CONCENTRATION" HAS THE SAME MEANING AS IN 40 CFR 51.166(b)(13)(i) THROUGH (ii)(b), INCLUSIVE.

[(11)](15) "Best Available Control Technology" or "BACT" means an emission limitation, including a [visible emission standard,] LIMITATION ON VISIBLE EMISSIONS, based upon the maximum degree of reduction for each applicable air pollutant emitted from any proposed stationary source or modification which the [Commissioner] COMMISSIONER, on a case-by-case basis, determines is achievable IN ACCORDANCE WITH SECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. [for a similar or representative type of source or modification through] BACT MAY INCLUDE, WITHOUT LIMITATION, THE application of production processes, WORK PRACTICE STANDARDS or available methods, systems, and techniques, including fuel cleaning or treatment, THE USE OF clean fuels, or innovative [fuel combustion] techniques for THE control of such air pollutant[. In determining BACT the Commissioner may take into account any emission limitation, including any visible emission standard, which has been achieved in practice under any permit limitation or demonstrated by any stack test acceptable to the Commissioner. For the purposes of this definition, the Commissioner may exclude any stack test on a pilot plant or prototype equipment which does not have reasonable operating experience or which may not be generally available for industry use. In determining BACT the Commissioner shall take

into account energy, environmental and economic impacts and other costs. In no event shall the application of BACT result in emissions of any pollutant which would exceed the emission allowed by an applicable standard under Title 40 of the Code of Federal Regulations Part 60 and Part 61, as from time to time may be amended. In determining BACT for a reconstructed source, the Commissioner shall take into account the provisions of Title 40 of the Code of Federal Regulations Part 60.15(f)(4), as from time to time may be amended, in assessing whether a standard of performance under Part 60 is applicable to such source. If the Commissioner determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, the Commissioner may prescribe a design, equipment, work practice or operational standard, or combination thereof, to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results].

[(12)](16) "Begin actual construction" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xv). [means initiation of physical on-site construction activities of an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in the method of operation this term refers to those on-site activities which mark the initiation of the change.]

[(13)](17) ["BTU"] "BTU" means British thermal unit, which is the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit.

[(14)](18) "CAS Number" means the number given to a compound by the American Chemical Society's Chemical Abstract Service.

[(15)](19) "CFR" means the Code of Federal Regulations.

[(16)](20) "Combustion efficiency" means the percentage [number] calculated in accordance with the following formula:

$$CE = \frac{[\ CO_2\ ]}{[\ CO\ ] + [\ CO_2\ ]} \times (100)$$

where: CE = Combustion efficiency in percent;

CO_2 = Amount of carbon dioxide;
CO = Amount of carbon monoxide; and
CO and CO_2 are both measured in volume units.

(21) "COMMENCE OPERATION" MEANS THE OWNER OR OPERATOR OF THE STATIONARY SOURCE HAS BEGUN, OR CAUSED TO BEGIN, ANY ACTIVITY WHICH HAS THE POTENTIAL TO EMIT ANY AIR POLLUTANT.

[(17)](22) "Commence[" or "Commencement" as applied to construction of a stationary source or modification] CONSTRUCTION" means that the owner or operator OF THE PROPOSED STATIONARY SOURCE OR PROPOSED MODIFICATION TO A STATIONARY SOURCE has all necessary permits or approvals required under [federal air quality control laws and these regulations,]THE ACT, ANY REGULATIONS ADOPTED THEREUNDER AND SECTION 22a-174-1, ET SEQ. OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, and has either:

(A) Begun, or caused to begin, a CONTINUOUS program of physical on-site construction of the source[:],SUBJECT TO THE PERMIT ISSUED BY THE COMMISSIONER, WITHOUT ANY BREAKS IN SUCH CONSTRUCTION OF MORE THAN EIGHTEEN MONTHS; OR

[(i) subject to a schedule which will lead to completion in a reasonable time; and

(ii) without any breaks in such construction of more than 18 months; or]

(B) Entered into [site specific] binding agreements or contractual obligations TO UNDERTAKE ACTUAL CONSTRUCTION OF THE SOURCE WITHIN A REASONABLE TIME, which cannot be [cancelled] CANCELED or modified without substantial ECONOMIC loss to the owner or operator[, to undertake a program of construction of the source to be completed within a reasonable time].

[For the purposes of this definition construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification) which would result in a change in either potential or actual emissions.]

[(18)](23) "Commissioner" means the Commissioner of Environmental Protection, or any member of the Department or any local air pollution control official or agency authorized by the [Commissioner] COMMISSIONER, acting singly or jointly, to whom the [Commissioner] COMMISSIONER assigns any function arising under the provisions of these regulations.

(24) "CONSTRUCTION" HAS THE SAME MEANING AS IN 40 CFR 51.165 (a)(1)(xviii).

(25) "CEM" OR "CONTINUOUS EMISSION MONITORING" MEANS A SYSTEM FOR CONTINUOUSLY MEASURING THE EMISSIONS OF ANY POLLUTANT FROM A STATIONARY SOURCE.

(26) "CERC" OR "CONTINUOUS EMISSION REDUCTION CREDIT" MEANS A REAL, QUANTIFIABLE, SURPLUS, PERMANENT AND ENFORCEABLE REDUCTION OF AN AIR POLLUTANT AT A SOURCE WHICH IS:

(A) CERTIFIED BY THE COMMISSIONER THROUGH A SIP APPROVED PLAN; AND

(B) GENERATED OVER AN UNINTERRUPTED PERIOD OF TIME IN INCREMENTS OF ONE TON OF A SPECIFIED AIR POLLUTANT.

[(19)](27) "Criteria [Air Pollutant"] AIR POLLUTANT" means any air pollutant for which an ambient air quality standard has been established by the [administrator] ADMINISTRATOR in accordance with Section 107 of the [Clean Air] Act.

[(20)](28) "Department" means the Department of Environmental Protection.

[(21) "Deterioration in air quality" means that a pollutant concentration in a region or subregion for any pollutant specified in these regulations will exceed the maximum pollutant concentration for the specified time period for that region or subregion.]

[(22)] (29) "Dioxin emissions" means [tetrachlorodibenzodioxin (TCDD) and tetrachlorodibenzofuran (TCDF) emissions or emissions of any other isomers of comparable toxicity] THE TOTAL EMISSIONS OF POLYCHLORODIBENZODIOXINS (PCDDs) AND POLYCHLORODIBENZOFURANS (PCDFs) CONVERTED TO THE TOXIC EQUIVALENCE AMOUNT OF 2,3,7,8-TETRACHLOROTEDIBENZODIOXIN (2,3,7,8-TCDD). For the purposes of this definition, the [Commissioner] COMMISSIONER shall determine the [equivalent] TOXIC EQUIVALENCE amount of 2,3,7,8-TCDD BY MULTIPLYING THE CONCENTRATION OF EACH ISOMER IN THE SAMPLE BY THE APPROPRIATE TOXIC EQUIVALENCY FACTOR (TEF) SET FORTH IN TABLE 1-1 AND THEN ADDING THE PRODUCTS TO OBTAIN THE TOTAL DIOXIN EMISSIONS IN THE SAMPLE. [using the following toxic equivalency factors (TEF)]

Table 1-1

FORM OF DIOXIN EMISSIONS	TEF

Table 1-1 FORM OF DIOXIN EMISSIONS	TEF
monochlorodibenzodioxin	0
dichlorodibenzodioxin	0
trichlorodibenzodioxin	0
2,3,7,8 tetrachlorodibenzodioxin	1.0
other tetrachlorodibenzodioxins	0.01
[2,3,7,8 pentachlorodibenzodioxin	0.5]
1,2,3,7,8 PENTACHLORODIBENZODIOXIN	0.5
other pentachlorodibenzodioxins	0.005
[2,3,7,8 hexachlorodibenzodioxin	0.04]
1,2,3,4,7,8 HEXACHLORODIBENZODIOXIN	0.04
1,2,3,6,7,8 HEXACHLORODIBENZODIOXIN	0.04
1,2,3,7,8,9 HEXACHLORODIBENZODIOXIN	0.04
other hexachlorodibenzodioxins	0.0004
[2,3,7,8 heptachlorodibenzodioxin	0.001]
1,2,3,4,6,7,8 HEPTACHLORODIBENZODIOXIN	0.001
other heptachlorodibenzodioxins	0.00001
octachlorodibenzodioxin	0
monochlorodibenzofuran	0
dichlorodibenzofuran	0
trichlorodibenzofuran	0

Table 1-1 FORM OF DIOXIN EMISSIONS	TEF
2,3,7,8 tetrachlorodibenzofuran	0.1
other tetrachlorodibenzofurans	0.001
[2,3,6,7 pentachlorodibenzofuran	0.1]
1,2,3,7,8 PENTACHLORODIBENZOFURAN	0.1
2,3,4,7,8 PENTACHLORODIBENZOFURAN	0.1
other pentachlorodibenzofurans	0.001
[2,3,7,8 hexachlorodibenzofuran	0.01]
1,2,3,4,7,8 HEXACHLORODIBENZOFURAN	0.01
1,2,3,6,7,8 HEXACHLORODIBENZOFURAN	0.01
2,3,4,6,7,8 HEXACHLORODIBENZOFURAN	0.01
1,2,3,7,8,9 HEXACHLORODIBENZOFURAN	0.01
other hexachlorodibenzofurans	0.0001
[2,3,7,8 heptachlorodibenzofuran	0.001]
1,2,3,4,6,7,8 HEPTACHLORODIBENZOFURAN	0.001
1,2,3,4,7,8,9 HEPTACHLORODIBENZOFURAN	0.001
other heptachlorodibenzofurans	0.00001
octachlorodibenzofuran	0

[To determine total dioxin emissions, multiply the isomer concentration in the sample by the appropriate toxic equivalency factor and then add the products to obtain the total 2,3,7,8-TCDD equivalents in the sample.]

[(23)](30) "Discharge point" means any stack [and shall also include any] OR area from which a hazardous air pollutant IS RELEASED INTO THE AMBIENT AIR [emanates by evaporation, diffusion, or wind entrainment into the ambient air].

[(24)](31) "Dispersion technique" [means any method which attempts to affect the concentration of a pollutant in the ambient air by:] HAS THE SAME MEANING AS IN 40 CFR 51.100(hh).

[(A) Using that portion of a stack which exceeds the good engineering practice stack height;

(B) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(C) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack or other selective handling of exhaust gas so as to increase the exhaust gas plume rise.

The preceding sentence does not include:

(i) the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) the merging of exhaust gas streams where:

(aa) the owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams; or

(bb) after July 8, 1985 such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of dispersion technique applies only to the emission limitation for the pollutant affected by such change in operation; or

(cc) before July 8, 1985 such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Commissioner shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that the merging was not significantly motivated by such intent, the Commissioner shall deny credit for the effect of such merging in calculating the allowable emissions of the source.

(iii) smoke management in agricultural or silvacultural prescribed burning programs;

(iv) episodic restrictions on residential woodburning and open burning; or

(v) techniques under part C of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide do not exceed five thousand (5,000) tons per year.]

(32) "DERC" OR "DISCRETE EMISSION REDUCTION CREDIT" MEANS THE REAL, QUANTIFIABLE, SURPLUS, PERMANENT, AND ENFORCEABLE REDUCTION OF AN AIR POLLUTANT AT A SOURCE, WHICH IS:

(A) CERTIFIED BY THE COMMISSIONER THROUGH A SIP APPROVED PLAN; AND

(B) GENERATED DURING A SPECIFIED PERIOD OF TIME.

[(25)](33) "Emission" means the [act of releasing] RELEASE or [discharging] DISCHARGE OF AN air [pollutants] POLLUTANT into the ambient air from any source.

[(26)](34) "Emission limitation" and "Emission standard" HAVE THE SAME MEANING AS IN 40 CFR 51.100(z). [mean a requirement established by the Commissioner or the Administrator which limits the quantity, rate, or concentration of emissions of air

pollutants on a continuous basis, including any requirement which limits the level of opacity, prescribes equipment or fuel specifications, or relates to the operation or maintenance of a source to assure continuous emission reduction.]

(35) "EMISSION UNIT" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(vii).

(36) "ERC" OR "EMISSION REDUCTION CREDIT" MEANS REAL, QUANTIFIABLE, SURPLUS, PERMANENT, AND ENFORCEABLE REDUCTIONS OF AIR POLLUTANT EMISSIONS FROM A SOURCE, WHEN SUCH REDUCTIONS ARE CERTIFIED BY THE COMMISSIONER THROUGH A SIP APPROVED PLAN AND RECORDED AS CERCS OR DERCS.

[(27)](37) "Excessive concentration" has the same meaning as [ascribed to that term] in [Title] 40 [Code of Federal Regulations Part] CFR 51.100(kk).

[(28)](38) "Federally enforceable" [means all limitations and conditions which are: approved by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61; requirements within any applicable State Implementation Plan (SIP); any permit requirements established pursuant to 40 CFR Parts 52.10, 52.21, 70 or 71, under regulations approved pursuant to 40 CFR Part 51, subpart I; and any permit to construct requirements established pursuant to section 22a-174-3.] HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xiv).

[(29)](39) "Flare" means an apparatus, [or contrivance] DEVICE, PROCESS, OR PROCEDURE for the burning of flammable gases or vapors at or near the exit of a stack, flue or vent.

[(30)](40) "Fuel-burning equipment" means any furnace, boiler, apparatus, stack, and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power.

[(31)](41) "Fugitive dust" means solid airborne particulate matter emitted from any source other than through a stack.

[(32)](42) "Fugitive emissions" means fugitive dust or those emissions [which could not] THAT CANNOT reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

[(33)](43) "Good engineering practice (GEP) stack height" or ["(GEP)"] has the same meaning as [ascribed to that term] in [Title] 40 [Code of Federal Regulations Part] CFR 51.100(ii).

[(34)](44) "Hazardous air pollutant," EXCEPT AS OTHERWISE PROVIDED IN SECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, means a substance listed in [either Table 29-1, 29-2, or 29-3 of] section 22a-174-29 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(35)"Hazardous air pollutant advisory panel" or "Panel" means the panel created by Public Act 85-590.]

[(36)](45) "Hazard limiting value" or "HLV"[,] means the highest acceptable concentration [in the ambient air] of a hazardous air pollutant IN THE AMBIENT AIR, [as shown in Table 29-1, 29-2, or 29-3 of] PURSUANT TO section 22a-174-29 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. [as determined by the Commissioner. The primary use of this term is in the derivation of the maximum allowable stack concentration for a source.

[(37)](46) "Heat input" means the total gross calorific value of all fuels burned, measured in [BTU] BTU by ASTM Method D2015-66, D240-64, or D1826-64, using the [higher] HIGHEST heating value of each fuel.

[(38)](47) "Incinerator" means any device, apparatus, equipment, SLAB, or structure used for destroying, reducing, or salvaging, by fire OR HEAT, any material or substance including, but not limited to, refuse, rubbish, garbage, trade waste, debris or scrap; or facilities for cremating human or animal remains[. For further definitions related to incineration, see subdivision 22a-174-18(c)(1).] PROVIDED THAT, FOR THE PURPOSES OF THIS DEFINITION, SOURCES COMBUSTING THE FOLLOWING USED OIL TYPES ARE NOT INCINERATORS:

(A) USED OIL MEETING THE SPECIFICATIONS OF 40 CFR 279.11; OR

(B) USED OIL BURNED IN SPACE HEATERS MEETING THE REQUIREMENTS OF 40 CFR 279.23.

[(39)](48) "Indian Governing Body" HAS THE SAME MEANING AS IN 40 CFR 51.166(b)(28). [means the governing body of any tribe, band or group of Indians which tribe, band or group of Indians is subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.]

[(40)](49) "Indian reservation" HAS THE SAME MEANING AS IN 40 CFR 51.166(b)(27). [means any federally recognized reservation established by Treaty, Agreement, Executive Order or Act of Congress.]

[(41)](50) "Indirect source" means any building, structure, facility installation, or combination thereof, that has or leads to associated activity as a result of which an air pollutant is or may be emitted. Indirect sources include, but are not limited to: shopping centers, sports complexes[;], drive-in theaters or restaurants[;], parking lots or garages[;], residential, commercial, industrial or institutional buildings or developments[;], amusement parks and other recreational areas[;], highways[;], AND airports [and combinations thereof].

[(42)](51) "Indirect source construction permit" means a permit [for] ISSUED BY THE COMMISSIONER AUTHORIZING the construction of an indirect source [which is required to ensure that the proposed indirect source will neither prevent nor interfere, either directly or indirectly, with the attainment or maintenance of any applicable ambient air quality standard].

(52) "INNOVATIVE CONTROL TECHNOLOGY" HAS THE SAME MEANING AS IN 40 CFR 51.166 (b)(19).

[(43)](53) "Internal offset" means any federally enforceable reduction of actual emissions from one or more stationary sources on [a premise] THE SAME PREMISES which [can be] ARE used to offset [allowable] POTENTIAL emissions increases from a proposed [new] stationary source [or modification on such premise] ON SUCH PREMISES IN ACCORDANCE WITH THE PROVISIONS OF SECTION 22a-174-3a(*l*) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(44)](54) "LAER" or "Lowest Achievable Emission Rate" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(xiii). [means the rate of emissions, which reflects the more stringent of:

(A) The most stringent emission limitation which is contained in any state implementation plan for such class or category of stationary source, unless the owner or operator demonstrates to the Commissioner's satisfaction that such limitations are not achievable; or

(B) The most stringent emission limitation which is achieved in practice by such stationary source or category of stationary source.

In determining LAER the Commissioner may take into account any emission limitation, including a visible emission standard, which has been established as a permit limitation or demonstrated by a stack test acceptable to the Commissioner. For the purposes of this definition, the Commissioner may exclude any stack test on a pilot plant or prototype equipment which does not have

reasonable operating experience or which may not be generally available for industry use. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable standards in Title 40 of the Code of Federal Regulations Part 60 and Part 61, as from time to time may be amended.]

[(45)](55) "Major modification" HAS THE SAME MEANING AS IN 40 CFR 51.165 (a)(1)(v). PROVIDED THAT, FOR THE PURPOSES OF THIS DEFINITION, THE TERM "SIGNIFICANT" HAS THE SAME MEANING AS IN 40 CFR 51.166(b)(23)(i) AND:

(A) THE VALUES FOR NITROGEN OXIDES AS AN OZONE PRECURSOR AND VOLATILE ORGANIC COMPOUNDS ARE EACH TWENTY-FIVE (25) TONS PER YEAR, AND

(B) ASBESTOS, BERYLLIUM AND VINYL CHLORIDE ARE EXCLUDED.

[means a physical change or change in the method of operation of a major stationary source which would result in an increase in potential emissions of any individual air pollutant equal to or greater than the amount listed in Table 3(k)-1 in section 22a-174-3 1(m)-1 . For the purposes of this definition:

(A) A major stationary source of volatile organic compounds or nitrogen oxides shall be considered a major stationary source for ozone;

(B) In calculating potential emissions any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, or restrictions on production rates, hours of operation, and types of materials processed, stored or combusted which limit the maximum rated capacity shall be treated as part of its design if the limitation or the effect the limitation would have on emissions is federally enforceable;

(C) in calculating a potential emissions increase of volatile organic compounds or nitrogen oxides, all previous increases in potential emissions from the subject premise shall be aggregated over the most recent five (5) consecutive calendar years. Such five (5) year period shall not precede January 1, 1991 and shall include the calendar year in which the proposed increase will occur. Such aggregation shall exclude emission increases previously permitted under subsection 22a-174-3(*l*). If such aggregated emissions are greater than twenty-five (25) tons over the five

(5) year period, then the annual average of such aggregated emissions shall be added to the increase in potential emissions in determining if such emissions increase is equal to or greater than the amount listed in Table 3(k)-1 in section 22a-174-3.]

(56) "MAJOR SOURCE BASELINE DATE" MEANS JANUARY 6, 1975 FOR PARTICULATE MATTER AND SULFUR DIOXIDE AND FEBRUARY 8, 1988 FOR NITROGEN DIOXIDE.

(57) "Major stationary source" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(iv), PROVIDED THAT:

(A) A STATIONARY SOURCE THAT EMITS OR HAS THE POTENTIAL TO EMIT TWENTY-FIVE (25) TONS PER YEAR OF VOLATILE ORGANIC COMPOUNDS OR NITROGEN OXIDES AS AN OZONE PRECURSOR IN ANY SEVERE OZONE NONATTAINMENT AREA IS A MAJOR STATIONARY SOURCE, AND

(B) A STATONARY SOURCE THAT EMITS OR HAS THE POTENTIAL TO EMIT FIFTY (50) TONS PER YEAR OF VOLATILE ORGANIC COMPOUNDS OR NITROGEN OXIDES AS AN OZONE PRECURSOR IN ANY SERIOUS OZONE NONATTAINMENT AREA IS A MAJOR STATIONARY SOURCE.

[means:

(A) A premise with potential emissions equal to or greater than one hundred (100) tons per year of any individual air pollutant prior to the application for a modification to that stationary source or addition to the premise; or the more stringent of the following applicable thresholds shall apply:

(i) fifty (50) tons per year of volatile organic compounds or nitrogen oxides in any serious non-attainment area for ozone; or

(ii) twenty-five (25) tons per year of volatile organic compounds or nitrogen oxides in any severe non-attainment area for ozone;

(B) A premise with potential emissions equal to or greater than the thresholds in subparagraph (A) above after taking into consideration:

(i) any increase in potential emissions of fifteen (15) tons per year or more from a proposed

modification or the addition of a proposed stationary source; and

(ii) any other increases and decreases in potential emissions which the Commissioner determines will occur before the date that the increase from the proposed modification occurs; or

(C) a physical change or change in the method of operation of a premise which in and of itself has potential emissions greater than or equal to the thresholds in subparagraph (A) above;

(D) for the purposes of this definition,

(i) a major stationary source of volatile organic compounds or nitrogen oxides shall be considered a major stationary source for ozone; and

(ii) in calculating potential emissions any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, or restrictions on production rates, hours of operation, and types of materials processed, stored or combusted which limit the maximum rated capacity shall be treated as part of its design if the limitation or the effect the limitation would have on emissions is federally enforceable.]

(58) "MALFUNCTION" HAS THE SAME MEANING AS IN 40 CFR 60.2.

(59) "MACT" OR "MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY" MEANS A METHOD OF ACHIEVING AN EMISSION LIMITATION OR REDUCING THE EMISSION OF HAZARDOUS AIR POLLUTANTS AS DETERMINED BY THE COMMISSIONER PURSUANT TO SECTION 22a-174-33(e) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES OR BY THE ADMINISTRATOR PURSUANT TO 40 CFR 63.

[(47)](60)"Maximum allowable stack concentration" or "MASC" is the maximum allowable concentration of a hazardous air pollutant in the exhaust gas stream AT THE DISCHARGE POINT of a STATIONARY source under actual operating conditions [at the discharge point].

[(48) "Maximum pollutant concentration" means the largest concentration of a specific pollutant in a region or subregion either as a measured or calculated value, as determined by the Commissioner, for the twelve months ending on June 30, 1972. The

time periods to be averaged for the purpose of establishing maximum pollutant concentrations shall be as follows: for sulfur oxides, particulate matter, and nitrogen dioxide, one year; for carbon monoxide, eight hours; for photochemical oxidants, one hour; for hydrocarbons, three hours.]

[(49)](61) "Maximum [rated] capacity" means the design maximum hourly capacity OF A STATIONARY SOURCE or highest demonstrated hourly capacity OF A STATIONARY SOURCE, whichever is greater, multiplied by 365 days per year and 24 hours per day[.], OR SOME OTHER TIME PERIOD AS MAY BE ACCEPTED BY THE COMMISSIONER.

[(50)](62) "Maximum uncontrolled emissions" means the rate of emissions for a source, determined [before] WITHOUT the application of air pollution control equipment unless the source is incapable of being operated without the air pollution control equipment, of a particular air pollutant where [the] SUCH rate [of emissions] is calculated using:

(A) The maximum [rated] capacity of the source unless the [Commissioner] COMMISSIONER determines that the source is physically unable to operate at that capacity or unless the maximum [rated] capacity is limited by restrictions on production rates, hours of operation, [and] OR types of materials processed, stored or combusted either through permit conditions or other order of the [Commissioner] COMMISSIONER; and

(B) Information from the Compilation of Air Pollutant Emission Factors (AP-42) published by the U. S. Environmental Protection Agency, relevant source test data or other information deemed more representative by the [Commissioner.] COMMISSIONER.

(63) "MINOR PERMIT MODIFICATION" MEANS A CHANGE TO A PERMIT THAT IS REQUIRED FOR THE PERMITTEE TO LAWFULLY ENGAGE IN ANY OF THE ACTIVITIES OR PROPOSED ACTIVITIES AT A STATIONARY SOURCE AS IDENTIFIED IN SECTION 22a-174-2a(e) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

(64) "MINOR SOURCE" MEANS ANY STATIONARY SOURCE WHICH EMITS, AND HAS THE POTENTIAL TO EMIT, POLLUTANTS AT RATES OR IN AMOUNTS LOWER THAN THOSE SPECIFIED IN SUBDIVISION (57) OF THIS SUBSECTION.

(65) "MINOR SOURCE BASELINE DATE" MEANS JUNE 7, 1988 FOR PARTICULATE MATTER, DECEMBER 17, 1984 FOR SULFUR DIOXIDE AND JUNE 7, 1988 FOR NITROGEN DIOXIDE.

[(51)](66) "Mobile source" means a source designed or constructed to move from one location to another during normal operation except portable equipment and includes, but is not limited to, automobiles, buses, trucks, tractors, earth moving equipment, hoists, cranes, aircraft, locomotives operating on rails, vessels for transportation on water, lawnmowers, and other small home appliances.

[(52)] (67) ["Modify" or] "Modification" OR "MODIFIED SOURCE" means WITH RESPECT TO A STATIONARY SOURCE, ANY PHYSICAL CHANGE OR CHANGE IN THE METHOD OF OPERATION THAT WOULD RESULT IN AN EXCEEDANCE OF THE ALLOWABLE EMISSIONS OF ANY INDIVIDUAL AIR POLLUTANT, ANY INCREASE IN THE MAXIMUM CAPACITY, OR ANY POTENTIAL EMISSIONS OF ANY INDIVIDUAL AIR POLLUTANT NOT PREVIOUSLY EMITTED, EXCEPT THAT:

(A) ROUTINE MAINTENANCE, REPAIR OR REPLACEMENT AT A STATIONARY SOURCE SHALL NOT BE CONSIDERED A PHYSICAL CHANGE; AND

[(A) making any physical change in, change in the method of operation of, or addition to a stationary source which:

(i) increases the potential emissions of any individual air pollutant from a stationary source by five (5) tons per year or more; or

(ii) increases the maximum rated capacity of the stationary source unless the owner or operator of the stationary source demonstrates to the Commissioner's satisfaction that such increase is less than fifteen percent (15%) and the change or addition does not cause an increase in the actual emissions or the potential emissions ; or

(iii) increases the potential emissions above the levels listed in Table 3(k)-1 of subsection 22a-174-3(k); or

(iv) increases maximum uncontrolled emissions from a stationary source by one hundred (100) tons per year or more.]

[In addition a change in the type fuel used in accordance with a permit or order, or the type of fuel for which the source has provided registration under section 22a-174-2 to the Commissioner shall be

considered a modification unless such change is allowed under a permit or other order of the Commissioner either of which is federally enforceable.]

(B) [Notwithstanding the above, the] THE following [are not modifications] SHALL NOT BE CONSIDERED A CHANGE IN THE METHOD OF OPERATION [unless the stationary source was previously limited by permit conditions or other order of the Commissioner]:

[(i) any routine maintenance, repair or replacement unless such replacement results in reconstruction as defined in this section; or

(ii) a change in the method of operation; or]

[(iii)] (i) any increase in the production rate, if such increase does not exceed the operating design capacity of the affected facility[;] AND SUCH INCREASE DOES NOT CAUSE OR ALLOW AN EXCEEDANCE OF THE RATES OR EMISSION LIMITS AUTHORIZED BY A PERMIT,ORDER, OR JUDGEMENT FOR SUCH SOURCE, or

[(iv)] (ii) any increase in hours of operation[; or]AND SUCH INCREASE DOES NOT CAUSE OR ALLOW AN EXCEEDANCE OF THE RATES OR EMISSION LIMITS AUTHORIZED BY A PERMIT,ORDER, OR JUDGEMENT FOR SUCH SOURCE.

[(v) any change, the sole purpose of which is to bring an existing source into compliance with regulations applicable to such source, unless such change is a major modification or a major stationary source; or

(vi) relocation of a portable rock crusher with potential emissions of less than fifteen (15) tons per year which has a permit or exemption letter issued by the Commissioner under section 22a-174-3 provided the owner or operator provides written notice to the Commissioner prior to the relocation; or

(vii) relocation of a portable stripping facility which has a general permit issued by the Commissioner pursuant to section 22a-174(l) of the Connecticut General Statutes, provided the owner or operator of such facility provides written notice to the Commissioner prior to the relocation.]

(68) "MONITORING" MEANS ANY ACTION OR PROCEDURE THAT IS USED TO DETERMINE ACTUAL EMISSIONS FROM A STATIONARY SOURCE OR COMPLIANCE WITH THE REQUIREMENTS OF ANY PERMIT, ORDER, STATUTE OR REGULATION.

[(53)](69) "Multiple-chamber incinerator" means any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning[,] AND which consists of two or more refractory lined combustion furnaces in A series, physically separated by refractory walls[,] AND interconnected by gas passage ports or ducts [and employing] THAT EMPLOYS adequate design parameters necessary for maximum combustion of the material to be burned.

[(54) "Nearby" has the same meaning as ascribed to that term in Title 40 Code of Federal Regulations Part 51.100(jj).]

(70) "NET EMISSIONS INCREASE" HAS THE SAME MEANING AS IN 40 CFR 51.165 (a)(1)(vi) PROVIDED THAT:

(A) FOR THE PURPOSES OF THIS DEFINITION, THE PHRASE "THIS SECTION" FOUND IN 40 CFR 51.165(a)(1)(vi)(C)(2) REFERS TO SECTIONS 22a-174-3a(k) AND (l) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, AND

(B) ANY INCREASES OR DECREASES IN ACTUAL EMISSIONS AT A STATIONARY SOURCE ARE CREDITABLE ONLY IF SUCH INCREASES OR DECREASES OCCURED WITHIN THE PREVIOUS FIVE (5) YEARS OF THE PRESENT MODIFICATION.

[(55) "Netting" means determining the net emissions increase the determination of the increase or decrease, of potential emissions only, from stationary sources on any individual premise which the Commissioner determines will occur before the date that the increase from the proposed modification to the stationary source occurs].

[(56)](71) "Nitrogen oxides" or "Nox" means the sum of all oxides of nitrogen, expressed as nitrogen dioxide.

[(57)](72) "Non-attainment" [shall mean] MEANS that the quality of the ambient air, as [determined] MEASURED by the [Commissioner] COMMISSIONER, fails to meet any [National] Ambient Air Quality Standard for a given pollutant for which such standards have been established by the United States Environmental Protection Agency.

[(58)](73) "Non-attainment air pollutant" means the particular air pollutant for which an area is designated AS A non-attainment AREA, except that volatile organic compounds and nitrogen oxides are non-attainment air pollutants[,] for ozone non-attainment areas.

[(59)](74) "Non-attainment area" means a geographic area which has been designated as non-attainment under [Title] 40 [Code of Federal Regulations Part] CFR 81 in accordance with the provisions of 42 [U.S.C section] USC 7407 (section 107 of the [Clean Air] Act).

[(60)"Non-degradation" means that air quality in any region or designated sub-region shall not deteriorate, as defined in this section.]

(75) "NON-MINOR PERMIT MODIFICATION" MEANS A CHANGE TO A PERMIT THAT IS REQUIRED FOR THE PERMITTEE TO LAWFULLY ENGAGE IN ANY OF THE ACTIVITIES OR PROPOSED ACTIVITIES AT A STATIONARY SOURCE AS IDENTIFIED IN SECTION 22a-174-2a(d) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(61)] (76) "Offset fill pipe" means a fill pipe that has bends or angles such that a straight sleeve cannot be installed.

[(62)](77) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

[(63)](78) "Open-burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through [an adequate] A stack or flue.

[(64)](79) "Operator" means the person or persons who are legally responsible for the operation of a source of air pollution.

[(65)](80) "Organic compounds" means any chemical compounds of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

[(66)](81) "Particulate matter" OR "PM" means any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid [at standard conditions.] IN THE AMBIENT AIR.

(82) "PM 2.5" MEANS PARTICULATE MATTER WITH AN AERODYNAMIC DIAMETER LESS THAN OR EQUAL TO A NOMINAL 2.5 MICROMETERS AS MEASURED BY A REFERENCE METHOD SET FORTH IN 40 CFR 50, APPENDIX L, AND DESIGNATED AS A REFERENCE METHOD IN ACCORDANCE WITH 40 CFR 53 OR BY AN EQUIVALENT METHOD APPROVED BY THE ADMINISTRATOR IN ACCORDANCE WITH 40 CFR 53.

[(67)](83) "PM 10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method [based on appendix J of Title 40 Code of Federal Regulations Part 50 and designated in accordance with Title 40 Code of Federal Regulations Part 53 as published in the July 1, 1987 Federal Register or by an equivalent method approved by the Administrator in accordance with Title 40 Code of Federal Regulations Part 53.] SET FORTH IN 40 CFR 50, APPENDIX M, AND DESIGNATED AS A REFERENCE METHOD IN ACCORDANCE WITH 40 CFR 53 OR BY AN EQUIVALENT METHOD APPROVED BY THE ADMINISTRATOR IN ACCORDANCE WITH 40 CFR 53.

[(68)](84) "Permit" [to construct"] means [a permit] ANY LICENSE ISSUED UNDER CHAPTER 446c OF THE CONNECTICUT GENERAL STATUTES. [for the construction of a stationary source, which is required to ensure:

(A) That the proposed stationary source will not be in violation of any applicable emissions rate standards imposed by these regulations; and

(B) That the proposed stationary source will neither prevent nor interfere with the attainment or maintenance of any applicable ambient air quality standards as described in subparagraph 22a-174-3(c)(1)(B).]

[(69)"Permit to operate" means a permit which is required to ensure:

(A) That the operations of a stationary source will be in compliance with any applicable emissions rate standards or other applicable requirements imposed by these regulations; and

(B) That the operations of a stationary source will neither prevent nor interfere with the attainment or maintenance of any applicable ambient air quality standards as described in subparagraph 22a-174-3(c)(1)(B); and

(C) That all the terms of the permit to construct were fulfilled.]

[(70)](85) "Person" HAS THE SAME MEANING AS IN SECTION 22a-170 OF THE CONNECTICUT GENERAL STATUTES. [means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state, the United States, or political subdivision or agency thereof or any legal successor, representative, agent, or any agency of the foregoing.]

[(71) "Potential emissions" OR "potential to emit" means the rate of emissions from a stationary source, including fugitive emissions to the extent quantified by permit, order or by registration information, after application of air pollution control equipment, of a particular air pollutant such that the rate is equal to or greater than the actual emissions and where the rate is calculated using:

(A) The maximum rated capacity of the stationary source, unless the maximum rated capacity is limited by restrictions on production rates, hours of operation, and types of materials processed, stored or combusted either through permit conditions or other order of the Commissioner; and

(B) Information from the "Compilation of Air Pollutant Emission Factors" (AP-42) published by the U. S. Environmental Protection Agency, relevant source test data or other information deemed more representative by the Commissioner.

For the purposes of this definition, in calculating potential emissions in subsections (k) and (l) of section 22a-174-3, subsections 22a-174-8(c) and 22a-174-20(ee) or in the definitions of major modification, major stationary source, netting and commence or commencement, any physical or operational limitation or condition restricting the capacity of the source to emit a pollutant, including air pollution control equipment or restrictions on production rates hours of operation and types of materials processed, stored or combusted which limit the maximum rated capacity shall be treated as part of its design if the limitation or condition, or the effect the limitation or condition would have on emissions is federally enforceable.]

(86) "POTENTIAL EMISSIONS" OR "POTENTIAL TO EMIT" MEANS THE MAXIMUM CAPACITY OF A STATIONARY SOURCE, INCLUDING ALL PHYSICAL AND OPERATIONAL LIMITATIONS, TO EMIT ANY AIR POLLUTANT, INCLUDING FUGITIVE EMISSIONS TO THE EXTENT QUANTIFIABLE, PROVIDED THAT:

(A) ANY PHYSICAL LIMITATION ON SUCH CAPACITY, NOT INCLUDING AIR POLLUTION CONTROL EQUIPMENT, SHALL BE TREATED AS PART OF THE STATIONARY SOURCE AS DETERMINED BY THE COMMISSIONER OR ADMINISTRATOR; AND

(B) ANY OPERATIONAL LIMITATION ON SUCH CAPACITY, INCLUDING AIR POLLUTION CONTROL EQUIPMENT, OR A RESTRICTION ON THE HOURS OF OPERATION OR ON THE TYPE OR AMOUNT OF MATERIAL PROCESSED, STORED OR COMBUSTED, SHALL BE TREATED AS PART OF THE STATIONARY SOURCE IF THE LIMITATION OR RESTRICTION IS PRACTICABLY ENFORCEABLE.

(87) "PRACTICABLY ENFORCEABLE" MEANS:

(A) ANY FEDERALLY ENFORCEABLE EMISSION LIMITATION OR RESTRICTION ON POTENTIAL EMISSIONS; OR

(B) ANY EMISSION LIMITATION OR RESTRICTION ON THE POTENTIAL EMISSIONS SET FORTH IN A PERMIT, ORDER, REGULATION OR STATUTE ISSUED OR ADMINISTERED BY THE COMMISSIONER, PROVIDED SUCH EMISSION LIMITATION OR OPERATIONAL RESTRICTION:

(i) IDENTIFIES THE SUBJECT STATIONARY SOURCE OR CATEGORY OF STATIONARY SOURCE,

(ii) SPECIFIES AN EMISSION LIMITATION USING A SHORT TERM EMISSIONS RATE FOR SUCH STATIONARY SOURCE EXPRESSED IN POUNDS PER HOUR, POUNDS PER UNIT OF PRODUCTION OR CONCENTRATION LEVELS SUFFICIENT TO CALCULATE THE ACTUAL EMISSIONS FROM SUCH STATIONARY SOURCE OR SPECIFIES AN OPERATIONAL RESTRICTION FOR SUCH STATIONARY SOURCE SUCH AS HOURS OF OPERATION OR FUEL USE RESTRICTIONS SUFFICIENT TO CALCUALTE THE ACTUAL EMISSIONS FROM SUCH SOURCE,

(iii) SPECIFIES APPROPRIATE MONITORING TO DETERMINE COMPLIANCE WITH SUCH EMISSION LIMITATION OR RESTRICTION SPECIFIED IN ACCORDANCE WITH SUBPARAGRAPH (ii) OF THIS SUBDIVISION PROVIDED THAT IF A TWELVE MONTH ROLLING AVERAGE IS SELECTED, THE MONITORING SHALL BE CEM OR EQUIVALENT, AND

(iv) IF AN EMISSION LIMITATION OR OPERATIONAL RESTRICTION IS REQUIRED TO DEMONSTRATE THAT A STATE OR FEDERAL STANDARD DOES NOT APPLY, SUCH

EMISSION LIMITATION OR RESTRICTION SHALL BE CALCULATED IN ACCORDANCE WITH SUBPARAGRAPH (ii) OF THIS SUBDIVISION AND EXPRESSED USING THE SHORTEST TECHNICALLY AND ECONOMICALLY FEASIBLE AVERAGING PERIOD, IN NO CASE LONGER THAN A TWELVE MONTH ROLLING AVERAGE. IF A TWELVE MONTH ROLLING AVERAGE IS SELECTED, THE MONITORING SHALL BE CEM OR EQUIVALENT.

[(72)](88) ["Premise"] "PREMISES" means the grouping of all stationary sources at any one location and owned or under the control of the same person or persons.

(89) "PROCESS CHANGES TO CONTROL AIR POLLUTION" MEANS ANY MODIFICATION THAT ALTERS OR IMPLEMENTS PRODUCTION PROCESSES OR AVAILABLE METHODS, INCLUDING FUEL SWITCHING, SYSTEMS, TECHNIQUES, WORK PRACTICE STANDARDS, OPERATIONAL STANDARDS OR A COMBINATION THEREOF WHICH IS DESIGNED AND IMPLEMENTED FOR THE PRIMARY PURPOSE OF REDUCING EMISSIONS OF AIR POLLUTANTS FROM A STATIONARY SOURCE.

[(73)](90) "Process source" means any operation, process, or activity except:

(A) The burning of fuel for indirect heating in which the products of combustion do not come in contact with process material;

(B) The burning of refuse; and

(C) The processing of salvageable material by burning.

[(74)](91) "Reasonably Available Control Technology" OR "RACT" means the lowest emission limitation that a particular [facility] STATIONARY SOURCE is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility[.] [It may require technology that has been applied to similar, but not necessarily identical, source categories].

[(75)](92) "Reconstruct" or "reconstruction" means the renovation or re-building of a STATIONARY source in accordance with the provisions of [Title 40 of the Code of Federal Regulations Part 60.15] 40 CFR 60.15. A reconstructed STATIONARY source shall be considered a new STATIONARY source [for the purposes of these regulations]. [Use] THE USE of an alternative fuel or raw material by reason of an order in effect under sections 2(a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974, or superseding legislation, or by reason of a Natural Gas Curtailment Plan pursuant to the Federal Power Act,

or by reason of an order or rule under section 125 of the Clean Air Act, shall not be considered reconstruction.

[(76)] (93) "Region" means a Connecticut intrastate Air Quality Control Region[,] or the Connecticut portion of an interstate Air Quality Control Region as defined by the [United States Environmental Protection Agency in Title 40 Code of Federal Regulations Part 81.] EPA IN 40 CFR 81[;].

[(77) "Remote fill pipe" means an offset fill pipe.]

[(78)] (94) "Residual oil" means any fuel oil of No. 4, No. 5, or No. 6 grades, as defined by Commercial Standard C.S. 12-48.

[(79)](95) "Resources recovery facility" [means a facility utilizing processes aimed at reclaiming the material or energy values from municipal solid waste.] HAS THE SAME MEANING AS IN SECTION 22a-207(9) OF THE CONNECTICUT GENERAL STATUTES.

[(80)](96) "Ringelmann chart" means the chart published and described in the U.S. Bureau of Mines Information Circular 8333.

(97) "SECONDARY EMISSIONS" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(viii).

[(81)](98) "Serious non-attainment area for ozone" means all towns within the State of Connecticut, except those towns located in the severe non-attainment area for ozone.

[(82)](99) "Severe non-attainment area for ozone" means the towns of [Beth*l] BETHEL, Bridgeport, Bridgewater, Brookfield, Danbury, Darien, Easton, Fairfield, Greenwich, Monroe, New Canaan, New Fairfield, New Milford, Newtown, Norwalk, Redding, Ridgefield, Sherman, Stamford, Stratford, Trumbull, Weston, Westport and Wilton.

[(83)"Soiling index" means a measure of the soiling properties of suspended particles in air determined by drawing a measured volume of air through a known area of Whatman No. 4 filter paper for a measured period of time, expressed as COHs/1,000 linear feet, or equivalent.]

[(84)](100) "Solid waste" means unwanted or discarded materials, including solid, liquid, semisolid, or contained gaseous material.

[(85)](101) "Source" means any property, real or personal, which emits or may emit any air pollutant.

[(86)](102) "Stack" HAS THE SAME MEANING AS IN 40 CFR 51.100 (ff) PROVIDED THAT STACK SHALL ALSO INCLUDE A FLARE [means any point of release from a source, which emits solids, liquids, or gases into the ambient air including a pipe, duct, or flare].

[(87)](103) "Standard conditions" means a dry gas temperature of 68 degrees Fahrenheit and a gas pressure of 14.7 pounds per square inch absolute (20 degrees C, 760 mm[.]Hg[.]).

[(88)](104) "State" as used in the phrase "any other state" means state, region, territory, commonwealth, military reservation, or Indian reservation.

[(89)](105) "State implementation plan" or "SIP" means a plan required by section 110 of the [Clean Air] Act which has been approved by the Administrator.

[(90)](106) "Stationary source" HAS THE SAME MEANING AS IN 40 CFR 51.165(a)(1)(i) AND (ii), PROVIDED [means any building, structure, facility, equipment, operation, or installation, which is located on one or more contiguous or adjacent properties and which is owned by or operated by the same person, or by persons under common control which emits or may emit any air pollutant, and which does not move from location to location during normal operation except that portable rock crushers and portable stripping facilities] THAT ANY PORTABLE EMISSIONS UNIT which [are] IS moved from site to site but REMAINS [remain] stationary during operation IS A STATIONARY SOURCE [and asphalt plants which combine aggregate and asphalt while in motion are stationary sources].

[(91)](107) "Stripping facility" means any stationary source, except air pollution control equipment, the primary purpose of which is to remove organic compounds from water, soil or any other material.

[(92)](108) "Submerged fill pipe" means any fill pipe the discharge opening of which REMAINS [is still] entirely submerged when the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

[(93)](109) "Subregion" means a subdivision of a Region, as determined by the [Commissioner] COMMISSIONER.

[(94)](110) "Tank" means any vessel for containing liquids or gases.

(111) "TITLE V SOURCE" HAS THE SAME MEANING AS IN SECTION 22a-174-33 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

(112) "THROUGHPUT" MEANS THE RATE, BY VOLUME OR MASS, OF PRODUCTION IN A MANUFACTURING PROCESS, WHERE THE COMBINED QUANTITIES OF ALL MATERIALS INTRODUCED INTO THE PROCESS, EXCLUDING AIR AND WATER, ARE USED TO DETERMINE SUCH RATE.

[(95)](113) "Total suspended particulate" means particulate matter as measured by the method described in [Appendix B of Title 40 Code of Federal Regulations Part 50.] 40 CFR 50, APPENDIX B.

[(96)](114) "Unclassifiable area" means a geographic area which has not been designated either as AN attainment AREA or A non-attainment AREA under [Title 40 Code of Federal Regulations Part 81] 40 CFR 81 in accordance with the provisions of section 107 of the Clean Air Act.

[(97)](115) "Volatile organic compound" or "VOC" [means any compound of carbon which participates in atmospheric photochemical reactions excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate and the organic compounds listed on 1(a)-1 below which the Administrator has designated as having negligible photochemical reactivity.] HAS THE SAME MEANING AS IN 40 CFR 51.100(s), AS AMENDED FROM TIME TO TIME.

[

Table 1(a)-1 Exempt Volatile Organic Compounds	
acetone	ethane
methane	cyclic, branched, or linear completely methylated siloxanes
1,1,1-trichoroethane (methyl chloroform)	dichloromethane (methylene chloride)
Trichlorofluoromethane (CFC-11)	dichlorodifluoromethane (CFC-12)
Chlorodifluoromethane (HCFC-22)	trifluoromethane (HFC-23)
1,1,-dichloro-1-fluoroethane (HCFC-141b)	pentafluoroethane (HFC-125)
1,1,2-trichloro-1,2,2-trifluoro-ethane(CFC-113)	1,2-dichloro-1,1,2,2-tetrafluoroethane(CFC-114)
Chloropentafluoroethane	1,1,2,2-tetrafluoroethane

Table 1(a)-1 Exempt Volatile Organic Compounds	
(CFC-115)	(HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)	1,1,1-trifluoroethane (HFC-143a)
1-chloro-1,1-difluoroethane (HCFC-142b)	1,1-difluoroethane (HFC-152a)
1,1,1-trifluoro-2,2-dichloroethane (HCFC-123)	2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
Tetrachloroethylene (perchloroethylene)	1,1,1,2,3,4,4,5,5,5-decafluoropentane(HFC 43-10mee)
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)	1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)
Difluoromethane (HFC-32)	Fluoroethane or ethylfluoride (HFC-161)
1,1,1,3,3,3-hexafluoropropane (HFC-236fa)	1,1,2,2,3-pentafluoropropane (HFC-245ca)
1,1,2,3,3-pentafluoropropane (HFC-245ea)	1,1,1,2,3-pentafluoropropane (HFC-245eb)
1,1,1,3,3-pentafluoropropane (HFC-245fa)	1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
1,1,1,3,3-pentafluorobutane (HFC-365mfc)	chlorofluoromethane (HCFC-31)
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)	1-chloro-1-fluoroethane (HCFC-151a)
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$)	2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$)
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$)	2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$)
Perfluorocarbon compounds which fall into these classes: (1)cyclic, branched, or linear, completely fluorinated alkanes; (2)cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;	parachlorobenzotrifluoride (4-chlorobenzotrifluoride)

Table 1(a)-1 Exempt Volatile Organic Compounds	
(3)cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and (4)sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.	
	t-butyl acetate

]

[(98)](116) "Waste water separator" means any tank, box, sump, or other container in which any volatile organic compound floating on or entrained or contained in water entering such tank, box, sump, or another container is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

[(99)](117) "Watercourse" MEANS "WATERCOURSES" AS DEFINED IN SECTION 22a-38(16) OF THE CONNECTICUT GENERAL STATUTES [means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs and all other bodies of water, natural or artificial, which are contained within, flow through or border upon this state or any portion thereof].

Statement of Purpose: To consolidate in one location, to the extent practicable, the definitions of terms which are used in multiple sections of the regulations for the abatement of air pollution. This amendment also clarifies and streamlines existing definitions to allow for the implementation of federal requirements.

B. Final Wording of Proposed R.C.S.A. 22a-174-2 and 22a-174-2a:

Sec. 2 The Regulations of Connecticut State Agencies are amended by deleting section 22a-174-2.

Sec. 3 The Regulations of Connecticut State Agencies are amended by adding a new Section 22a-174-2a as follows:

(NEW)

Section 22a-174-2a. Procedural requirements for new source review and Title V permitting

(a) Signatory Responsibilities

(1) Any document, such as a permit application, report or certification, submitted to the commissioner shall be signed by any of the following individuals, as authorized in accordance with subdivision (2) of this subsection, if applicable:

(A) For an individual or sole proprietorship: by the individual or proprietor, respectively;

(B) For a corporation: by any officer, employee, or representative of a corporation;

(C) For a partnership: by a general partner;

(D) For a municipality: by the person authorized by charter or resolution of the board of selectmen or town council or other governing body;

(E) For a federal entity: by the principal executive officer, statutorily authorized official, or by a federal employee or any other representative who has received legal delegation of authority. For the purpose of this subsection, a principal executive officer of a federal agency or department includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency or department; or

(F) For a state entity: by the statutorily authorized official or by a state employee or any other representative who has received legal delegation of authority.

(2) An officer, employee, or representative of a corporation, an employee or representative of a municipality, state or federal entity, or any other government or quasi-public entity shall be authorized as follows:

(A) For a corporation:

(i) authorization is made in writing by certified resolution of the board of directors on forms prescribed by the commissioner,

(ii) the authorization specifies an individual having responsibility for the overall operation of the regulated stationary source or premises, such as the plant manager, operator, superintendent, or an individual having overall responsibility for environmental matters for the company, and

(iii) the written authorization is submitted to the commissioner prior to submitting, or together with, any documents or other information to be signed by the authorized representative;

(B) For a municipality: a certified copy of a governing body resolution and an incumbency statement is submitted to the commissioner prior to submitting or together with any documents or other information to be signed by the authorized representative;

(C) For a state or federal entity: if the authorized representative is not statutorily authorized to submit the documents, then a certified copy of the delegation of authority is submitted to the commissioner prior to submitting or together with any documents or other information to be signed by the authorized representative; or

(D) For any other governmental or quasi-public entity: a copy of the documentation sufficient to satisfy the commissioner that the signatory is legally authorized to sign any document submitted to the commissioner is submitted to the commissioner prior to submitting or together with any documents or other information to be signed by the authorized representative;

(3) An application shall be considered insufficient by the commissioner unless the applicant provides all required signatures and supporting documentation.

(4) If a different individual is assigned or has assumed the signatory responsibilities, a new authorization satisfying the requirements of this subsection shall be submitted to the commissioner prior to or together with the submission of any documents or other information signed by the authorized representative.

(5) Notwithstanding the requirements of section 22a-3a-5(a)(2) of the Regulations of Connecticut State Agencies, where a permit application, permit or other documentation requires a certification, the appropriate individual as specified in this subsection, and the individual or individuals responsible for actually preparing any document to which the certification applies, shall examine and be familiar with the information submitted in the document and all attachments thereto, and shall make inquiry of those individuals responsible for obtaining the information to determine that the information is true, accurate, and complete, and each shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all

attachments thereto, and I certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information may be punishable as a criminal offense under section 22a-175 of the Connecticut General Statutes, under section 53a-157b of the Connecticut General Statutes, and in accordance with any applicable statute."

(6) Notwithstanding subdivisions (1)(B) or (2)(A)(ii) of this subsection an individual having overall responsibility for environmental matters for a Title V source shall not sign Title V permit applications or Title V associated certifications unless such individual has responsibility for the overall operation of the Title V source or such source

(b) Public Notice

(1) When proposing to issue a general permit, the commissioner shall comply with the requirements for notice and opportunity for public comment pursuant to section 22a-174(1)(2) of the Connecticut General Statutes.

(2) With respect to public notice of any application for a permit, other than a general permit, the applicant shall comply with the requirements of section 22a-6g of the Connecticut General Statutes and the following:

(A) The commissioner may require the applicant to publish notice of the application in media that serves the needs of communities and representatives not served by traditional media in addition to a newspaper with substantial circulation in the area in which the source intends to operate, and the commissioner may require the notice to be published in languages other than English; and

(B) In the event the commissioner requires compliance with subparagraph (A) of this subdivision, the applicant shall submit to the commissioner a certified copy of such notice as it appeared in such other media no later than twenty (20) days after the date such notice was published.

(3) With respect to notice of tentative determination for any application for a permit, other than a general permit, the applicant shall comply with the requirements of section 22a-6h of the Connecticut General Statutes. In addition to the requirements of section 22a-6h of the Connecticut General Statutes, such notice shall include the following statement, unless such notice is for a

minor permit modification pursuant to subsection (e) of this section, that:

> "Interested persons have thirty (30) days from publication of such notice to submit comments in writing to the Department of Environmental Protection, Bureau or Air Management or request a public adjudicatory hearing concerning the commissioner's tentative determination to approve or deny the permit application, in accordance with the section 22a-3a-5(b) of the Regulations of Connecticut State Agencies and section 22a-174-2a(c) of the Regulations of Connecticut State Agencies."

(4) For any application for a permit or modification thereto, the commissioner may require the applicant to comply with section 22a-61 of the Connecticut General Statutes.

(5) For any permit application under section 22a-174-33 of the Regulations of Connecticut State Agencies, the commissioner shall forward a copy of the notice of tentative determination, published in accordance with subdivision (3) of this subsection, to:

(A) The individuals who request such notice;

(B) The chief elected official of the municipality where the stationary source is or is proposed to be located;

(C) The chief executive officer of the municipality where the source is or is proposed to be located;

(D) The appropriate Connecticut regional planning agency;

(E) Any federally recognized Indian governing body whose lands may be affected by emissions from the subject stationary source. In addition to the notice, a copy of the proposed Title V permit shall be submitted to such federally recognized Indian governing body;

(F) The director of the air pollution control program in any affected state. In addition to the notice, a copy of the proposed Title V permit shall be submitted to such director; and

(G) The regional Administrator of the United States Environmental Protection Agency. In addition to the notice, a copy of the proposed Title V permit shall be submitted to the regional Administrator.

(6) For any permit application under section 22a-174-3a of the Regulations of Connecticut State Agencies for a new major stationary source or a major modification at a major stationary source, the commissioner shall forward a copy of the notice of tentative

determination, published in accordance with subdivision (3) of this subsection, to those individuals or entities identified in subparagraphs (A), (B), (C), (E) and (G), of subdivision (5) of this subsection.

(7) For any permit application under section 22a-174-3a of the Regulations of Connecticut State Agencies other than an application for a new major stationary source or a major modification at a major stationary source, the commissioner shall forward a copy of the notice of tentative determination, published in accordance with 40 CFR 51.161, as amended from time to time, to those individuals or entities identified in subparagraphs (A), (B), (C), and (G) of subdivision (5) of this subsection.

(8) For any permit application under section 22a-174-3a(l) of the Regulations of Connecticut State Agencies, the commissioner shall comply with the public notice requirements set forth in section 22a-174-3a(l)(7) of the Regulations of Connecticut State Agencies.

(9) For any permit application under section 22a-174-33 of the Regulations of Connecticut State Agencies, the commissioner shall comply with the requirements set forth in section 22a-174-33(n) of the Regulations of Connecticut State Agencies.

(c) Public Comments, Hearings and Meetings

(1) Written comments may be filed by any person within thirty (30) days following the publication of a notice of a tentative determination under subsection (b)(3) of this section. The commissioner shall maintain a record of all comments made on the subject application. Any comments concerning the issuance of a Title V permit may be accompanied by a request for a public informational meeting or hearing, an adjudicatory hearing, or all three. Notwithstanding the provisions of section 22a-3a-6 of the Regulations of Connecticut State Agencies, any comments concerning the issuance of a permit under section 22a-174-3a of the Regulations of Connecticut State Agencies may be accompanied by a request for a public informational meeting or hearing, or both.

(2) If the commissioner does not accept the recommendations of any director of the air pollution control program in any affected state or federally recognized Indian governing body with respect to any Title V permit issued pursuant to section 22a-174-33 of the Regulations of Connecticut State Agencies, the commissioner shall inform such director or federally recognized Indian governing body and the Administrator of the reasons therefore in accordance with the provisions of 40 CFR 70.8(b), as amended from time to time.

(3) **Public adjudicative hearings** shall be held as provided in section 22a-174(l)(2) or section 22a-174(m) of the Connecticut General Statutes, and in accordance with section 22a-3a-6 of the Regulations of Connecticut State Agencies.

(4) If a public adjudicative hearing is held, the commissioner shall publish a notice of such hearing in a newspaper of general circulation in the affected area at least thirty (30) days prior to such hearing.

(5) Following the close of the public adjudicative hearing, the final decision maker shall make a decision. Such decision shall be based on the record of such hearing to approve, deny or conditionally approve the issuance of the permit sought.

(6) **Non-Adjudicative Public Informational Hearings.** Following receipt of a written material request and prior to the issuance of a subject permit, or order pursuant to section 22a-174-33(d) of Regulations of Connecticut State Agencies, the commissioner shall hold a non-adjudicative public informational hearing on:

(A) An application under section 22a-174-3a of the Regulations of Connecticut State Agencies;

(B) An application under section 22a-174-33 of the Regulations of Connecticut State Agencies;

(C) An order under section 22a-174-33(d) of the Regulations of Connecticut State Agencies; and

(D) Notwithstanding the above and following the commissioner's receipt of a written request for a public hearing, the commissioner shall hold such hearing if the permit application is for a new major stationary source or a major modification at a major stationary source, or for any stationary source where the stack height exceeds good engineering practice.

(7) **Non-Adjudicative Informational Meetings.** For the purposes of an application under section 22a-174-3a or section 22a-174-33 of Regulations of Connecticut State Agencies, the commissioner may hold a non-adjudicative informational meeting prior to the issuance of a subject permit, either following receipt of a request therefore or upon the commissioner's own initiative. The commissioner shall publish, at the applicant's expense, notice of such public informational meeting in a newspaper of general circulation in the affected area at least thirty (30) days prior to such a meeting. The commissioner may consider more than one permit application at any such meeting.

(8) Any notice of hearing or meeting pursuant to this subsection shall:

(A) Be published at the applicant's expense in a newspaper of general circulation in the affected area at least thirty (30) days prior to such hearing or meeting;

(B) Provide the name of the applicant; the location of the proposed activity; the application number; the type of permit being sought; name, address and phone number for a contact person at the Department;

(C) Provide the name, address and number for the Department's Americans with Disabilities Act coordinator;

(D) Provide the date, time and location of the public hearing or meeting; and

(E) Be published in other media and in languages other than English as required by the commissioner.

(9) The commissioner may consider more than one permit application, or order pursuant to section 22a-174-33(d) of Regulations of Connecticut State Agencies, at any hearing or meeting under subdivisions (6) or (7) of this subsection, provided the notice requirements of subdivision (8) of this subsection have been satisfied. The commissioner shall consider all written comments submitted within the public comment period in the notice including all comments received at the public hearing when making a final decision on the approvability of the application.

(d) New Source Review and Title V Non-Minor Permit Modification

(1) General. Prior to making the change that is the subject of the non-minor permit modification application the owner or operator shall apply for and obtain a non-minor permit modification pursuant to this subsection.

(2) Exemptions. A permittee may conduct an activity described in section 22a-174-3a(a)(2) of the Regulations of Connecticut State Agencies without applying for and obtaining a new source review non-minor permit modification under this subsection.

(3) Except as provided in subdivision (2) of this subsection, the permittee of any stationary source or emission unit permitted under section 22a-174-3a or former section 22a-174-3 of the Regulations of Connecticut State Agencies shall apply for and obtain a new source review non-minor permit modification for any stationary source, emission unit, or modification identified in section 22a-174-3a(a)(1) of the Regulations of Connecticut State Agencies.

(4) Notwithstanding the exemptions in subdivision (2) of this subsection, the permittee of any Title V source shall apply for and obtain a Title V non-minor permit modification for any one or more of the following:

(A) To incorporate the requirements of any new source review permit issued to the permittee under former section 22a-

174-3(k) or (l) of the Regulations of Connecticut State Agencies or section 22a-174-3a(k) or (l) of the Regulations of Connecticut State Agencies;

(B) To change a Title V permit term or condition which had prevented a Title V source from being subject to an otherwise applicable requirement;

(C) To relax the form or type of or any reduction in the frequency of any monitoring, reporting or record keeping required by the Title V permit; or

(D) To incorporate a change to an applicable requirement not otherwise subject to subsections (e) or (f) of this section or not otherwise allowed as an off-permit change pursuant to 40 CFR 70.4(b)(14), as amended from time to time, or as operational flexibility pursuant to 40 CFR 70.4(b)(12), as amended from time to time.

(5) The procedural requirements for all non-minor permit modifications under subdivisions (3) and (4) of this subsection are as follows:

(A) An application for a non-minor permit modification shall be made on forms prescribed by the commissioner. Such application shall include a description of any proposed changes, a proposed permit, any proposed monitoring procedures, any changes in potential emissions resulting from the proposed changes, and an identification of all regulatory, statutory, or otherwise applicable requirements that would become applicable as a result of such changes;

(B) The permittee shall not deviate from the terms and conditions of the existing permit until and unless the commissioner has modified that permit; and

(C) A non-minor permit modification pursuant to this subsection, shall only be granted, granted with conditions, or denied following public notice and opportunity for public comment and public hearing, in accordance with the procedures set forth in subsections (b) and (c) of this section.

(6) In addition to the procedural requirements provided in subdivision (5) of this subsection, an application for a new source review non-minor permit modification under subdivision (3) of this subsection shall meet the requirements set forth in section 22a-174-3a(c) and 22a-3a-5 of the Regulations of Connecticut State Agencies.

(7) In addition to the procedural requirements provided in subdivision (5) of this subsection, an application for a Title V

non-minor permit modification under subdivision (4) of this subsection shall meet the requirements set forth in section 22a-174-33(g) and 22a-3a-5 of the Regulations of Connecticut State Agencies and shall:

(A) Meet the requirements of 40 CFR 70.5(c), as amended from time to time;

(B) Meet the requirements of 40 CFR 70.7(a)(1), (4), (5) and (6) as amended from time to time;

(C) Shall, where applicable, meet the requirements of 40 CFR 72 through 78, inclusive, as amended from time to time; and

(D) Shall only be granted or denied following opportunity for a public informational hearing described in subsection (c)(6) of this section, as may be applicable.

(8) With respect to an application for a Title V non-minor permit modification under subdivision (4) of this subsection, the commissioner shall:

(A) Take final action on a Title V non-minor permit modification within twelve (12) months from receipt of a complete application. In the event that this deadline is exceeded no application for a Title V non-minor permit modification shall automatically be deemed sufficient or approved; and

(B) Submit the modified Title V permit to the Administrator.

(9) If, pursuant to section 22a-174-3a(f) of the Regulations of Connecticut State Agencies, the commissioner modifies a new source review permit issued under section 22a-174-3a or former section 22a-174-3 of the Regulations of Connecticut State Agencies, the following procedures shall apply:

(A) The permittee shall not deviate from the terms and conditions of the existing permit until and unless the commissioner has modified that permit; and

(B) A non-minor permit modification pursuant to this subsection, shall only be granted, granted with conditions, or denied following public notice and opportunity for public comment and public hearing, in accordance with the procedures set forth in subsections (b) and (c) of this section.

(e) New Source Review and Title V Minor Permit Modification

(1) The permittee of any source that is subject to a new source review permit issued by the commissioner under section 22a-174-3a(a)(1)(D) or (E) or former section 22a-174-3 of the Regulations of Connecticut State Agencies shall apply for a new source review minor permit modification to incorporate any modification of an emission unit with any increase in potential emissions, above allowable emissions, of less than fifteen (15) tons per year of any individual air pollutant, unless such modification is subject to the provisions of section 22a-174-3a(a)(1)(A), (B), (C) or (F) of the Regulations of Connecticut State Agencies.

(2) The permittee of any Title V source shall apply for a Title V minor permit modification to incorporate:

(A) Any modification not covered by permit revisions in subsection (f)(2)(A) through (F), inclusive, of this section; and

(B) Any modification allowed pursuant to the Title V minor permit modification criteria under 40 CFR 70.7 (e)(2)(i)(A)(1) through (6), inclusive, as amended from time to time.

(3) The procedural requirements for all new source review and Title V minor permit modifications, except as otherwise provided in subdivisions (4) and (5) of this subsection, are as follows:

(A) An application for a minor permit modification shall be made on forms prescribed by the commissioner and signed in accordance with subsection (a) of this section;

(B) An application for a minor permit modification shall include the following:

(i) a description of the proposed modification, a proposed modified permit, any proposed monitoring procedures, any increase in potential emissions resulting from the proposed modification, and an identification of all regulatory, statutory, or otherwise applicable requirements that would become applicable as a result of such modification, and

(ii) a statement, certified in accordance with subsection (a)(5) of this section, that the proposed minor permit modification meets all regulatory, statutory, or applicable requirements identified in the subject application pursuant;

(C) Subject to limitations specified in subdivision (5)(F) of this subsection, a permittee may implement the modifications proposed in the minor permit modification application no less than twenty-one (21) days after

filing a complete application with the commissioner. The permittee shall comply with the terms and conditions of the proposed modified permit and the terms and conditions of the existing permit that are not being modified, until the commissioner issues or denies the proposed modified permit.

(D) The commissioner shall process any minor permit modification, subject to subdivision (1) of this subsection, at a Title V source in accordance with both the Title V and new source review minor modifications provisions in subdivisions (3) through (5), inclusive of this subsection unless otherwise allowed pursuant to subdivision (r)(2) of section 22a-174-33 of the Regulations of Connecticut State Agencies.

(4) With respect to an application for a new source review minor permit modification, under subdivision (1) of this subsection, to a permit issued under section 22a-174-3a or former section 22a-174-3 of the Regulations of Connecticut State Agencies, the existing permit terms and conditions of the permit sought to be modified remain in full force and effect if the modification that is the subject of the application is determined by the commissioner to require a non-minor permit modification.

(5) The following requirements shall apply to an application for a Title V minor permit modification under subdivision (2) of this subsection:

(A) The application shall meet the requirements of 40 CFR 70.5(c), as amended from time to time, and shall be governed by 40 CFR 72 through 78, inclusive, as amended from time to time;

(B) The application shall include completed forms for the commissioner to use to notify the Administrator, affected states and federally recognized Indian governing bodies of the proposed Title V minor permit modification;

(C) The commissioner shall notify the Administrator, affected states and the federally recognized Indian governing bodies within five (5) business days of receiving an application for a Title V minor permit modification;

(D) The commissioner shall comply with the timetable for issuance set forth in 40 CFR 70.7(e)(2)(iv), as amended from time to time;

(E) The commissioner shall not grant the permit shield provided by section 22a-174-33(k) of the Regulations of Connecticut State Agencies for Title V minor permit modifications made under this subsection;

(F) The permittee shall comply with the existing permit terms and conditions of the Title V permit if:

(i) the permittee fails to comply with the proposed permit terms and conditions during the pendency of an application for a Title V minor permit modification,

(ii) such application is subject to the provisions of subsection (d) of this section and the owner or operator has already implemented or began implementing the proposed modifications,

(iii) the commissioner denies the proposed Title V modified permit,

(iv) the commissioner has made a determination under 40 CFR 70.7(e)(2)(iv)(C), as amended from time to time, or

(v) the commissioner determines that the proposed modification would make the source subject to section 22a-174-3a of the Regulations of Connecticut State Agencies; and

(6) Notwithstanding the requirements of subsections (b) and (c) of this subsection, the commissioner may modify a Title V permit or new source review permit under this subsection without published notice, public comment, or hearing.

(f) Permit Revisions

(1) Exemptions. The owner or operator of a stationary source may perform the activities described in sections 22a-174-3a(a)(2)(A)(i) through (iii) and 22a-174-3a(a)(2)(B) through (C) of the Regulations of Connecticut State Agencies unless otherwise restricted by any provision of such permit or an order of the commissioner.

(2) The permittee of any stationary source for which the commissioner has issued a permit under 22a-174-33, section 22a-174-3a, or former section 22a-174-3 of the Regulations of Connecticut State Agencies shall apply for and obtain a permit revision, for the purposes of:

(A) Correcting a clerical error;

(B) Revising the address or phone number of any person identified in such permit, or making another revision reflecting a similarly minor administrative change at or concerning the subject source;

(C) Revising the name of the authorized representative of the permittee, provided that a request to change such authorized representative shall be accompanied by written authorization in accordance with subsection (a)(2)(A) through (D), inclusive, of this section;

(D) Requiring more frequent or additional monitoring, record keeping or reporting;

(E) Reflecting a transfer in ownership or operational control of the subject source, in accordance with subsection (g) of this section, provided that:

(i) no other modification of the subject permit is required as a result of such transfer,
(ii) if the subject permit contains a provision for changing ownership or operational control of the subject source, the provision stated in the permit shall be followed provided that such provision is consistent with section 22a-6o of the Connecticut General Statutes, and

(iii) any transfer of the permit required by section 22a-6o of the Connecticut General Statutes has been granted by the commissioner;

(F) Implementing an administrative Title V permit amendment set forth in 40 CFR 70.7(d)(1)(v), as amended from time to time; or

(G) Implementing a fuel conversion described in section 22a-174-3a(a)(2)(A)(iv) or (v) of the Regulations of Connecticut State Agences.

(3) Notwithstanding the requirements of subsections (b) and (c) of this section, the commissioner may revise a permit under this subsection without published notice, public comment, or hearing.

(4) Except as provided in subdivision (2) of this subsection, upon submitting to the commissioner a written request for a permit revision under this subsection, a permittee may make changes as set forth in such request.

(5) With respect to a request to revise a Title V permit the commissioner shall comply with the applicable provisions of 40 CFR 70.7 (d)(2) and (3), as amended from time to time

(6) The commissioner shall not grant the permit shield provided by section 22a-174-33(k) of the Regulations of Connecticut State Agencies for permit revisions made under this subsection.

(g) Permit Transfer

(1) No person shall act or purport to act under the authority of a permit issued to another person unless such permit has been transferred in accordance with section 22a-6o of the Connecticut General Statutes.

(2) If the permit transferred is a Title V permit, such transfer shall comply with 40 CFR 70.7(d)(1)(iv), as amended from time to time, and proceed under subsection (f)(2)(E) of this section.

(h) Permit Revocation

(1) The commissioner may revoke any permit on his own initiative or at the request of the permittee in accordance with sections 4-182(c) and 22a-174c of the Connecticut General Statutes, section 22a-3a-5(d) of the Regulations of Connecticut State Agencies, and any other applicable law. Any such request shall be in writing and contain facts and reasons supporting the request.

(2) A permittee requesting the revocation of the permittee's Title V permit shall also state the requested date of revocation and provide evidence satisfactory to the commissioner that the subject source is no longer a Title V source.

(3) The Administrator, pursuant to the Act, is authorized to revoke or revoke and reissue a Title V permit if the Administrator has determined that the commissioner failed to act in a timely manner on a permit renewal application.

(i) Permit Renewal

(1) In addition to the requirements of section 22a-3a-5(c) of the Regulations of Connecticut State Agencies, except as provided in subdivision (2) of this subsection, the permittee shall apply for a permit renewal, if the subject permit contains an expiration date, at least one hundred twenty (120) days prior to the permit expiration date. Such application shall be made on forms prescribed by the commissioner, and shall include a description of any proposed modifications, proposed permit language, any proposed monitoring procedures, any increases or decreases in potential emissions resulting from any proposed modifications, and an identification of all regulatory, statutory, or otherwise applicable requirements that would become applicable as a result of such proposed modifications.

(2) The owner or operator of a Title V source shall apply for a renewal of a Title V permit no later than twelve (12) months prior to the expiration date of such permit.

(3) Notwithstanding subdivision (1) of this subsection, permits to operate issued after June 1, 1972 and before April 2, 1986 need not be renewed even when there is a expiration date on the permit.

Statement of purpose of Section 22a-174-2a: To adopt regulations to establish a minor permit revision procedure for holders of Title V operating permits in accordance with 40 CFR 70.7(e)(2); and to provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications in accordance with the conditions imposed on the Connecticut Department of Environmental Protection by the United States Environmental Protection Agency (EPA) in the proposed interim approval of the Connecticut Title V program. See proposed interim approval of the Connecticut Title V program by EPA, 61 *Federal Register* 64656 (December 6, 1996), finalized by EPA at 62 *Federal Register* 13830 (March 24, 1997). In addition, this proposal establishes modification and revision procedures for permits issued pursuant to former section 22a-174-3 or section 22a-174-3a of the Regulations of Connecticut State Agencies. This proposal also consolidates many procedural requirements that must be met prior to the issuance of new source review permits under proposed section 22a-174-3a of the Regulations of Connecticut State Agencies and Title V operating permits under section 22a-174-33 of the Regulations of Connecticut State Agencies.

C. Final Wording of Proposed R.C.S.A. 22a-174-3 and 22a-174-3a:

Sec. 4 The Regulations of Connecticut State Agencies are amended by deleting section 22a-174-3.

Sec. 5 The Regulations of Connecticut State Agencies are amended by adding a new section 22a-174-3a as follows:

(NEW)

Sec. 22a-174-3a. Permit to Construct and Operate Stationary Sources

(a) Applicability and Exemptions

(1) Applicability. Prior to beginning actual construction of any stationary source or modification not otherwise exempted in accordance with subdivision (2)(A) through (C) of this subsection, the owner or operator shall apply for and obtain a permit to construct and operate under this section for any:

(A) New major stationary source;

(B) Major modification;

(C) New or reconstructed major source of hazardous air pollutants subject to the provisions of subsection (m) of this section;

(D) New emission unit with potential emissions of fifteen (15) tons or more per year of any individual air pollutant;

(E) Modification to an existing emission unit which increases potential emissions of any individual air pollutant from such unit by fifteen (15) tons or more per year; or

(F) Stationary source or modification that becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant.

(2)Exemptions. Notwithstanding the provisions of subdivision (1) of this subsec sources listed in subdivision (2)(B) and (2)(C) of this section, without a permit under this section, with the exception of any source subject to subdivision (1) of this subsection in accordance with subdivision (6) of this subsection:

(A) Any activity that:

(i) adds air pollution control equipment or implements process changes to control air pollution unless the addition or implementation results in an increase in actual emissions of any individual air pollutant of fifteen (15) tons or more per year, or ten (10) tons or more per year of a hazardous air pollutant subject to the provisions of subsection (m) of this section,

(ii) relocates a portable rock crusher which is subject to a permit or exemption letter issued by the commissioner under former section 22a-174-3 Regulations of Connecticut State Agencies, or which is registered under a general permit for such sources issued by the commissioner under section 22a-174(*l*) of the Connecticut General Statutes, provided the owner or operator is in compliance with any such permits and provides written notice to the commissioner prior to such relocation,

(iii) constitutes a conversion from fuel oil to natural gas, or in addition to fuel oil, provided such conversion does not increase actual emissions of any individual air pollutant by fifteen (15) tons or more per year, unless such conversion results in reconstruction; or

(iv) constitutes a conversion from residual fuel oil to distillate fuel oil, or in addition to residual fuel oil, provided such conversion does not increase actual emissions of any individual air pollutant by fifteen (15) tons or more per year, unless such conversion results in reconstruction.

(B) Any stationary source that is:

(i) registered under and is in compliance with any new source review general permit to construct and operate a new or existing stationary source issued pursuant to section 22a-174(*l*) of the Connecticut General Statutes,

(ii) a stripping facility used to remove VOC from contaminated groundwater or soil pursuant to an order issued by the commissioner, provided such facility has a control device with VOC removal efficiency of at least ninety-five percent (95%),

(iii) a portable engine or boiler temporarily replacing an existing engine or boiler, provided the replacement units have a combined emission rate equal to or less than the existing units and that the number of days total that any and all such portable engines or boilers may be used does not exceed ninety (90) days in any calendar year, or

(iv) in compliance with section 22a-174-3b or Section 22a-174-3c of the Regulations of Connecticut State Agencies, unless otherwise subject to this section pursuant to subdivisions (6) or (7) of this subsection;

(C) Any:

(i) mobile source, or

(ii) non-road engine as defined in 40 CFR Part 89.

(3) In determining the applicability of subsections (k) or (*l*) of this section, the owner or operator may determine the net emissions increase. However, the net emissions increase shall not be used determining the applicability of:

(A) This section to any minor source or modification thereof; or

(B) Subsection (j) of this section.

(4) This section and section 22a-174-2a of the Regulations of Connecticut State Agencies shall apply to any stationary source or modification for which a permit application under former section 22a-174-3 of the Regulations of Connecticut State Agencies was filed prior to the effective date of this section, and for which a permit has yet to be issued or denied.

(5) Any permit modification or permit revision to a permit issued under this section shall be made as required in, and in accordance

with, the provisions of this section and section 22a-174-2a of the Regulations of Connecticut State Agencies.

(6) To determine the applicability of subdivision (1)(B) of this subsection, pursuant to the de minimis rule under section 182(c)(6) and (f) of the Act, the owner or operator of a major stationary source shall make and keep records of actual VOC and NOx emission increases and decreases at such source, resulting from any physical change in, or change in the method of operation of a stationary source. Such increases shall include emission increases below fifteen (15) tons per year of any individual air pollutant.

(7) To determine if the net emission increase of a modification exceeds the major source threshold levels and is subject to subsection (k) of this section, the owner or operator shall make and keep records of actual emissions increases and decreases including those below fifteen (15) tons per year, over the five (5) consecutive calendar years preceding the completion of construction.

(8) Any permit issued under former section 22a-174-3 of the Regulations of Connecticut State Agencies shall remain in full force and effect, in accordance with Section 22a-174-2a(i) of the Regulations of Connecticut Agencies, unless otherwise determined by the commissioner.

(b) Authorized activities prior to permit issuance

(1) The owner or operator of a stationary source or modification who is required to obtain a permit or non-minor permit modification under the provisions of this section may, prior to obtaining such permit:

(A) Enter into binding agreements or contractual obligations to undertake construction of the proposed stationary source or modification for which a permit is required; and

(B) Begin site clearing activities.

(2) The owner or operator of a stationary source or modification who must obtain a permit or non-minor permit modification under the provisions of this section, shall not begin actual construction before permit issuance. Such construction activities include, but are not limited to, the following activities which are specifically required for construction of the proposed stationary source or modification:

(A) Excavating, blasting, removing rock and soil; or

(B) Installing footings, foundations, retaining walls, or permanent storage structures.

(c) Applications

(1) The owner or operator of a stationary source or modification subject to the provisions of this section shall apply for a permit on forms prescribed by the commissioner. All permit applications shall include:

(A) An executive summary and all other information required by section 22a-3a-5 of the Regulations of Connecticut State Agencies. The executive summary shall summarize the information contained in the application;

(B) Background information, including, but not limited to, the address of the premises, the legal name and business address of the applicant and of the applicant's agent for service of process and, if the applicant is not the owner of the subject source, the legal name and business address of such owner and of the owner's agent for service of process, the names and telephone numbers of the plant or site manager and any other individual, such as an engineer or consultant, designated by the owner or operator to answer questions pertaining to such application, including but not limited to, the siting of the subject stationary source or modification;

(C) The premises' site plan, including: a linear scale and north arrow, the plot plans depicting existing and proposed building locations, the legal boundaries of the property, stack locations, location of the subject stationary source or modification on the premises, and a United States Geological Survey topographic quadrangle map identifying the latitude and longitude of the subject stationary source or modification; and to the extent the commissioner deems it necessary, building dimensions and final grade elevations for all structures located on the premises;

(D) Technical information, including, but not limited to:

(i) descriptions of equipment, processes, air pollution control equipment, stack, fuels, process materials to be used, and process flow diagrams,

(ii) a completed pre-inspection questionnaire, if requested by the commissioner, which describes the equipment, processes and materials used,

(iii) the type, size, and efficiency of control equipment, and

(iv) the date, or proposed date, for commencement of construction of the subject stationary source or modification;

(E) The rate of emissions for individual air pollutants from the subject stationary source or modification. To calculate the rate of emissions, the owner or operator shall use data from one or more of the following, unless the commissioner determines otherwise:

(i) a continuous monitoring system which has been certified by the commissioner, provided that such data may be taken from a source similar to that for which a permit is sought,

(ii) stack testing data, provided such testing was conducted in accordance with protocols preapproved by the commissioner in writing and such test was observed by department staff; and further provided that such data may be taken from a source similar to that for which a permit is sought,

(iii) material balances conducted by an individual with knowledge of the subject process,

(iv) data from the "Compilation of Air Pollutant Emission Factors (AP-42)" as published by the Environmental Protection Agency,

(v) a calculation submitted to the commissioner, or

(vi) manufacturer's data submitted to the commissioner;

(F) Pursuant to subsection (j) of this section, proposed best available control technology (BACT) determination, including, but not limited to, an analysis, as required by subsection (j) of this section, of the amount of emission reduction achievable through the use of BACT;

(G) For any stationary source or modification subject to subsection (l) of this section, the proposed lowest achievable emission rate (LAER) determination, including an analysis of the proposed LAER for each air pollutant, as required by subsection (l) of this section. Such analysis shall include the amount of emission reduction achievable through the use of LAER;

(H) For any stationary source or reconstruction subject to subsection (m) of this section, the proposed maximum achievable control technology (MACT) determination, as required by subsection (m) of this section;

(I) If the premises is a major stationary source, for the purposes of determining compliance with subdivisions (a)(6) and (7) of this section, a summary of the potential emissions from the new subject stationary source or modification and actual emissions from existing stationary sources located at the premises over the preceding five (5) consecutive calendar years;

(J) Compliance information pursuant to and required by section 22a-6m of the Connecticut General Statutes;

(K) Certification in accordance with section 22a-174-2a of the Regulations of Connecticut State Agencies; and

(L) All application fees required by law.

(2) The commissioner may require the owner or operator of the subject stationary source or modification to provide such additional information as the commissioner deems necessary.

(d) Standards for Granting and Renewing a Permit

(1) The commissioner may impose conditions on any permit or renewal thereof to ensure compliance with the regulations adopted pursuant to section 22a-174 of the Connecticut General Statutes and the Act.

(2) A permit or permit renewal shall not be issued unless the commissioner determines, upon evidence submitted by the owner or operator or otherwise made part of the record, that the owner or operator of the subject stationary source or modification shall comply with the applicable provisions of subdivision (3) of this subsection.

(3) Before issuance of a permit or permit modification, the owner or operator shall demonstrate, to the satisfaction of the commissioner, that, with respect to the construction and operation of the subject stationary source or modification, the owner or operator shall:

(A) Construct and operate such stationary source or modification in accordance with the permit, and operate such stationary source or modification in accordance with all applicable and relevant emission limitations, statutes, regulations, schedules for stack tests, and other order of the commissioner. In the event a conflict exists between the permit and another state or federally enforceable statute, regulation or order of the commissioner, the most stringent provision shall apply;

(B) Operate such stationary source or modification without preventing or interfering with the attainment or maintenance of any applicable ambient air quality

standards or any Prevention of Significant Deterioration increments under subsection (k) of this section;

(C) Operate such stationary source or modification without preventing or interfering with the attainment or maintenance of any National Ambient Air Quality Standard in any other state and without interfering with the application of the requirements in any other state's implementation plan, adopted under section 110 of the Act;

(D) Operate such stationary source or modification in accordance with all applicable emission standards and standards of performance under 40 CFR Parts 60, 61, and 63, as may be amended from time to time;

(E) Install:

(i) sampling ports of a size, number and location as the commissioner may reasonably require,

(ii) instrumentation to monitor and record emission and other parameter data as the commissioner may require, and

(iii) such other sampling and testing facilities as the commissioner may require;

(F) As the commissioner may require, conduct stack tests at the expense of such owner or operator, in accordance with subsection (e) of this section, and in accordance with permit conditions and methods prescribed by the commissioner. Such stack tests shall demonstrate, to the commissioner's satisfaction, that the requirements of each and every applicable permit or order of the commissioner for such stationary source or modification are being met and that such stationary source or modification complies with the Regulations of Connecticut State Agencies and federal requirements;

(G) Pay all fees required by the Department within forty-five (45) days of receipt of a tentative determination of the commissioner;

(H) Incorporate Best Available Control Technology (BACT), as directed by the commissioner, for each individual air pollutant subject to, and in accordance with, subsection (j) of this section;

(I) Incorporate the lowest achievable emission rate (LAER), as directed by the commissioner, for each individual air

pollutant subject to, and in accordance with, subsection (*l*) of this section;

(J) Incorporate the maximum available control technology (MACT), as directed by the commissioner, for each individual air pollutant subject to, and in accordance with, subsection (m) of this section;

(K) As required by the commissioner, install monitoring equipment and perform monitoring to demonstrate compliance with any permit provision. Such monitoring may include, but not be limited to, continuous emission monitoring (CEM);

(L) Provide the commissioner with current information regarding air pollutant emissions from such stationary source or modification, and in accordance with the commissioner's request, submit updated and current information regarding air pollutant emissions from any other stationary sources located on the applicable premises;

(M) Comply with any applicable maximum allowable stack concentration or other emission limitation of section 22a-174-29 of the Regulations of Connecticut State Agencies, as may be amended;

(N) Demonstrate that the emission limitation required of such stationary source or modification for the control of any air pollutant shall not be affected by that portion of the stack height of such stationary source or modification that exceeds good engineering practice stack height or by any other dispersion technique;

(O) Comply with an approved operation and maintenance plan submitted pursuant to subsection (c)(2) of this section;

(P) Have completed and submitted, on forms prescribed by the commissioner, a pre-inspection questionnaire, if requested to do so by the commissioner, which describes the equipment, processes and materials used;

(Q) Make the permit available at the subject premises throughout the period that such permit is in effect; and

(R) Comply with the applicable provisions of this section and any other applicable regulations, permits or orders of the commissioner for such stationary source or modification.

(4) An expiration date may be placed within any permit issued pursuant to this section. Any permit issued pursuant to this

section or former section 22a-174-3 of the Regulations of Connecticut State Agencies containing an expiration date shall be renewed in accordance with the provisions of section 22a-174-2a(i) of the Regulations of Connecticut State Agencies.

(e) Emission Testing

(1) The permit may require that the owner or operator conduct emission (stack) testing to assure compliance with the permit terms and conditions in accordance with this subsection and section 22a-174-5 of the Regulations of Connecticut State Agencies.

(2) Emission tests shall be conducted in a manner acceptable to and approved by the commissioner. The owner or operator shall provide the results of any emission test in a form satisfactory to the commissioner. The commissioner shall have the opportunity to observe all emission tests or the results of any such tests may be disapproved by the commissioner.

(3) Based upon emission test results, the commissioner may modify, revise, or revoke a permit in accordance with subsection (f) of this section.

(f) Modification, revision, or revocation of a permit

(1) The commissioner may modify, revise, or revoke a permit in accordance with this section, section 22a-174-2a of the Regulations of Connecticut State Agencies, and sections 4-182 and 22a-174c of the Connecticut General Statutes.

(2) The commissioner shall review and may modify, revise or revoke any permit if the owner or operator:

(A) Has not commenced construction authorized by the permit within eighteen (18) months from the date of issuance, or such other period, as the permit provides, whichever is later;

(B) Has discontinued construction for eighteen (18) months or more after actual construction authorized by the permit has begun; or

(C) Has not commenced operation authorized by the permit within twenty-four (24) months from the completion of construction, or such other period as the permit provides, whichever is later.

(g) Non-Minor Permit Modifications, Minor Permit Modifications and Permit Revisions

(1) Any non-minor permit modification to a permit issued pursuant to this section shall be made in accordance with subsections (d)(1), (2), (3), (5) and (6) or subsection (d)(8) of section 22a-174-2a of the Regulations of Connecticut State Agencies, respectively.

(2) Any minor permit modification to a permit issued pursuant to this section shall be made in accordance with subsections (e)(1), (3) and (4) of section 22a-174-2a of the Regulations of Connecticut State Agencies, respectively.

(3) Any revision to a permit issued pursuant to this section shall be made in accordance with section 22a-174-2a(f) of the Regulations of Connecticut State Agencies.

(h) Duty to Comply

An owner or operator shall comply with the permit or modification thereto issued by the commissioner under this section.

(i) Ambient Air Quality Analysis

(1) An application for a permit subject to this subsection, if requested to be provided under subsection (c)(2) of this section, shall contain an analysis of the effect of the pollutants listed in Table 3a(i)-(1) below. For the purposes of this subsection, the allowable emissions of an air pollutant will be deemed to have a significant impact on air quality if such impact is greater than or equal to the amount listed for any individual air pollutant in Table 3a(i)-1 below.

Table 3a(i)-1 Ambient Impact

AIR POLLUTANT	AMBIENT IMPACT (MICROGRAMS PER CUBIC METER)
PM_{10}	
Annual average	1
24-hour average	5
Sulfur Dioxide	
Annual average	1
24-hour average	5
3-hour average	25
Carbon Monoxide	
8-hour average	500
1-hour average	2000
Nitrogen Dioxide	
Annual average	1
Dioxin	
Annual average (as calculated according to Section 22a-174-1(29) of the	(Notwithstanding above units)

Regulations of Connecticut State Agencies) (Polychlorodibenzodioxins (PCDDs)) (Polychlorodibenzofurans (PCDFs))	0.1 picograms/m^3
Lead (Pb) Three (3) month average	0.3

(2) Any person who makes estimates of ambient air quality impacts shall use applicable air quality models, databases or other techniques approved by the commissioner. The commissioner may request any owner or operator to submit an ambient air quality impact analysis using applicable air quality models and modeling protocols approved by the commissioner.

(j) Best Available Control Technology (BACT)

(1) An owner or operator shall incorporate BACT for:

(A) Potential emissions of each regulated air pollutant above the significant emission rate thresholds in Table 3a(k) - 1 of subsection (k) of this section, from each major stationary source;

(B) Potential emissions of each regulated air pollutant above the significant emission rate thresholds in Table 3a(k) - 1 of subsection (k) of this section, from each major modification. This requirement applies to each individual emission unit that is being modified as part of such major modification;

(C) Potential emissions of fifteen (15) tons or more per year of any individual air pollutant, from each new emission unit and

(D) Potential emissions of fifteen (15) tons or more per year of any individual air pollutant, from a modification to each existing emission unit.

(2) The owner or operator:

(A) Shall make and submit to the commissioner for written approval a BACT analysis for each air pollutant subject to subdivision (1) of this subsection, including but not limited to, secondary and cumulative impacts and cost estimates of all control options, or the use of innovative technology; and

(B) Shall install BACT as approved by the commissioner.

(3) The commissioner's review and written approval regarding BACT or the use of innovative technology shall be conducted prior to the issuance of the permit and prior to beginning actual construction.

(4) Notwithstanding any permit for a new source or modification under this subsection the commissioner may require for construction projects, including phased construction projects, that the permittee resubmit for review and approval a BACT analysis if such construction or phase of construction has not commenced within the eighteen (18) months following the commissioner's approval of the current BACT determination for such construction or phase of construction.

(5) Prior to commencing construction, including each phase of phased construction, the owner or operator may be required by the commissioner to demonstrate the adequacy of the technology used pursuant to any previous BACT determination, if such construction or phase of construction has not commenced within the eighteen (18) months following the commissioner's approval of the current BACT determination for such construction or phase of construction.

(6) In determining whether to approve BACT, the commissioner shall:

(E) Take into account any emission limitation, including any visible emission standard, which is achievable under any permit limitation or any stack test demonstration acceptable to the commissioner;

(F) Consider a previous BACT approval for a similar or a representative type of source;

(C) If the commissioner determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, the commissioner may prescribe a design, equipment, work practice or operational standard, or combination thereof, to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results: and

(D) Not preclude the establishment of an output based emission limitation as BACT provided such application of BACT improves the overall thermal efficiency of the subject source or modification.

(7) In determining whether to approve BACT, the commissioner shall take into account energy, economic and environmental impacts, including secondary and cumulative impacts, and other costs.

(8) In no event shall the application of BACT result in:

(A) Emissions of any pollutant which would exceed the emission allowed by an applicable standard under 40 CFR Parts 60 and 61, and any State Implementation Plan limitation;

(B) The use of offsetting emission reductions to meet the commissioner's approval of BACT; or

(C) The use of a net emissions increase to meet the commissioner's approval of BACT.

(9) The commissioner may allow the use of innovative technology as BACT, in accordance with 40 CFR 52.21(v), provided that Administrator means commissioner for the purposes of this provision. The owner or operator shall demonstrate that the proposed innovative technology will comply with 40 CFR 52.21(v), provide a net air quality benefit, and meet at least two (2) of the following criteria:

(A) Improves the process or operation of existing equipment;

(B) Requires the use of new equipment or air pollution control technology;

(C) Reduces localized impacts of any individual air pollutant; or

(D) Implements principles of pollution prevention or environmental management systems.

(k) Permit Requirements for Attainment Areas: Prevention of Significant Deterioration of Air Quality (PSD) Program

(1) The provisions of this subsection shall apply to the owner or operator of any new major stationary source for each criteria air pollutant that is significant from such new major stationary source located in an attainment area or unclassified area for such pollutant.

(2) The provisions of this subsection shall apply to the owner or operator of any major modification for each criteria air pollutant from such major modification located in an attainment area or unclassified area for such pollutant, that has:

(A) Actual emissions that are equal to or greater than the significant emission rate thresholds in Table 3a(k)-1 of this subsection; and

(B) A net emissions increase that is equal to or greater than the significant emission rate thresholds in Table 3a(k)-1 of this subsection.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, the provisions of this subsection do not apply to a major stationary source or major modification with potential emissions of nitrogen oxides of more than twenty-five (25) tons but less than forty (40) tons per year.

(4) The owner or operator of a new major stationary source or major modification subject to this subsection shall install BACT as approved by the commissioner in accordance with subsection (j) of this section.

(5) Ambient Monitoring

(A) The permit application shall contain an analysis of the effect on ambient air quality in the area of the subject source or modification, of the following pollutants:

(i) those that have allowable emissions in excess of the amount listed in Table 3a(k)-1 of this subsection, or

(ii) those listed in section 22a-174-24 of the Regulations of Connecticut State Agencies,

(B) For any pollutant for which a National Ambient Air Quality Standard does not exist, the analysis shall contain such air quality monitoring data as the commissioner determines is necessary to assess ambient air quality for that pollutant in any area that such pollutant may affect;

(C) For any pollutant (other than nonmethane hydrocarbons) for which a National Ambient Air Quality Standard exists, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of such standard or a Prevention of Significant Deterioration increment listed in Table 3a(k)-2 of this subsection;

(D) The continuous air quality monitoring data that is required by subparagraphs (B) and (C) of this subdivision shall have been gathered over a period of one (1) year and shall represent the year preceding receipt of the application, unless the commissioner determines in writing that a complete and adequate analysis can be accomplished with monitoring data gathered over a period

shorter than one (1) year, but not to be less than four (4) months;

(E) The owner or operator shall, after construction of the subject source or modification, conduct such ambient monitoring as the commissioner determines is necessary to determine the effect which the emissions from such source or modification may have, or are having, on air quality in any area. In addition, the owner or operator shall submit the results of such ambient monitoring to the commissioner within thirty (30) days of data collection; and

(F) The owner or operator shall meet the requirements of 40 CFR 58, Appendix B during the operation of monitoring.

(6) Source Impact Analysis.

(A) The owner or operator of the subject source or modification which will have an impact on air quality equal to or greater than any amount listed in Table 3a(i)-1 of subsection (i) of this section shall not cause or contribute to air pollution in violation of the National Ambient Air Quality Standards or any applicable maximum allowable increase above baseline concentration established in Table 3a(k)-2 of this subsection;

(B) Compliance with the requirements of this subsection shall be determined using the Department's air emissions inventory and the Prevention of Significant Deterioration increments listed in Table 3a(k)-2 of this subsection;

(C) A permit application for the subject source or modification shall include a calculation of the increase, above the baseline concentration, in ambient concentrations of pollutants to be expected from the new major stationary source or major modification. Such calculation shall be based on:

(i) the allowable emissions from the subject source or modification,

(ii) the actual emissions from all major stationary sources which were required to obtain a permit after the major source baseline date,

(iii) the increased actual emissions from all modifications to the major stationary source which were required to be permitted after the major source baseline date and before the minor source baseline date. The owner or operator shall use allowable emissions instead of actual emissions if such

modifications are located on the owner's or operator's premises,

(iv) the actual emissions from all stationary sources, other than major stationary sources, which were required to obtain a permit after the minor source baseline date,

(v) the allowable emissions for any stationary source for which a permit is pending and for which the commissioner has made a determination of application sufficiency, and

(vi) the reductions, occurring on or after the minor source baseline date, in actual emissions and federally enforceable allowable emissions from stationary sources located in the baseline area;

(D) When determining the increase over the baseline concentration of criteria air pollutant emissions from the subject major stationary source or major modification, the commissioner may consider any proposed reductions in actual emissions and allowable emissions which will occur prior to the commencement of operation of the subject major stationary source or major modification, provided such reductions become enforceable.

(7) A permit application for the subject source or modification shall contain an analysis, in accordance with subsection (i) of this section, of the effect of the pollutants listed in Table 3a(k)-1.

Table 3a(k)-1 Significant Emission Rate Thresholds

AIR POLLUTANT	EMISSION LEVELS (TONS PER YEAR)
Carbon Monoxide	100
Nitrogen Oxides (as an ozone precursor)	25
Nitrogen Oxides (NOx National Ambient Air Quality Standard)	40
Sulfur Dioxide	40
Particulate Matter	25
PM_{10}	15
Volatile Organic Compounds	25
Hydrogen Sulfide (H-S)	10

Total Reduced Sulfur (including H_2S)	10
Reduced Sulfur Compounds (including H_2S)	10
Sulfuric Acid Mist	7
Fluorides	3
Lead	0.6
Mercury	0.1
Municipal Waste Combustor Organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6}
Municipal Waste Combustor Metals (Measured as particulate matter)	15
Municipal Waste Combustor Acid Gases (Measured as sulfur dioxide and hydrogen chloride)	40

Table 3a(k)-2 Maximum Allowable Increase above Baseline Concentration

AIR POLLUTANT	PSD INCREMENT (ug/m^3)
Particulate Matter, as PM_{10}	
Annual Arithmetic Mean	17
24-Hour Average	30
Sulfur Dioxide	
Annual Arithmetic Mean	20
24-Hour Average	91
3-Hour Average	512
Nitrogen Dioxide	
Annual Arithmetic Mean	25

(8) Additional Source Information.

(A) The owner or operator of the subject source or modification shall include in the application:

(i) an analysis of the impairment to visibility, soils, and vegetation that would result from construction and operation of the subject source or modification,

and an analysis of the general commercial, residential, industrial and other associated growth. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or residential value,

(ii) an analysis, based upon methods approved by the commissioner in writing, of the ambient air quality impact projected for the area as a result of the general commercial, residential, industrial, and other growth associated with the subject source or modification,

(iii) a description of the nature, location, design capacity and typical operating schedule of the subject source or modification, including specifications and drawings showing its design and plant layout,

(iv) a schedule for construction of the subject source or modification,

(v) a detailed description as to what system of continuous emission reduction is planned for the subject source or modification, emission estimates, or any other information necessary to demonstrate to the commissioner that BACT will be applied, and

(vi) any other information deemed necessary by the commissioner to perform any analysis or make any determination under this subsection;

(B) Upon the commissioner's request, the owner or operator of the subject source or modification shall submit:

(i) the ambient air quality impact of the subject source or modification, including meteorological and topographical data necessary to estimate such impact, and

(ii) the ambient air quality impacts and the nature and extent of the general commercial, residential, industrial and other growth which have or has occurred since August 7, 1977 in the area the subject source or modification will affect.

(9) Additional Public Participation Requirements. In addition to the public participation requirements of section 22a-174-2a of the Regulations of Connecticut State Agencies:

(A) The commissioner shall include in the notice of tentative determination published pursuant to section 22a-174-2a of

the Regulations of Connecticut State Agencies and section 22a-6h of the Connecticut General Statutes, notice of opportunity for public comment at a public hearing, if one is requested, the opportunity to submit written comment, the degree of Prevention of Significant Deterioration increment consumption that is expected if the proposed activity is permitted, and any other information the commissioner deems appropriate; and

(B) The owner or operator of the subject source or modification shall send a copy of the notice required under subparagraph (A) of this subdivision to those individuals or entities listed under subsection (b)(5), as specified in subsection (b)(6), of section 22a-174-2a of the Regulations of Connecticut State Agencies.

(l) Permit Requirements For Non-attainment Areas

(1) Applicability. In accordance with subsection (a) of this section, the provisions of this subsection shall apply to the owner or operator of any new major stationary source or major modification which:

(A) Is or will be a major stationary source or major modification for any non-attainment air pollutant if such source is located in a non-attainment area for such air pollutant; or

(B) Is located in an attainment area or unclassifiable area, but the allowable emissions of any air pollutant would cause or exacerbate a violation of a National Ambient Air Quality Standard in an adjacent non-attainment area. Allowable emissions of any such air pollutant will be deemed not to cause or contribute to a violation of a National Ambient Air Quality Standard provided that such emissions result in impacts that are less than levels set forth in Table 3a(i)-1 in subsection (i) of this section.

(2) Analysis of alternatives.

(A) An owner or operator of the subject source or modification shall include an analysis of alternative sites for the proposed activity, alternative sizes for the subject source or modification, alternative production processes, and all environmental control techniques and technologies which are available for such major stationary source or major modification;

(B) Such analysis shall demonstrate whether the benefits of the subject source or modification would significantly outweigh its adverse environmental impacts, including secondary impacts and cumulative impacts, and social

costs imposed as a result of the location, construction or modification;

(C) The owner or operator of the subject source or modification shall submit such analysis prior to the issuance of any tentative determination on a permit application under this section.

(3) Control Technology Review and Approval.

(A) An owner or operator of the subject source or modification shall submit, for approval in writing:

(i) a LAER determination for each non-attainment air pollutant for which the subject source is a new major modification or new major stationary source, and

(ii) a LAER determination for each air pollutant which would cause or contribute to a violation of a National Ambient Air Quality Standard in an adjacent non-attainment area.

(B) In determining whether to approve LAER, the commissioner may take into account any emission limitation, including a visible emission limit. The commissioner may disregard any emissions test on a pilot plant or prototype equipment which does not have reasonable operating experience or which may not be generally available for industry use;

(C) In determining whether to approve LAER, the commissioner may take into account an output based emission limitation as LAER provided such application of LAER improves the overall thermal efficiency of the subject source or modification;

(D) The owner or operator of the subject source or modification shall not be granted a permit under this section unless and until the commissioner determines that such owner or operator will install air pollution control technology which complies with the commissioner's approval of LAER for each non-attainment air pollutant;

(E) If the owner or operator of the subject source or modification has made modifications to the subject source or modification and any of these modifications are subject to but have not previously been evaluated under this subsection, the commissioner shall conduct a LAER review under this subsection and require implementation of LAER for such modifications;

(F) In no event shall the application of LAER result in an emission limit or rate of emissions that is less stringent or environmentally protective than an emission limitation approved by the commissioner as BACT, an emission limitation demonstrated or established in any State Implementation Plan or any applicable limitation or standard under 40 CFR Parts 60, 61, 62 or 63 ; and

(G) An owner or operator of the subject source or modification shall submit, for approval in writing an evaluation of secondary impacts or cumulative impacts for each non-attainment air pollutant with potential emissions in excess of the amount listed in Table 3a(k)-1of subsection (k).

(4) Offsetting emission reductions or Emission Reduction Credits.

(A) Except as provided in subdivision (8)(B) of this subsection, prior to commencing operation pursuant to a permit issued under this section, the owner or operator of the subject source or modification shall:

(i) reduce actual emissions from other stationary sources on such premises, sufficient to offset the allowable emissions increase for each individual non-attainment air pollutant which is the subject of the application, or

(ii) obtain certified emission reduction credits in accordance with subdivision (5) of this subsection, which credits are sufficient to offset the allowable emissions increase for each individual non-attainment air pollutant; and

(B) The commissioner shall not grant a permit to an owner or operator of the subject source or modification unless the owner or operator demonstrates that internal offset or certified emission reduction credits under subparagraph (A) of this subdivision:

(i) have occurred preceding the submission of such application and prior to the date that the subject source or modification becomes operational and begins to emit any air pollutant. The commissioner may consider a-time period beginning no earlier than November 15, 1990,

(ii) are not otherwise required by any of the following: the Act; a federally enforceable permit or order; the State Implementation Plan; or the regulations or statutes in effect when such application is filed,

(iii) will be incorporated into a permit or order of the commissioner and would be federally enforceable,

(iv) will create a net air quality benefit in conjunction with the proposed emissions increase. In determining whether such a net air quality benefit would be created, the commissioner may consider emissions on an hourly, daily, seasonal or annual basis. For carbon monoxide or particulate matter (total suspended particulate and PM_{10}), the net air quality benefits shall be determined by the use of atmospheric modeling procedures approved by the commissioner and the Administrator in writing. Upon the request of the commissioner, the owner or operator shall make and submit to the commissioner, a net air quality benefit determination for each air pollutant. Such determination shall include, but not be limited to, all increases and decreases of emissions from stationary sources at any premises providing the offsetting emission reductions,

(v) shall be based on the pounds per hour of potential emissions increase from the subject source or modification. The commissioner may consider other more representative periods, including, but not limited to, tons per year or pounds per day,

(vi) are identified in an emissions inventory maintained by the commissioner or otherwise approved in writing by the commissioner,

(vii) are of the same non-attainment air pollutant of which the owner or operator proposes to increase. Reductions of any exempt volatile organic compound listed in Table 1-3 of section 22a-174-1 of the Regulations of Connecticut State Agencies or those listed in 40 CFR 51.100 shall not be used to offset proposed increases emissions of non-exempt volatile organic compounds,

(viii) occurred at either: one or more stationary sources in the same non-attainment area or stationary sources in another non-attainment area if, under the Act, such area has an equal or higher non-attainment classification than the area in which the proposed activity would take place, and if emissions from such other non-attainment area contribute to a violation of a National Ambient Air Quality Standard in the non-attainment area in which the proposed activity would take place,

(iii) will be incorporated into a permit or order of the commissioner and would be federally enforceable,

(iv) will create a net air quality benefit in conjunction with the proposed emissions increase. In determining whether such a net air quality benefit would be created, the commissioner may consider emissions on an hourly, daily, seasonal or annual basis. For carbon monoxide or particulate matter (total suspended particulate and PM_{10}), the net air quality benefits shall be determined by the use of atmospheric modeling procedures approved by the commissioner and the Administrator in writing. Upon the request of the commissioner, the owner or operator shall make and submit to the commissioner, a net air quality benefit determination for each air pollutant. Such determination shall include, but not be limited to, all increases and decreases of emissions from stationary sources at any premises providing the offsetting emission reductions,

(v) shall be based on the pounds per hour of potential emissions increase from the subject source or modification. The commissioner may consider other more representative periods, including, but not limited to, tons per year or pounds per day,

(vi) are identified in an emissions inventory maintained by the commissioner or otherwise approved in writing by the commissioner,

(vii) are of the same non-attainment air pollutant of which the owner or operator proposes to increase. Reductions of any exempt volatile organic compound listed in Table 1-3 of section 22a-174-1 of the Regulations of Connecticut State Agencies or those listed in 40 CFR 51.100 shall not be used to offset proposed increases emissions of non-exempt volatile organic compounds,

(viii) occurred at either: one or more stationary sources in the same non-attainment area or stationary sources in another non-attainment area if, under the Act, such area has an equal or higher non-attainment classification than the area in which the proposed activity would take place, and if emissions from such other non-attainment area contribute to a violation of a National Ambient Air Quality Standard in the non-attainment area in which the proposed activity would take place,

(ix) for the applicable non-attainment air pollutant, shall be from reductions in actual emissions, and

(x) offset actual emissions at a ratio greater than one to one, as determined by the commissioner. In addition, the owner or operator shall offset emission increases of allowable emissions at a ratio, for volatile organic compounds or nitrogen oxides, of at least: 1.3 to 1 in any severe non-attainment area for ozone, and 1.2 to 1 in any serious non-attainment area for ozone.

(5) The owner or operator of the subject source or modification shall secure certified emission reduction credits before using them. Continuous emission reduction credits shall be secured and retired prior to their use. Emission reduction credits shall be:

(A) Created and used in accordance with 40 CFR 51;

(B) Real, that is, resulting in a reduction of actual emissions, net of any consequential increase in actual emissions resulting from shifting demand. The emission reductions shall be measured, recorded and reported to the commissioner;

(C) Quantifiable, based on either stack testing approved by the commissioner in writing, conducted pursuant to an appropriate, reliable, and replicable protocol approved by the commissioner, or continuous emissions monitoring certified by the commissioner. Such quantification shall be in terms of the rate and total mass amount of non-attainment pollutant emission reduction;

(D) Surplus, not required by any Connecticut General Statute or regulation adopted thereunder, or mandated by the State Implementation Plan, and not currently relied upon for any attainment plan, any Reasonable Further Progress plan or milestone demonstration;

(E) Permanent, in that at the source of the emission reduction, the emission reduction system shall be in place and operating, and an appropriate record keeping system is maintained to collect and record the data required to verify and quantify such emissions reductions; and

(F) Enforceable and approved by the commissioner in writing after the submission to the commissioner of documents satisfactory to the commissioner or incorporated into a permit as a restriction on emissions.

(6) Compliance Requirements.

(A) The owner or operator of the subject source or modification shall demonstrate that all stationary sources owned, operated or controlled by the owner, operator, applicant, permittee and any parent company or subsidiary thereof are in compliance with all environmental protection laws or are on a federally enforceable schedule for achieving such compliance; and

(B) The owner or operator of the subject source or modification shall demonstrate that compliance with any enforcement orders for stationary sources in Connecticut owned, operated or controlled by the owner, operator, applicant, or permittee are on the most expeditious compliance schedule practicable.

(7) Public Notice. The notice of tentative determination under section 22a-6h of the Connecticut General Statutes shall include any information concerning the proposal by the owner or operator to offset the potential emissions increase from the subject source or modification and the commissioner's approval of LAER.

(8) Notwithstanding any provision of this section:

(A) No permit shall be granted under this subsection if the Administrator has made a final determination that the applicable implementation plan is not being implemented for the nonattainment area in which the subject source or modification is to be located; and

(B) Pursuant to section 173(a)(1)(B) of the Act, the owner or operator of any new major stationary source or major modification which is located in a zone within the non-attainment area, which zone has been identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, shall not be required to obtain offsetting emission reductions pursuant to this subsection unless the proposed emissions would cause or contribute to emissions levels which exceed the emissions levels allowed by the State Implementation Plan.

(m) Permit Requirements for Hazardous Air Pollutants subject to the provisions of section 112(g) of the Act, as may be amended from time to time

(1) For the purposes of this subsection:

(A) "Major source of hazardous air pollutants" means any stationary source that emits or has the potential to

emit, ten (10) tons per year or more of any particular hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants;

(B) "Hazardous air pollutant" or "HAP" means, notwithstanding the definition in section 22a-174-1 of the Regulations of Connecticut State Agencies, any air pollutant listed in section 112(b) of the Act, excluding hydrogen sulfide and caprolactam;

(C) "Construct a major source of hazardous air pollutants" means to fabricate, erect or install a major source of hazardous air pollutants or group of major sources of hazardous air pollutants within a contiguous area and under common control; and

(D) "Reconstruct a major source of hazardous air pollutants" means to replace one or more components at a major source of hazardous air pollutants, provided that:

(i) the fixed capital cost of the new component(s) exceeds fifty (50%) percent of the fixed capital cost of constructing a comparable source, and

(ii) it is technically and economically feasible for the source as determined by the commissioner, if reconstructed as proposed, to meet the applicable MACT emission limitation under this subsection.

(2) The owner or operator of the following sources are exempt from the requirements of this subsection:

(A) A major source of hazardous air pollutants subject to the MACT standards of 40 CFR 63, provided that such owner or operator has met all requirements for preconstruction review and any other applicable requirements of 40 CFR 63, Subpart A;

(B) A major source of hazardous air pollutants de-listed by the Administrator pursuant to section 112(c)(9) of the Act; or

(C) A major source of hazardous air pollutants excluded for research and development activities pursuant to 40 CFR 63.40(f).

(3) An application for a permit to construct, reconstruct, or operate a major source of hazardous air pollutants shall include:

(A) The names of the hazardous air pollutant(s) to be emitted, and the estimated emission rate of each such pollutant;

(B) A proposed determination of MACT, including, but not necessarily limited to, specific design, equipment, work practice, or operational standard, or a combination thereof, that will meet the MACT, technical information on the design, operation, size, and estimated control efficiency of any proposed emission control equipment. The commissioner may require the owner or operator to submit the manufacturer's name, address, telephone number, and design specifications of such equipment for:

(i) each single hazardous air pollutant with potential emissions of ten (10) tons per year or more, and

(ii) any combination of hazardous air pollutants with potential emissions of twenty-five (25) tons per year or more;

(C) A description of the subject source including identification of any listed source category or categories such source is included within under the Act;

(D) The owner's or operator's proposed dates for:

(i) commencement of construction or reconstruction of such source,

(ii) completion of construction or reconstruction of such source, and

(iii) start-up of such source;

(E) Any federally enforceable emission limitations applicable to such source;

(F) The proposed maximum utilization capacity of such source, and the associated:

(i) uncontrolled emission rates per year, and

(ii) controlled emission rates per year;

(G) A proposed emission limitation for each hazardous air pollutant from such source;

(H) Supporting documentation for the proposed determination of MACT, such as an identification of alternative control technologies and an analysis of the cost, health and environmental impacts and energy requirements; and

(I) Any other relevant information required pursuant to 40 CFR 63, Subpart A, or as the commissioner may require.

(4) No permit will be granted unless the commissioner approves the proposed MACT determinations and determines that the owner or operator shall:

(A) Comply with any applicable emission standards or work practice standards adopted by the Administrator under sections 112(d) or 112(h) of the Act, respectively; and

(B) Comply with any applicable determination of the commissioner pursuant to section 112(j) of the Act.

(5) In establishing MACT for any major source of hazardous air pollutants, the commissioner shall:

(A) Consider any relevant emission standard or work practice standard proposed by the Administrator under sections 112(d) or 112(h) of the Act;

(B) Consider any presumptive MACT determination adopted by the Administrator for the applicable source category which includes the source under consideration;

(C) Require the limitation or requirements to be no less stringent than the emission control which is achieved in practice by the best controlled similar source, as determined by the commissioner; and

(D) Require the maximum degree of reduction in emissions of hazardous air pollutants which can be achieved by utilizing those control technologies, taking into consideration the costs of achieving such emission reduction and any health and environmental impacts and energy requirements associated with the emission reduction.

(6) The owner or operator of a source subject to this subsection and the commissioner shall comply with the provisions of 40 CFR Part 63.44 as amended from time to time.

(7) Any permit issued pursuant to this subsection will require the permittee to comply with the applicable emission standard promulgated by the Administrator under section 112(d) or 112(h) of the Act no later than eight (8) years after such standard is promulgated or eight (8) years after the date by which the permittee was first required to comply with the emission limitation established by such permit, whichever is earlier.

(8) Notwithstanding subdivisions (5), (6) and (7) of this subsection the permittee will not be required to comply with any less stringent provisions of an applicable emission standard promulgated by the Administrator under section 112(d) or 112(h) of

the Act if the level of control required by the emission limitation established by the permit issued pursuant to this subsection is at least as stringent as that required by the applicable emission standard promulgated by the Administrator under section 112(d) or 112(h) of the Act as determined by the commissioner.

Statement of Purpose of section 22a-174-3a: This amendment streamlines the applicability of the requirement to obtain an air permit, thereby reducing the administrative burden of having to apply for, but not obtain an air permit. This amendment provides the application requirements and standards for granting a permit and permit modification in subsections 3a(b) through 3a(m) of this section. This amendment increases the threshold for state specific program from 5 tons potential to 15 tons potential thereby reducing the burden of having to apply for permits that are not otherwise federally required. This amendment also provides for exemptions from new source review under certain specific conditions. In addition, this amendment provides the specifications for using secured emission reduction credits to offset emission increases which provides industry with flexibility while continuing to ensure compliance. In addition, this amendment distinguishes between a major modification and the requirement to obtain a permit modification or revision in accordance with subsection 22a-174-2a.

Subsection (m) has been amended to include federal Clean Air Act requirements; specifically, to incorporate Maximum Achievable Control Technology (MACT) requirements for major stationary sources of hazardous air pollutants into new source review permits pursuant to Section 112(g) of the Clean Air Act.

D. Final Wording of Proposed R.C.S.A. 22a-174-3b:

The Regulations of Connecticut State Agencies are amended by adding section 22a-174-3b as follows:

(NEW)

Section 22a-174-3b. Exemptions from permitting for construction and operation of external combustion units, automotive refinishing operations, emergency engines, nonmetallic mineral processing equipment and surface coating operations.

(a) **Definitions.** For the purposes of this section:

(1) "As applied" means a coating prepared according to a manufacturer's mixing instructions, including all components such as dilution solvents and reactive constituents, and prepared at the time of application to a substrate;

(2) "Automobile" means a passenger car, van, motorcycle, truck or any other motorized vehicle for transportation;

(3) "Automotive refinishing operation" means the processes performed to apply a new surface to the pre-existing coat or paint on an automobile or automotive component, including but not limited

to surface preparation, primer application, topcoat application and applicator cleaning;

(4) "Electrostatic application" means the application of charged atomized paint droplets by electrostatic attraction;

(5) "Emergency" means "emergency" as defined in section 22a-174-22 of the Regulations of Connecticut State Agencies;

(6) "Emergency engine" means "emergency engine" as defined in section 22a-174-22 of the Regulations of Connecticut State Agencies;

(7) "Existing stationary source" means a stationary source for which a permit to control emissions to the air has been issued by the Department;

(8) "External combustion unit" means a device that combusts only natural gas, propane or fuel oil, which is not a stationary internal combustion engine or turbine, and includes, but is not limited to, a boiler, heater, drying oven, curing oven or furnace;

(9) "Hazardous air pollutant" means, notwithstanding the definition in section 22a-174-1 of the Regulations of Connecticut State Agencies, any air pollutant listed in Section 112(b) of the Act, excluding hydrogen sulfide and caprolactum;

(10) "Nonmetallic mineral" means "nonmetallic mineral" as defined in 40 CFR 60.671;

(11) "Nonmetallic mineral processing equipment" means any crusher, grinding mill, screening operation, bucket elevator, belt conveyer, bagging operation, storage bin or other equipment used to crush or grind any nonmetallic mineral at a nonmetallic mineral processing plant;

(12) "Nonmetallic mineral processing plant" means "nonmetallic mineral processing plant" as defined in 40 CFR 60.671;

(13) "Pre-existing coat or paint" means a surface covering or coating applied to an automobile or automotive component at an automotive manufacturing facility;

(14) "Spray booth" means a building, a room within a building or a partitioned area within a room housing automatic or manual spray application equipment, that is used to apply coatings;

(15) "Surface coating operation" means a process used to apply a layer of material including spray painting, dip coating, roller coating, and electrostatic deposition, but exclusive of printing, publishing or packaging operations;

(16) "Tune-up" means to perform maintenance and adjust equipment to proper or required operating condition; and

(17) "Twelve (12) month rolling aggregate" means the sum of the total fuel use, actual emissions, coating use, solvent use or actual operating time calculated for each month by adding the current month's fuel use, actual emissions, coating use, solvent use or actual operating time to those of the previous eleven months.

(b) Applicability.

(1) The owner or operator of a stationary source that is an external combustion unit, an automotive refinishing operation, a nonmetallic mineral processing equipment, an emergency engine or a surface coating operation may construct and operate such source without obtaining a general permit for such source issued pursuant to section 22a-174(l) of the Connecticut General Statutes or a permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies if:

(A) The source is an emission unit with potential emissions of fifteen (15) tons or more per year of any individual air pollutant;

(B) The source is not a new major stationary source;

(C) The source is not a newly constructed or reconstructed major source of hazardous air pollutants subject to the requirements of section 22a-174-3a(m) of the Regulations of Connecticut State Agencies; and

(D) The owner or operator complies with all applicable provisions of this section.

(2) The owner or operator of an existing stationary source that is an external combustion unit, an automotive refinishing operation, a nonmetallic mineral processing equipment, an emergency engine or a surface coating operation may modify such source without obtaining a general permit for such source issued pursuant to section 22a-174(l) of the Connecticut General Statutes or a permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies if:

(A) The source is a modification to an existing emission unit which increases potential emissions of any individual air pollutant from such unit by fifteen (15) tons or more per year;

(B) At the time of modification, the source is not authorized to operate pursuant to an individual permit issued pursuant to section 22a-174-3a or former section 22a-174-3 of the Regulations of Connecticut State Agencies;

(C) The modification is not a major modification to an existing major stationary source; and

(D) The owner or operator complies with all applicable provisions of this section.

(3) The requirements of this section do not apply to those sources operating in compliance with section 22a-174-3c of the Regulations of Connecticut State Agencies.

(c) External combustion unit.

(1) The owner or operator of an external combustion unit shall properly maintain

(A) Maximum rated heat input shall not exceed the following limitations:

(i) 50 MMBtu/hr for sources burning gaseous fuels,

(ii) 25 MMBtu/hr for sources burning distillate fuel oil, and

(iii) 15 MMBtu/hr for sources burning residual fuel oil;

(B) Fuel use shall not exceed the following limitations:

(i) natural gas usage shall not exceed 214 million cubic feet in any twelve (12) month rolling aggregate,

(ii) propane usage shall not exceed 1.57 million gallons in any twelve (12) month rolling aggregate,

(iii) distillate fuel oil usage shall not exceed 704,000 gallons in any twelve (12) month rolling aggregate,

(iv) residual fuel oil usage shall not exceed 191,000 gallons in any twelve (12) month rolling aggregate, and

(v) use of any combination of the fuels listed in subparagraphs (B)(i) through (B)(iv) of this subdivision shall not result in emissions of any individual air pollutant greater than fifteen (15) tons per year in any twelve (12) month rolling aggregate;

(C) Fuel content shall be as follows:

(i) any residual fuel oil used shall contain 0.5%, or less, sulfur by weight, dry basis, and

(ii) no fuel oil used shall be blended with waste oil or solvent;

(D) The height of any stack associated with the unit shall be the greater of:

(i) ten (10) meters, or

(ii) the lesser of 1.3 times the building height or maximum building width; and

(E) A tune-up of the external combustion unit shall be performed on an annual basis.

(2) The owner or operator of an external combustion unit shall maintain records of the information necessary for the commissioner to determine compliance with the requirements of subdivision (1) of this subsection. Information sufficient to make such determinations may include the information specified in subdivision (3) of this subsection. All records made to determine compliance with the requirements of this section shall be:

(A) Made available to the commissioner to inspect and copy upon request; and

(B) Maintained for five (5) years from the date such record is created.

(3) The owner or operator of an external combustion unit may make and maintain records of the following information, as applicable:

(A) Records of the fuel type and quantity used, in gallons or million cubic feet, for each month and each twelve (12) month rolling aggregate;

(B) If the fuel used is residual oil, records of the sulfur content for each nongaseous fuel shipment received;

(C) If multiple fuels are used, records of the quantity in tons of each criteria pollutant emitted for each month and each twelve (12) month rolling; and

(C) The date each annual tune-up is performed.

(d) Automotive refinishing operation.

(1) The owner or operator of an automotive refinishing operation shall properly maintain equipment and perform such operation in accordance with the following requirements:

(A) The total amount of VOC-containing coatings or solvents used shall not exceed 2,000 gallons in any twelve (12) month rolling aggregate;

(B) Any paint or coating shall be applied by one of the following means:

(i) high volume low pressure spray equipment,

(ii) electrostatic application equipment, or

(iii) any other application method that has a manufacturer's guaranteed transfer efficiency of at least sixty-five percent (65%);

(C) Any application equipment used shall be cleaned using one of the following means:

(i) in a device that remains closed at all times when not in use,

(ii) in a system that discharges unatomized cleaning solvent into a waste container that remains closed when not in use,

(iii) in a vat that allows for disassembly and cleaning of application equipment and that is kept closed when not in use, or

(iv) in a system that atomizes spray into a paint waste container that is fitted with a device designed to capture atomized solvent emissions;

(D) Spray operations shall be performed in an enclosed area; and

(E) If a spray booth is used, such booth shall contain particulate control equipment that is operated and maintained in good working condition at all times the booth is in use.

(2) The owner or operator of an automotive refinishing operation shall maintain records of the information necessary for the commissioner to determine compliance with the requirements of subdivision (1) of this subsection. Information sufficient to make such determinations may include the information specified in subdivision (3) of this subsection. All records made to determine compliance with the requirements of this section shall be:

(A) Made available to the commissioner to inspect and copy upon request; and

(B) Maintained for five (5) years from the date such record is created.

(3) The owner or operator of an automotive refinishing operation may make and maintain records of the following information:

(A) Records of the amount of coating and solvent used, in gallons, for each month and each twelve (12) month rolling aggregate; and

(B) If a paint or coating is applied by other than the methods specified in subsection (c)(3)(B)(i) or (c)(3)(B)(ii), a record of the manufacturer's guaranteed transfer efficiency.

(e) Emergency engine.

(1) The owner or operator of an emergency engine shall properly maintain equipment and operate such engine in accordance with this subsection.

(2) No owner or operator of an emergency engine shall cause or allow such engine to operate except during periods of testing and scheduled maintenance or during an emergency and unless the following conditions are met:

(A) Operation of such engine shall not exceed 500 hours during any twelve (12) month rolling aggregate; and

(B) Any nongaseous fuel consumed by such engine shall not exceed a sulfur content of 0.3% by weight, dry basis.

(3) The owner or operator of an emergency engine shall maintain records of the information necessary for the commissioner to determine compliance with the requirements of subdivision (2) of this subsection. Information sufficient to make such determinations may include the information specified in subdivision (4) of this subsection. All records made to determine compliance with the requirements of this section shall be:

(A) Made available to the commissioner to inspect and copy upon request; and

(B) Maintained for five (5) years from the date such record is created.

(4) The owner or operator of an emergency engine may make and maintain records of the hours of operation for each month and each twelve (12) month rolling aggregate.

(f) Nonmetallic mineral processing equipment.

(1) The owner or operator of nonmetallic mineral processing equipment shall properly maintain and operate such equipment and the engine powering it in accordance with the following conditions:

(A) An internal combustion engine greater than or equal to 600 horsepower, that powers nonmetallic mineral processing equipment, shall not exceed 67,400 gallons of fuel oil usage in any twelve (12) month rolling aggregate;

(B) An internal combustion engine less than 600 horsepower, that powers nonmetallic mineral processing equipment, shall not exceed 48,900 gallons fuel oil usage in any twelve (12) month rolling aggregate; and

(C) Any nongaseous fuel consumed by engines powering nonmetallic mineral processing equipment shall not exceed a sulfur content of 0.05% by weight, dry basis.

(2) The owner or operator of nonmetallic mineral processing equipment shall maintain records of the information necessary for the commissioner to determine compliance with the requirements of subdivision (1) of this subsection. Information sufficient to make such determinations may include the information specified in subdivision (3) of this subsection. All records made to determine compliance with the requirements of this section shall be:

(A) Made available to the commissioner to inspect and copy upon request; and

(B) Maintained for five (5) years from the date such record is created.

(3) The owner or operator of nonmetallic mineral processing equipment may make and maintain records of the following information:

(A) Records of the quantity of fuel used, in gallons, for each month and each twelve (12) month rolling aggregate; and

(B) For each nongaseous fuel shipment received, records of the sulfur content as a percent by weight, dry basis, and type of fuel.

(g) Surface coating operation.

(1) The owner or operator of a surface coating operation shall properly maintain equipment and conduct such coating operations only in accordance with the following limitations on VOCs, hazardous air pollutants and particulate matter:

(A) The VOC content of any coating used shall not exceed 6.3 pounds per gallon, as applied;

(B) The hazardous air pollutant content of any coating used shall not exceed 6.3 pounds per gallon, as applied;

(C) Coating and solvent usage, including diluents and cleanup solvents but excluding water, shall not, in any twelve (12) month rolling aggregate, exceed 3,000 gallons; and

(D) Any electrostatic dry powder coating operation or plasma spray operation shall be operated only with particulate control equipment that meets the following requirements:

(i) includes a minimum collection efficiency of 90%, and

(ii) is operated and maintained in good working condition.

(2) The owner or operator of a surface coating operation shall maintain records of the information necessary for the commissioner to determine compliance with the requirements of subdivision (1) of this subsection. Information sufficient to make such determinations may include the information specified in subdivision (3) of this subsection. All records made to determine compliance with the requirements of this section shall be:

(A) Made available to the commissioner to inspect and copy upon request; and

(B) Maintained for five (5) years from the date such record is created.

(3) The owner or operator of a surface coating operation may make and maintain records of the following information:

(A) Records of the type and quantity of coating and solvent used, in gallons, for each month and each twelve (12) month rolling aggregate;

(B) Records of the hazardous air pollutant and VOC content per gallon of each coating and solvent used, as applied; and

(C) If the surface coating operation includes an electrostatic dry powder coating operation or a plasma spray operation, a record of the manufacturer's specifications for particulate control efficiency.

(h) Fuel sulfur content. Any of the records listed in subdivisions (1), (2) and (3) of this subsection are sufficient

to demonstrate the sulfur content of fuel used as required by subsections (c), (e) and (f) of this section:

(1) A fuel certification for a delivery of nongaseous fuel from a bulk petroleum provider;

(2) A sales receipt for the sale of motor vehicle diesel fuel from a retail location; or

(3) A copy of a current contract with the fuel supplier supplying the fuel used by the equipment that includes the applicable sulfur content of nongaseous fuel as a condition of each shipment.

(i) Reporting.

(1) The owner or operator of any source required to make and maintain records pursuant to this section shall provide any such records, or a copy thereof, to the commissioner upon request and shall make such records available to the commissioner to inspect at the location maintained.

(2) Any record requested pursuant to subdivision (1) of this subsection shall be submitted with a certification in accordance with section 22a-174-2a(a) of the Regulations of Connecticut State Agencies.

(j) Applicable law. Nothing in this section shall relieve an owner or operator

(1) The requirements of 40 CFR 63, Subpart B as implemented in section 22a-174-3a(m) of the Regulations of Connecticut State Agencies; and

(2) Any other applicable federal, state or local law.

(k) Application for individual permits.

(1) Nothing in this section shall preclude the commissioner from requiring an owner or operator to obtain an individual permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies.

(2) Nothing in this section shall preclude an owner or operator from applying for an individual permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies, if applicable.

(3) An owner or operator who has filed an application for an individual permit pursuant to subdivision (1) of this subsection shall comply with the requirements of this section while such application is pending.

Statement of Purpose for Section 22a-174-3b: This section establishes emissions limitations, operating practices, and recordkeeping requirements for certain categories of stationary sources of air pollution to restrict emissions to levels that are not significant contributions to air pollution; and exempts such sources from the permitting process by removing owners and operators from the duty to apply for and obtain individual operating permits.

E. Final Wording of Proposed R.C.S.A. 22a-174-3c:

The Regulations of Connecticut State Agencies are amended by adding section 22a-174-3c as follows:

(NEW)

Section 22a-174-3c. Limitations on potential to emit for external combustion units, emergency engines, automotive refinishing operations, nonmetallic mineral processing equipment and surface coating operations.

(a) Limitations on potential to emit.

(1) Notwithstanding the definition of "potential emissions" or "potential to emit" in section 22a-174-1 of the Regulations of Connecticut State Agencies, the potential emissions or potential to emit of any individual air pollutant for a stationary source identified in subdivision (2) of this subsection is less than fifteen tons per year, unless otherwise determined by a permit or order of the commissioner, if the owner or operator operates the source to comply with all applicable requirements of subsections (b) and (c) of this section.

(2) The owner or operator of any new or existing stationary source that is an external combustion unit, an automotive refinishing operation, a nonmetallic mineral processing equipment, an emergency engine or a surface coating operation may limit potential emissions pursuant to subdivision (1) of this subsection.

(b) Operating requirements.

(1) The owner or operator of an external combustion unit using gaseous fuel and operating to limit potential emissions in accordance with this section shall:

(A) Limit gaseous fuel purchase for the premises to equal to or less than 100 million cubic feet in any calendar year; and

(B) Maintain a maximum rated heat input less than 50 mmBTU/hr.

(2) The owner or operator of an external combustion unit using distillate fuel and operating to limit potential emissions in accordance with this section shall:

(A) Limit distillate fuel oil purchase for the premises to equal to or less than 328,000 gallons in any calendar year; and

(B) Maintain a maximum rated heat input less than 25 mmBTU/hr.

(3) The owner or operator of an external combustion unit using residual fuel and operating to limit potential emissions in accordance with this section shall:

(A) Limit residual fuel oil purchase for the premises to equal to or less than 89,000 gallons in any calendar year; and

(B) Maintain a maximum rated heat input for the external combustion unit of less than 15 mmBTU/hr.

(4) The owner or operator of an external combustion unit using propane and operating to limit potential emissions in accordance with this section shall:

(A) Limit propane purchase for the premises to equal to or less than 736,000 gallons in any calendar year; and

(B) Maintain a maximum rated heat input less than 50 mmBTU/hr.

(5) The owner or operator of an emergency engine using gaseous fuel and operating to limit potential emissions in accordance with this section shall limit gaseous fuel purchase for the premises to equal to or less than 41 million cubic feet in any calendar year.

(6) The owner or operator of an emergency engine using distillate fuel and operating to limit potential emissions in accordance with this section shall limit distillate fuel oil purchase for the premises to equal to or less than 21,000 gallons in any calendar year.

(7) The owner or operator of an emergency engine using propane and operating to limit potential emissions in accordance with this section shall limit propane purchase for the premises to equal to or less than 100,000 gallons in any calendar year;

(8) The owner or operator of an automotive refinishing operation operating to limit potential emissions in accordance with this section shall limit VOC containing coating or solvent purchase for the premises to equal to or less than 1,000 gallons in any calendar year.

(9) The owner or operator of a nonmetallic mineral processing equipment operating to limit potential emissions in accordance with this section shall limit fuel oil purchase for the premises to equal to or less than 22,000 gallons in any calendar year.

(10) The owner or operator of a surface coating operation operating to limit potential emissions in accordance with this section shall limit purchase for the premises of VOC containing coatings, including diluents and cleanup solvents but excluding water, to equal to or less than 1,500 gallons in any calendar year.

(c) Records.

(1) The owner or operator of any source that is operating to comply with the requirements of subsection (b) of this section shall maintain purchase records to demonstrate compliance with applicable fuel, coating and solvent limitations.

(2) The owner or operator of any source shall make purchase records maintained pursuant to subdivision (1) of this subsection available to the commissioner to inspect and copy upon request.

(3) The owner or operator of any source maintaining purchase records pursuant to subdivision (1) of this subsection shall maintain such records for five (5) years from the date such records are created.

(d) Applicable law. Nothing in this section shall relieve an owner or operator from any obligation to comply with:

(1) The requirements of 40 CFR 63, Subpart B as implemented in section 22a-174-3a(m) of the Regulations of Connecticut State Agencies; and

(2) Any other applicable federal, state or local law.

(e) Individual application.

(1) Nothing in this section shall preclude the commissioner from requiring an owner or operator to obtain an individual permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies.

(2) An owner or operator who has filed an application for an individual permit pursuant to subdivision (1) of this subsection shall comply with the requirements of this section while such application is pending.

Statement of Purpose: This section establishes limitations on fuel purchase and use and coating and solvent use for certain categories of stationary sources of air pollution to restrict emissions to levels that do not contribute significantly to air pollution. An owner or operator of a source operating in compliance with this

section does not need to obtain an individual operating permit or operate the source to comply with the requirements of section 22a-174-3b of the Regulations of Connecticut State Agencies.

F. Final Wording of Proposed R.C.S.A. 22a-174-33:

Section 5.

Section 22a-174-33 of the Regulations of Connecticut State Agencies is being amended as follows:

Sec. 22a-174-33. Title V Sources.

(a) Definitions. For the purposes of this section:

[(1) "Act" means the Clean Air Act, as amended in 1990, 42 U.S.C. 7401 et seq.

(2) "Administrator" means the Administrator of the United States Environmental Protection Agency or his designee.]

[(3) "Affected states" means the States of Massachusetts, New York, and Rhode Island and any other State located within fifty (50) miles of a Title V source.]

[(4)] (1) "Alternative operating scenario" means a condition, including equipment configurations, process parameters, or materials used in a process under which the owner or operator of a Title V source may be allowed to operate.

[(5)] (2) "Applicable requirements" means:

(A) [any] ANY standard or other requirement in the State implementation plan or in a federal implementation plan for the State of Connecticut promulgated by the Administrator pursuant to the Act;

(B) [any] ANY term or condition of a permit [to construct] issued pursuant to FORMER section 22a-174-3 OR SECTION 22a-174-3a of the Regulations of Connecticut State Agencies;

(C) [any] ANY standard or other requirement of the acid rain program pursuant to 40 CFR Parts 72 through 78, inclusive; and

(D) [any] ANY standard or other requirement pursuant to 40 CFR [Part] 51, 52, 59, 60, 61, 62, 63, 64, 68, [or] 70, OR 82.

[(6)](3) "Code of Federal Regulations" or "CFR" means the Code of Federal Regulations [revised as of September 16, 1994, unless otherwise specified] AS AMENDED FROM TIME TO TIME.

[(7) "Emissions unit" means any part or activity of a stationary source which part or activity emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant.]

(4) "DEVIATION" HAS THE SAME MEANING AS IN 40 CFR 71.6(a)(3)(iii)(C).

[(8)](5) "Hazardous air pollutant" means, notwithstanding the definition in section 22a-174-1 of the Regulations of Connecticut State Agencies, any air pollutant listed in section 112(b) of the Act [except] EXCLUDING hydrogen sulfide AND CAPROLACTAM.

[(9)](6) "Implementation date of this section" means APRIL 23, 1997. [the earlier of:

(A) June 1, 1997; or

(B) the date of interim or final approval of this section by the Administrator pursuant to 40 CFR Part 70.4.]

[(10) "Maximum achievable control technology" or "MACT" means a method of achieving an emission limitation or reduction in emissions of hazardous air pollutants determined by the commissioner pursuant to subsection (e) of this section or by the Administrator pursuant to 40 CFR Part 63.]

[(11) "Monitoring" means any particular procedures required to determine emissions or compliance with parameters in accordance with applicable requirements or any particular procedures necessary to determine whether applicable requirements are being met.]

[(12)](7) "Regulated air pollutant" means any of the following:

(A) [nitrogen] NITROGEN oxides or any volatile organic compound;

(B) [any] ANY pollutant which is a criteria air pollutant AS DEFINED IN SECTION 22a-174-1 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES;

(C) [any] ANY pollutant [from] EMITTED BY a stationary source which is subject to any standard of performance for new stationary sources pursuant to 40 CFR [Part] 60;

(D) [any] ANY pollutant from a substance subject to a stratospheric ozone protection requirement pursuant to 40 CFR [Part] 82, Subpart A, Appendix A or B;

(E) [any] ANY pollutant subject to a national emission standard or other requirement under 40 CFR [Part] 63,and emitted by a source in a category listed in THE Federal Register [Vol. 58 No. 231, December 3, 1993] IN ACCORDANCE WITH SECTION 112(e)(3) OF THE ACT;

(F) [any] ANY pollutant from a stationary source which is subject to any standard or other requirement pursuant to 40 CFR 61; or

(G) [any] ANY pollutant listed in 40 CFR [Part] 68.

(8) "RESEARCH AND DEVELOPMENT OPERATION" MEANS ANY ACTIVITY WHICH:

(A) OCCURS IN A LABORATORY;

(B) IS INTENDED TO (i) DISCOVER SCIENTIFIC FACTS, PRINCIPLES OR SUBSTANCES, OR (ii) ESTABLISH METHODS OF MANUFACTURE OR DESIGN OF SALEABLE SUBSTANCES, DEVICES OR OTHER PRODUCTS, BASED UPON PREVIOUSLY DISCOVERED SCIENTIFIC FACTS, PRINCIPLES OR SUBSTANCES; AND

(C) DOES NOT INCLUDE (i) PRODUCTION FOR SALE OF ESTABLISHED PRODUCTS THROUGH ESTABLISHED PROCESSES, OR (ii) PRODUCTION OF A PRODUCT FOR DISTRIBUTION THROUGH MARKET TESTING CHANNELS.

[(13) "Throughput" means the rate of production by volume or weight, in a manufacturing process, for which the combined quantities of all materials introduced, excluding air and water, are used to determine such rate.]

[(14)](9) "Title V permit" means any permit issued, renewed, or modified by the commissioner pursuant to this section.

[(15)](10) "Title V source" means any [premise] PREMISES AT, IN, OR ON which [includes] any of the following IS LOCATED:

(A) [any] ANY stationary source subject to 40 CFR [Part] 60 or 61 ;

(B) [any] ANY stationary source subject to 40 CFR [Part] 62, 63 OR 68;

(C) [any] ANY stationary source subject to 40 CFR [Parts] 72 through 78, inclusive;

(D) [any] ANY stationary source subject to section 129(e) of the Act;

(E) [any] ANY one or more stationary sources, which are located on one or more contiguous or adjacent properties

under [common] THE control of the same person or persons and which IN THE AGGREGATE emit, or have the potential to emit, including fugitive emissions [to the extent quantifiable, in the aggregate], ten (10) tons or more per year of any hazardous air pollutant, twenty-five (25) tons or more per year of any combination of hazardous air pollutants[, or the quantity established by the Administrator pursuant to 40 CFR Part 63]; or

(F) [any] ANY one or more stationary sources, which are located on one or more contiguous or adjacent properties under [common] THE control of the same person or persons and which belong to the same two-digit Standard Industrial Classification code, as published by the United States Office of Management and Budget in the Standard Industrial Classification Manual of 1987, and which IN THE AGGREGATE emit, or have the potential to emit AIR POLLUTANTS, including fugitive emissions, from those categories of sources listed in (2)(i) through (xxvii) in the definition of "major source" in 40 CFR [Part] 70.2, OF:

(i) one hundred (100) tons or more per year of any regulated air pollutant[;],

(ii) fifty (50) tons or more per year of volatile organic compounds or nitrogen oxides in a serious ozone [nonattainment] NON-ATTAINMENT area[;], or

(iii) twenty-five (25) tons or more per year of volatile organic compounds or nitrogen oxides in a severe ozone [nonattainment] NON-ATTAINMENT area[.]; AND

(G) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (F) OF THIS SUBDIVISION, ANY LANDFILL CONTAINING ONLY MUNICIPAL SOLID WASTE, AS THAT TERM IS DEFINED IN SECTION 22a-207(23) OF THE CONNECTICUT GENERAL STATUTES, SHALL NOT BE CONSIDERED A TITLE V SOURCE UNLESS SUCH LANDFILL IS SUBJECT TO ANY APPLICABLE REQUIREMENT IDENTIFIED IN SUBPARAGRAPH (B) OR (D) OF THIS SUBDIVISION.

(b) Signatory Responsibilities.

[(1)] An application for a Title V permit, any form, report, compliance [certificate] CERTIFICATION or other document required by a Title V permit, and any other information submitted by an [applicant] OWNER OR OPERATOR or a permittee pursuant to this section shall be signed [by the following individual:] IN ACCORDANCE WITH SECTION 22a-174-2a(a) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(A) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or the duly authorized representative responsible for overall operation of one or more manufacturing, production, or operating facilities subject to this section provided;

(i) the operating facilities subject to this section employ more than 250 persons or have gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars); or

(ii) the authority to sign documents has been assigned or delegated to such representative in accordance with corporate procedures

(B) For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

(C) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) A duly authorized representative under subparagraph (A)(i) or (ii) of subdivision (1) of this subsection may be either a named individual or any individual occupying a named position. Such named individual or individual occupying a named position is a duly authorized representative only if:

(A) his or her authorization has been given in writing by an individual as prescribed in subparagraph (A)(ii) of subdivision (1) of this subsection;

(B) such authorization specifically authorizes either;

(i) an individual or a position having responsibility for the overall operation of the premise or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility, or

(ii) an individual or position having overall responsibility for environmental matters for the company; and

(C) such written authorization is submitted to the commissioner and has been approved in writing by the commissioner in advance of such delegation. Such approval does not constitute approval of corporate procedures.

(3) If an authorization under subdivision (2) of this subsection is no longer effective because a different individual or position has assumed the applicable responsibility, a new authorization satisfying the requirements of such subdivision shall be submitted to the commissioner prior to or together with the submission of any applications, reports, forms, compliance certifications, documents or other information which is, pursuant to subdivision (1) of this subsection, signed by an individual or a duly authorized representative of such individual.

(4) Any individual signing any document pursuant to subdivision (1) of this subsection shall also sign the certification provided in section 22a-3a-5(a)(2) of the Regulations of Connecticut State Agencies.

(5) The owner or operator of a Title V source shall comply with the applicable provisions of 40 CFR Parts 72 through 78, inclusive. If such provisions conflict with this subsection of this section, the provisions and requirements of 40 CFR Part 72 through 78, inclusive, shall apply.]

(c) Applicability.

(1) The provisions of this section shall apply to THE OWNER OR OPERATOR OF every Title V source.

(2) Notwithstanding subdivision (1) of this subsection AND EXCEPT AS PROVIDED IN SUBDIVISION (3) OF THIS SUBSECTION, this section shall not apply to any [premise] PREMISES which is defined as a Title V source solely because a stationary source on such [premise] PREMISES is subject to one or more of the following:

(A) [standard] STANDARD of performance for new residential wood heaters pursuant to 40 CFR [Part] 60, Subpart AAA;

(B) 40 CFR [Part 61, Subpart M, section] 61.145 ;

(C) [accidental] ACCIDENTAL release requirements pursuant to 40 CFR [Part] 68 ;

(D) [40 CFR Part 61 Subpart I; or

(E)] 40 CFR [Part] 60, 61, 63[,] OR 68 [or 72], if such source is exempt [by the terms of such part or is exempted by

the Administrator] OR DEFERRED from the requirement [of obtaining] TO OBTAIN a Title V permit[.]:

(i) BY THE TERMS OF THE APPLICABLE CFR,

(ii) BY THE TERMS OF 40 CFR 70,

(iii) BY THE ADMINISTRATOR, OR

(iv) WITH THE ADMINISTRATOR□S AUTHORIZATION, BY THE COMMISSIONER;

[(3) If a premise is subject to this section, any stationary source subject to 40 CFR Part 61 Subpart I located at such premise shall, notwithstanding subparagraph (2)(D) of this subsection, also be subject to this section.]

[(4)] (3) Notwithstanding the definition of a Title V source SET FORTH IN SUBSECTION (a) OF THIS SECTION, for the purpose of determining whether this section applies to a [premise] PREMISES at which research and development operations are located, the owner or operator of such [premise] PREMISES may calculate the emissions from such [premise] PREMISES by subtracting the emissions from such research and development operations from the total emissions [from] OF such [premise] PREMISES. [Such premise] THE EMISSIONS FROM THE REMAINDER OF SUCH PREMISES and research and development operations shall be separately evaluated BY THE COMMISSIONER for purposes of determining whether [a] Title V [permit is] PERMITS ARE required FOR EACH PORTION OF SUCH PREMISES. [For the purposes of this subsection, a research and development operation means any activity which:

(A) occurs in a laboratory;

(B) involves (i) the discovery of scientific facts, principles, reactions or substances, or (ii) the structuring or establishment of methods of manufacture or of specific designs of saleable substances, devices or procedures, based upon previously discovered scientific facts, principles, reaction or substances; and

(C) does not include (i) production for sale of established products through established processes, or (ii) production of a product for distribution through market testing channels.]

(4) IF THE COMMISSIONER OR ADMINISTRATOR DETERMINES THAT THE OWNER OR OPERATOR OF ANY TITLE V SOURCE THAT IS SUBJECT TO A TITLE V GENERAL PERMIT ISSUED UNDER THIS SECTION HAS NOT COMPLIED WITH SUCH GENERAL PERMIT, SUCH NONCOMPLIANCE SHALL BE A VIOLATION OF THIS SECTION AND SUCH OWNER OR OPERATOR SHALL BE DEEMED TO HAVE BEEN OPERATING A TITLE V SOURCE WITHOUT A TITLE V PERMIT.

(5) IF THE COMMISSIONER OR ADMINISTRATOR DETERMINES THAT THE OWNER OR OPERATOR OF ANY TITLE V SOURCE THAT IS SUBJECT TO A TITLE V GENERAL PERMIT ISSUED UNDER THIS SECTION HAS NOT QUALIFIED FOR APPLICABILITY UNDER SUCH GENERAL PERMIT, SUCH NONCOMPLIANCE SHALL BE A VIOLATION OF THIS SECTION AND SUCH OWNER OR OPERATOR SHALL BE DEEMED TO HAVE BEEN OPERATING A TITLE V SOURCE WITHOUT A TITLE V PERMIT.

(d) Limitations on Potential to Emit.

(1) In lieu of requiring an owner or operator of a [premise] TITLE V SOURCE described in [subdivision (a)(15)] SUBSECTION (a)(10)(E) OR (F) of this section to obtain a Title V permit, the commissioner may, by permit or by order, limit ALL AGGREGATE potential emissions from such [premise] PREMISES to less than the following amounts:

(A) [one] ONE hundred (100) tons per year of any regulated air pollutant;

(B) [fifty] FIFTY (50) tons per year of volatile organic compounds or nitrogen oxides, in a serious ozone nonattainment area;

(C) [twenty-five] TWENTY-FIVE (25) tons per year of volatile organic compounds or nitrogen oxides, in a severe ozone nonattainment area; and

(D) [in the aggregate, ten] TEN (10) tons per year of any hazardous air pollutant, twenty-five (25) tons per year of any combination of hazardous air pollutants, or the quantity established by the Administrator under 40 CFR Part 63 .

(2) [The] A permit or order ISSUED PURSUANT TO THIS SUBSECTION shall require the owner or operator of [a] THE subject [premise] PREMISES to:

(A) [limit] LIMIT potential emissions at such [premise] PREMISES to less than the amounts specified in [the] subparagraphs (A) through (D), inclusive, of subdivision [(d)](1) of this subsection;

(B) [conduct] CONDUCT monitoring, recordkeeping, or a combination of monitoring and recordkeeping sufficient to ensure compliance with [this subsection] SUCH PERMIT;

(C) [for each emission unit at such premise, maintain records indicating, for every month, throughput, hours of operation, and capacity;

(D)] [maintain any record] MAINTAIN ALL RECORDS required by such permit or order at the [premise] PREMISES for five

(5) years after the creation of such [record] RECORDS and make such [record] RECORDS available, upon request, to the commissioner;

[(E)] (D) [submit] SUBMIT compliance certifications to the commissioner pursuant to subdivision (q)(2) of this section; AND

[(F)] (E) [comply] COMPLY with every term, emission limitation, condition, or other requirement of such permit or order, including the requirements that the terms, limitations and conditions of such permit or order are binding[,] and legally enforceable, and THAT THE emissions [to be] allowed are quantified[;].

(3) A permit or order shall not be issued pursuant to this subsection, and any such permit or order shall not be federally enforceable, unless the commissioner:

(A) [requires] REQUIRES the owner or operator of a subject [premise] PREMISES to comply with each provision of subdivision (2) of this subsection;

(B) [for] FOR a general permit, complies with the requirements for notice and opportunity for public comment pursuant to section 22a-174(l)(2) of the [general statutes] CONNECTICUT GENERAL STATUTES;

(C) [for] FOR an individual order, sends a copy of a notice to those listed in subparagraph (D)(i) through (vi), inclusive, of this subdivision, and, at least thirty (30) days before approving or denying a [draft] PROPOSED order under this subsection, publishes or causes to be published, at the respondent's expense, once in a newspaper having substantial circulation in the affected area, such notice of [his] THE [draft] PROPOSED order regarding the subject [premise] PREMISES. IN ADDITION, THE COMMISSIONER MAY REQUIRE THE OWNER OR OPERATOR TO PUBLISH SUCH NOTICE IN OTHER MEDIA AND IN LANGUAGES OTHER THAN ENGLISH. Such notice shall contain the following:

(i) the name and mailing address of the owner or operator of the subject [premise] PREMISES and the address of the location of the proposed activity[;],

(ii) the draft order number[;],

(iii) the summary of the draft order provisions regarding the proposed activity[;],

(iv) the type of authorization sought, including a reference to the applicable statute or regulation[;],

(v) a description of the location of the proposed activity and any natural resources affected thereby[;],

(vi) the name, address and telephone number of any agent of the [respondent] OWNER OR OPERATOR from whom interested persons may obtain copies of the draft order[;],

(vii) a brief description of all opportunities for public participation provided by statute or regulation, including the length of time available for submission of public comments to the commissioner on the draft order[;], and

(viii) such additional information as the commissioner deems necessary to comply with any provision of the Regulations of Connecticut State Agencies or with the Act[.];

(D) [for an individual] FOR A TENTATIVE DETERMINATION REGARDING A permit APPLICATION UNDER THIS SUBSECTION, OTHER THAN A GENERAL PERMIT, sends a copy of the notice required by section 22a-6h of the [general statutes] CONNECTICUT GENERAL STATUTES to[:] THOSE IDENTIFIED IN, AND AS REQUIRED BY, SECTION 22a-174-2a(b)(5)(A) THROUGH (G) INCLUSIVE, OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(i) the Administrator;

(ii) the Chief Executive Officer of the municipality where the premise is or will be located;

(iii) the appropriate Connecticut Regional Planning Agency;

(iv) any federally-recognized Indian governing body whose lands may be affected by emissions from the premise which is the subject of such permit;

(v) the Director of the air pollution control program in any affected state; and

(vi) any individual who makes a request to the commissioner, in writing, to receive such a notice.

(E) In addition to any notice in accordance with subparagraph (B), (C) or (D) of this subdivision, the commissioner shall contemporaneously send a copy of the tentative determination, or draft order, to the Administrator and the Director of the air pollution control program in any affected state.]

(4) Following receipt of a request for a public hearing pursuant to [subdivision (d)(3) this subsection] SECTION 22a-174-2a(c)(6) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, THE COMMISSIONER SHALL PUBLISH a notice of such public hearing [shall be published] AT THE OWNER OR OPERATOR□S EXPENSE in a newspaper of general circulation in the affected area at least thirty (30) days prior to such hearing. IN ADDITION, THE COMMISSIONER MAY REQUIRE THE OWNER OR OPERATOR TO PUBLISH SUCH NOTICE IN OTHER MEDIA AND IN LANGUAGES OTHER THAN ENGLISH.

(5) The commissioner shall not issue any permit or order pursuant to this subsection which waives or makes less stringent any limitation, standard or requirement contained in or issued pursuant to the State implementation plan or that is otherwise federally enforceable, including any standard established in 40 CFR [Part] 63 .

(6) The commissioner shall provide the Administrator with a copy of any general permit issued pursuant to this subsection.

(7) Notwithstanding a permit or order issued pursuant to subdivision [d)](1) of this subsection, the owner or operator of any [premise] PREMISES subject to this section shall pay the [department] DEPARTMENT all fees required by section 22a-174-26 of the Regulations of Connecticut State Agencies.

(8) Notwithstanding the provisions of section 22a-174(l) of the [general statutes] CONNECTICUT GENERAL STATUTES, the commissioner shall not issue a general permit covering a stationary source subject to any standard or other requirement pursuant to 40 CFR [Parts] 72 through 78, inclusive.

(9) IF THE COMMISSIONER OR ADMINISTRATOR DETERMINES THAT THE OWNER OR OPERATOR OF ANY PREMISES THAT IS SUBJECT TO A GENERAL PERMIT ISSUED UNDER THIS SECTION HAS NOT QUALIFIED FOR APPLICABILITY UNDER SUCH GENERAL PERMIT, SUCH NONCOMPLIANCE SHALL BE A VIOLATION OF THIS SECTION AND SUCH OWNER OR OPERATOR SHALL BE DEEMED TO HAVE BEEN OPERATING A TITLE V SOURCE WITHOUT A TITLE V PERMIT.

(10) IF THE COMMISSIONER OR ADMINISTRATOR DETERMINES THAT THE OWNER OR OPERATOR OF ANY PREMISES THAT IS SUBJECT TO A PERMIT OR ORDER ISSUED UNDER THIS SUBSECTION HAS NOT COMPLIED WITH THE TERMS OR CONDITIONS OF SUCH PERMIT OR ORDER, SUCH NONCOMPLIANCE SHALL BE A VIOLATION OF THIS SECTION AND SUCH OWNER OR OPERATOR SHALL BE DEEMED TO HAVE BEEN OPERATING A TITLE V SOURCE WITHOUT A TITLE V PERMIT.

(11) THE COMMISSIONER SHALL SUBMIT THIS SUBSECTION FOR APPROVAL BY THE ADMINISTRATOR UNDER TITLE I OF THE ACT TO AUTHORIZE THE ISSUANCE OF FEDERALLY ENFORCEABLE STATE OPERATING PERMITS IN LIEU OF TITLE V PERMITS. ANY PERMIT ISSUED UNDER THIS SUBSECTION SHALL NOT BE DEEMED A TITLE V PERMIT.

(e) MACT and Acid Rain Requirements.

(1) [If the Administrator does not promulgate a MACT standard for a category of sources within eighteen (18) months of the federal deadline for promulgating a for such category of sources, the commissioner shall determine a MACT standard for such category of sources. The federal deadline for promulgating a MACT standard is as published in the Federal Register, Vol.58, No. 231, December 3, 1993.] IF THE ADMINISTRATOR FAILS TO PROMULGATE A MACT STANDARD FOR A CATEGORY OF SOURCES CONSISTENT WITH THE DEADLINE UNDER SECTION 112(j)(2) OF THE ACT, THEN THE COMMISSIONER SHALL DETERMINE A MACT STANDARD FOR SUCH CATEGORY OF SOURCES. The commissioner shall determine such MACT standard in the same manner as IS required of the Administrator under section 112(d)(3) of the Act. In no event shall such a standard allow emissions of any hazardous air pollutant [which emissions] THAT would exceed [those] THE EMISSIONS allowed by an applicable standard under 40 CFR [Part] 63.

(2) Within three (3) years of the commissioner's determination of [such] A MACT standard FOR A CATEGORY OF SOURCES or upon notice from the commissioner TO THE OWNER OR OPERATOR OF THE SOURCE, whichever is earlier, the owner or operator of a source with respect to which the commissioner has determined a MACT standard shall [assure that such source is in compliance] COMPLY with such MACT standard.

(3) The owner or operator of a Title V source shall comply with the applicable provisions of 40 CFR [Parts] 72 through 78, inclusive . If ANY such provision [conflicts with or is not made a term or condition] IS STRICTER THAN A SIMILAR PROVISION of an applicable permit issued pursuant to this section, [such provisions shall nonetheless apply to such source.] THE STRICTER PROVISION SHALL PREVAIL.

(f) Timetable For Submitting An Application For A Title V Permit.

(1) The owner or operator of a Title V source which is subject to this section shall not be required to apply for a Title V permit before the implementation date of this section. After such date, the owner or operator of such a source shall apply for a Title V permit within ninety (90) days of receipt of notice from the commissioner that such application is required or by the date specified by such notice, whichever is earlier. If such owner or operator does not receive such notice, such owner or operator shall apply for such permit within nine (9) months of the implementation date of this section.

(2) EXCEPT AS PROVIDED IN SUBDIVISION (3) OF THIS SUBSECTION, [The] THE owner or operator of a Title V source [which becomes subject to this section after its implementation date] shall apply for a Title V permit within ninety (90) days of receipt of notice from the commissioner that such application is required or twelve (12) months after becoming subject to this section, whichever is earlier.

(3) The owner or operator of a Title V source which is subject to this section solely pursuant to a standard in [subparagraph (A) of subdivision (a)(15) of this section, if such standard became effective prior to July 21, 1992,] 40 CFR 60 OR 61, shall apply for a Title V permit within ninety (90) days of receipt of notice from the commissioner that such application is required [or five (5) years after the implementation date of this section, whichever is earlier] OR AS PROVIDED FOR BY THE ADMINISTRATOR, WHICHEVER IS EARLIER.

(4) The owner or operator of a NEW MAJOR STATIONARY [Title V] source OR A MAJOR MODIFICATION TO AN EXISTING MAJOR STATIONARY SOURCE to whom a Title V permit has not been issued and who is required to obtain a permit [to construct pursuant to subparagraph (B) or (D) of section 22a-174-3(b)(1) of the Regulations of Connecticut State Agencies] UNDER SECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES shall apply for a Title V permit [upon] WITHIN NINETY (90) DAYS OF RECEIPT OF notice from the commissioner that such Title V permit is required or within twelve (12) months of COMMENCING OPERATION UNDER [applying for such] A permit [to construct] ISSUED PURSUANT TO SECTION 22a-174-3a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, whichever is earlier.

(5) [The owner or operator of a Title V source who wishes to apply] APPLICATION for renewal of a Title V permit shall [apply therefor] BE MADE no later than [six (6)] TWELVE (12) months prior to the date of expiration of [such] THE TITLE V permit.

[(6) Notwithstanding subdivisions (1) through (5) of this subsection, the owner or operator of a Title V source subject to 40 CFR Parts 72 through 78, inclusive, shall submit an application to the commissioner by January 1, 1996 pertaining to the emission of sulfur dioxide and by January 1, 1998 pertaining to the emission of nitrogen oxides.]

(6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION, THE OWNER OR OPERATOR OF A TITLE V SOURCE SUBJECT TO 40 CFR 72 THROUGH 78, INCLUSIVE, WHICH BECOMES SUBJECT TO THIS SECTION AFTER JANUARY 1, 1998 SHALL SUBMIT A TITLE V APPLICATION TO THE COMMISSIONER WITHIN THE TIME PROVIDED BY 40 CFR 72.30 OR WITHIN NINETY (90) DAYS OF RECEIPT OF NOTICE FROM THE COMMISSIONER THAT SUCH APPLICATION IS REQUIRED, WHICHEVER IS EARLIER.

(g) TITLE V PERMIT Applications.

(1) [(A)]An application for a Title V permit shall be made on forms [provided] PRESCRIBED by the [department] COMMISSIONER. The application shall [comply with subparagraphs (B) through (G) of this subdivision and with subdivisions (2), (3) and (4) of this subsection] CONTAIN THE FOLLOWING[.]:

[(B)](A) [The application shall identify the applicant's legal name and address, the name and agent for service of the owner of the subject source, if the applicant is not the owner,] THE LEGAL NAME AND BUSINESS ADDRESS OF THE APPLICANT AND OF THE APPLICANT'S AGENT FOR SERVICE OF PROCESS AND, IF THE APPLICANT IS NOT THE OWNER OF THE SUBJECT SOURCE, THE LEGAL NAME AND BUSINESS ADDRESS OF SUCH OWNER AND OF THE OWNER'S AGENT FOR SERVICE OF PROCESS, and names and telephone numbers of THE plant site manager and other individuals designated by the applicant to answer questions pertaining to such application[.];

[(C)](B) [The application shall contain all] ALL information required by section 22a-3a-5 of the Regulations of Connecticut State Agencies, including an executive summary [clearly and concisely summarizing the information contained in the application.];

[(D)](C) [The application shall contain a] A compliance plan pursuant to subsection (i) of this section MEETING THE REQUIREMENTS OF 40 CFR 70.5(c)(8), [and a statement certifying notification pursuant to subsection (l) of this section.];

(D) A COMPLIANCE CERTIFICATION PURSUANT TO SUBSECTION (q)(2) OF THIS SECTION MEETING THE REQUIREMENTS OF 40 CFR 70.5(c)(9);

(E) [The applicant may apply for more than one alternative operating scenario for such source. For each alternative operating scenario, the applicant shall submit the] THE information required by this subsection FOR EACH ALTERNATIVE OPERATING SCENARIO THAT THE APPLICANT HAS INCLUDED IN THE TITLE V PERMIT APPLICATION[.];

(F) [If the applicant has complied with section 22a-174-22 or 22a-174-32 of the Regulations of Connecticut State Agencies, by an alternative means of compliance for nitrogen oxides or volatile organic compounds by order or permit or a certification, the application shall identify and describe] AN IDENTIFICATION AND DESCRIPTION OF ANY [each such] alternative means of compliance WITH SECTIONS 22a-174-22 OR 22a-174-32 OF THE REGULATIONS OF

CONNECTICUT STATE AGENCIES ISSUED BY ORDER, PERMIT OR CERTIFICATION. In addition, a copy of such order, permit or certification shall be submitted with the application[.]; AND

(G) [The application shall contain a] A certification pursuant to [subdivision (b)(4) of this] section 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

(2) [An application for a Title V permit, for] FOR the purpose of determining the applicability of this section pursuant to subsection (c) of this section, to impose any applicable requirement, or to determine compliance with any applicable requirement, AN APPLICATION FOR A TITLE V PERMIT shall provide the following information about the subject TITLE V source:

(A) [for] FOR each alternative operating scenario proposed, a description of the processes utilized, the standard industrial classification code, [identify] IDENTIFICATION OF each emission unit involved, as well as its throughput, hours of operation and capacity [of each such emission unit,] for [any] THE calendar year prior to the YEAR OF application or such other time period as the commissioner deems appropriate;

(B) [for] FOR each regulated air pollutant emitted or proposed to be emitted by the subject source, the amount of potential and actual emissions from such source during the TIME PERIOD SPECIFIED IN SUBPARAGRAPH (A) OF THIS SUBDIVISION [calendar year preceding the date of the application or during such other time period as the commissioner deems appropriate]; such emissions shall [include fugitive emissions to the extent quantifiable, and shall] be expressed in tons per year and in such terms as are necessary to demonstrate compliance with the applicable standard reference test method, if any;

(C) [the] THE methodology used by the applicant to quantify EMISSIONS, in such terms as are necessary to determine compliance with the applicable standard reference test method, if any, the potential and actual emissions referred to in subparagraph (B) of this subdivision, and the emission rates in tons per year of each regulated air [pollutants] POLLUTANT emitted or proposed to be emitted by the subject TITLE V source;

(D) [the] THE calculations used by the applicant to determine whether such source is a Title V source to which this section applies;

(E) [a] A description of all air pollution control equipment [in use] USED at the subject TITLE V source and a description of all monitoring equipment [in use] USED at the subject TITLE V source to quantify [such] emissions or to determine compliance WITH ANY APPLICABLE REQUIREMENT;

(F) [for] FOR each regulated air pollutant emitted or proposed to be emitted by the subject TITLE V source, a description of any [applicable] operational limitations or work [practice standards] PRACTICES in effect at such source which affect emissions at the time the application is submitted or A DESCRIPTION OF THE work [practice standards] PRACTICES to be implemented which will affect PROPOSED emissions [proposed to be emitted] at a specified later date;

(G) [identification] FOR EACH EMISSION UNIT, AN IDENTIFICATION of all applicable requirements, AND IDENTIFICATION AND EXPLANATION OF ANY EXEMPTIONS THE APPLICANT PROPOSES TO EXERCISE FROM OTHERWISE APPLICABLE REQUIREMENTS, AND [for each emission unit, including] IDENTIFICATION OF any applicable MACT source category as published in the Federal Register, [Vol.57, No. 137, July 16, 1992] IN ACCORDANCE WITH SECTION 112(e)(3) OF THE ACT, [and] including [those] ANY CATEGORY which [are] IS subject to compliance dates occurring after the effective date of this section;

(H) [any] ANY [applicable] test method to be used by the applicant for determining compliance with each applicable requirement [listed] IDENTIFIED pursuant to subparagraph (G) of this subdivision; and

(I) [any] ANY other information, required by each applicable requirement [listed] IDENTIFIED pursuant to subparagraph (G) of this subdivision[, including good engineering practices used to determine stack height].

(3) [Notwithstanding subdivisions (1) and (2) of this subsection, an] AN [applicant] APPLICATION need not CONTAIN [provide] the information REQUIRED UNDER SUBDIVISIONS (1) AND (2) OF THIS SUBSECTION on those items or activities specified in subparagraphs (A) and (B) of this subdivision.

(A) A laboratory hood used solely for the purpose of experimental study or teaching of any science or testing or analysis of drugs, chemicals, chemical compounds, or other substances, provided that the containers used for reactions, transfers, and other handling of substances under such laboratory hood are designed to be easily and safely manually manipulated by one person[.]; OR

(B) Any of the following items or activities which are not the principal function of [such Title V] THE SUBJECT TITLE V source:

(i) office equipment, including but not limited to copiers, facsimile and communication equipment, and computer equipment[;]_,_

(ii) grills, ovens, stoves, refrigerators, vending machines and other restaurant-style food preparation or storage equipment[;]_,_

(iii) lavatory vents, hand dryers, and noncommercial clothes dryers, not including dry cleaning machinery[;]_,_

(iv) garbage compactors and waste barrels[;]_,_

(v) aerosol spray cans[;]_,_

(vi) heating, air conditioning, and ventilation systems which do not remove air contaminants generated by or released from process or fuel burning equipment and which are separate from such equipment AND WHICH ARE NOT SUBJECT TO 40 CFR PART 82,

(vii) routine housekeeping activities such as painting buildings, roofing, and paving parking lots[;]_,_

(viii) all clerical and janitorial activities[;]_,_

(ix) maintenance activities such as_:_ THE MECHANICAL REPAIR OF [vehicle repair] VEHICLES[,]; THE USE OF brazing, soldering and welding equipment, carpentry_,_ [shops,] electrical charging [stations], grinding and polishing operations_,_ maintenance shop vents[,]; AND miscellaneous non-production surface cleaning, preparation and painting operations[;]_,_ and

(x) space heaters which can reasonably be carried by one person by hand.

(4) Notwithstanding subdivision (3) of this subsection, an [applicant] APPLICATION shall include [the emissions from] INFORMATION REGARDING each activity or item[,] set forth in [paragraph] SUBPARAGRAPHS _(A)_ AND (B) of subdivision (3) of this subsection, if necessary to determine whether a [source] PREMISES is a Title V source [to which this section is applicable] OR TO IMPOSE AN APPLICABLE REQUIREMENT. [If] IN ADDITION, IF the commissioner determines the emissions from any activity or items are needed to determine the applicability of this section or to impose any applicable requirement, the applicant shall list on the application

such activities or items listed in subparagraphs (A) and (B) of subdivision (3) of this subsection.

(5) AN APPLICATION TO RENEW OR MODIFY A TITLE V PERMIT SHALL BE MADE ON FORMS [PROVIDED] PRESCRIBED BY THE COMMISSIONER AND IN ACCORDANCE WITH SECTION 22a-174-2a OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. SUCH APPLICATION SHALL INCLUDE A DESCRIPTION OF ANY PROPOSED CHANGES, A PROPOSED PERMIT, ANY PROPOSED MONITORING PROCEDURES, ANY CHANGES IN ACTUAL EMISSIONS RESULTING FROM THE PROPOSED CHANGES, AND AN IDENTIFICATION OF ALL REGULATORY, STATUTORY, OR OTHERWISE APPLICABLE REQUIREMENTS THAT WOULD BECOME APPLICABLE AS A RESULT OF SUCH CHANGES.

(h) TITLE V Application Processing

(1) AN APPLICANT FOR A TITLE V PERMIT SHALL NOT BE LIABLE FOR FAILING TO OBTAIN SUCH PERMIT, UNLESS:

(A) [the] THE commissioner notifies the applicant IN WRITING WITHIN SIXTY (60) DAYS OF RECEIPT OF A SUFFICIENT AND TIMELY FILED APPLICATION that [an] THE application [is not sufficient, in accordance with] FAILS TO MEET THE REQUIREMENTS IN subsection (g) of this section [and] OR section 22a-3a-5(a)(1) of the Regulations of Connecticut State Agencies; [within sixty (60) days of receipt of the application, such application shall be deemed sufficient.] OR

(B) [If,] THE COMMISSIONER NOTIFIES THE APPLICANT IN WRITING subsequent to such [60] SIXTY (60) days, while processing an application for a Title V permit [that has been determined or deemed sufficient, the commissioner determines] that additional information is necessary to take final action regarding such application, [the commissioner may notify the applicant in writing that particular information is necessary. The] AND THE applicant [shall] FAILS TO submit such information in writing within forty-five (45) days of such notification.

(2) An applicant for a Title V permit shall submit[, during the pendency of the application,] information to address any requirements that become applicable to the subject source AND SHALL SUBMIT CORRECT, COMPLETE AND SUFFICIENT INFORMATION [or] upon THE APPLICANT□S becoming aware of any incorrect, INCOMPLETE, AND or insufficient submittal, DURING THE PENDENCY OF THE APPLICATION, OR ANY TIME THEREAFTER, with an explanation for such deficiency and a certification pursuant to [subdivision (b)(4) of this section] SECTION 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(3) An application to renew or, pursuant to subsection (r) of this section, to modify a Title V permit, shall include all of the information required pursuant to subsection (g) of this section and shall indicate how, if at all, such application differs from the application for the permit sought to be renewed or modified.]

[(4) If the owner or operator of a Title V source makes a timely and sufficient application for a new Title V permit pursuant to this subsection, such owner or operator shall not be liable for failure to previously have obtained such a permit, provided such owner or operator shall be liable for such failure if he does not timely provide information requested pursuant to a notice of the commissioner issued pursuant to subdivision (1) of this subsection.]

[(5)] (3) The owner or operator of a Title V source shall submit a copy of [his] THE application for a Title V permit, or for renewal or modification thereof, and of any compliance plan prepared under subsection (i) of this section, to the Administrator at the same time such owner or operator submits [such documents] THE APPLICATION to the commissioner.

(i) Compliance HISTORY, Plans WITH SCHEDULES AND CERTIFICATIONS.

(1) [Together with his application for a Title V permit, the applicant shall submit to the commissioner in writing a compliance plan which, describes the compliance status of the subject source with respect to all applicable requirements, in accordance with this subdivision, and which plan meets the other requirements of this subsection. For the purposes of this section, compliance status means the degree to which the applicant is in compliance with all applicable requirements. The information in the compliance plan shall be consistent with the requirements of any judgement or administrative order against the applicant concerning such source. The compliance plan shall contain a certification pursuant to subdivision (b)(4) of this section and a compliance certification pursuant to subdivision (q)(2) of this section. The compliance plan shall provide information on each of the following proceedings involving the owner or operator.] EACH APPLICATION FOR A TITLE V PERMIT SHALL INCLUDE:

(A) A COMPLIANCE HISTORY, IF REQUIRED BY THE COMMISSIONER, IN ACCORDANCE WITH SECTION 22a-6m OF THE CONNECTICUT GENERAL STATUTES;

[(A) Any criminal conviction involving a violation of any environmental protection law if such violation occurred within the five (5) years immediately preceding the date the application is submitted;]

[(B) any civil penalty imposed in any state or federal judicial proceeding, or any civil penalty exceeding five thousand

(5,000) dollars imposed in any administrative proceeding, for a violation of any environmental protection law if such violation occurred within five (5) years immediately preceding the date the application is submitted; and]

[(C) any judicial or administrative orders issued to the applicant regarding any such violation.]

[With respect to any such proceeding initiated by the commissioner or the Connecticut Attorney General, the applicant shall provide the docket, case, or order number or, if there is no such number, other identifying information; the date such proceeding commenced; and, if such proceeding has terminated, the date it terminated. With respect to any such proceeding by another state or by an agency thereof or by the federal government, the applicant shall provide a copy of the complaint, order, or other official document which initiated such proceeding and, if such proceeding has terminated, a copy of the final judgement, decree, order, decision, or other official document which terminated such proceeding.]

(B) A COMPLIANCE PLAN, IN ACCORDANCE WITH 40 CFR 70.5(c)(8) , THAT DESCRIBES THE COMPLIANCE STATUS OF THE TITLE V SOURCE WITH RESPECT TO ALL APPLICABLE REQUIREMENTS AND INCLUDING THE FOLLOWING:

[(2)](i) [With] WITH respect to applicable requirements with which the subject source is in compliance at the time the application is submitted, the applicant shall submit with [his] THE application a statement that the owner and operator of such source will continue to comply with such requirements[.],

(ii) WITH RESPECT TO APPLICABLE REQUIREMENTS WHICH WILL NOT TAKE EFFECT UNTIL AFTER THE REASONABLY ANTICIPATED ISSUANCE DATE OF THE TITLE V PERMIT SOUGHT BY THE APPLICANT, THE APPLICANT SHALL SUBMIT A STATEMENT THAT THE OWNER AND OPERATOR OF SUCH SOURCE WILL COMPLY AND CONTINUE TO COMPLY WITH SUCH REQUIREMENTS ONCE THEY ARE APPLICABLE,

(iii) WITH RESPECT TO APPLICABLE REQUIREMENTS FOR WHICH THE SOURCE IS NOT IN COMPLIANCE AT THE TIME OF PERMIT ISSUANCE, A DESCRIPTION OF HOW THE OWNER AND OPERATOR OF SUCH SOURCE WILL ACHIEVE COMPLIANCE WITH SUCH REQUIREMENTS IN ACCORDANCE WITH THE COMPLIANCE PLAN, AND

(iv) FOR EACH APPLICABLE REQUIREMENT IDENTIFIED IN ACCORDANCE WITH SUBPARAGRAPHS (B)(ii) AND (B)(iii) OF THIS SUBDIVISION, A COMPLIANCE SCHEDULE, WHICH SHALL BE AT LEAST AS STRINGENT AS ANY REQUIREMENT CONTAINED IN ANY FINAL JUDGMENT OR DECREE OR ANY ADMINISTRATIVE ORDER TO WHICH THE APPLICANT IS SUBJECT, SPECIFYING THE DATES BY

WHICH MEASURES WILL BE TAKEN TO BRING THE TITLE V SOURCE INTO COMPLIANCE WITH THE APPLICABLE REQUIREMENT;

[(3)](C) A COMPLIANCE CERTIFICATION, WHICH MEETS THE REQUIREMENTS OF SUBSECTION (q) OF THIS SECTION AND 40 CFR 70.5(c)(9), THAT SHALL REQUIRE:

(i) THE SUBMISSION OF CERTIFIED PROGRESS REPORTS IN ACCORDANCE WITH SUBDIVISION (q)(1) OF THIS SECTION, AND

(ii) THE SUBMISSION OF COMPLIANCE CERTIFICATIONS IN ACCORDANCE WITH SUBDIVISION (q)(2) OF THIS SECTION.

(2) THE SUBMITTAL OF A COMPLIANCE SCHEDULE UNDER SUBDIVISION (1)(B)(iv) OF THIS SUBSECTION SHALL NOT PRECLUDE THE COMMISSIONER FROM IMPOSING A MORE STRINGENT COMPLIANCE SCHEDULE OR TAKING ENFORCEMENT ACTION AGAINST THE OWNER OR OPERATOR OF THE TITLE V SOURCE FOR SUCH NONCOMPLIANCE.

(3) THE COMPLIANCE PLAN CONTENT REQUIRED BY THIS SUBSECTION SHALL BE INCLUDED IN THE ACID RAIN PORTION OF A COMPLIANCE PLAN FOR A TITLE V SOURCE THAT IS ALSO SUBJECT TO ANY PROVISION OF 40 CFR 72 THROUGH 78, INCLUSIVE, EXCEPT AS SPECIFICALLY SUPERSEDED THEREIN.

[(3) The compliance plan required by this subsection shall include a schedule for bringing the subject source into compliance with each applicable requirement. Such schedule shall include a schedule of remedial measures to be taken, assuring compliance by specified dates, with such applicable requirements for which the Title V source will be in noncompliance at the time of Title V permit issuance. Such submittal of a compliance schedule shall not preclude the commissioner from taking enforcement action.]

[(4) With respect to applicable requirements with which the subject source is not in compliance at the time the application is submitted and which will not take effect until after the reasonably anticipated issuance date of the Title V permit sought by the applicant, the applicant shall submit a statement that the such source will comply with such requirements by such dates.]

[(5) Notwithstanding subdivisions (1) through (4) of this subsection, for any Title V source that comprises one or more emission units subject to any provision of 40 CFR Parts 72 through 78, inclusive, the applicable requirements with regard to such schedule and compliance methods, shall be identified as required by this subsection, except as specifically superseded by 40 CFR Parts 72 through 78, inclusive.]

[(6) Such schedule shall require the submission of certified progress reports in accordance with subdivision (q)(1) of this section, no less frequently than once every six (6) months.

(7) Such schedule shall require the submission of compliance certifications in accordance with subdivision (q)(2) of this section, no less frequently than one every twelve (12) months.]

(j) Standards for Issuing and Renewing Title V permits.

(1) EXCEPT WITH RESPECT TO AN APPLICATION FOR A TITLE V PERMIT FOR A SOURCE SUBJECT TO A DEADLINE PURSUANT TO 40 CFR 72 THROUGH 78, INCLUSIVE, WITHIN EIGHTEEN (18) MONTHS OF RECEIVING A TITLE V PERMIT APPLICATION, AND WITHIN TWELVE (12) MONTHS OF RECEIVING AN APPLICATION TO MODIFY OR RENEW A TITLE V PERMIT, [The] THE commissioner shall [take final action with respect to a sufficient application within eighteen (18) months of receiving a such application,] MAKE A DECISION TO GRANT OR DENY SUCH APPLICATION. [and] THE COMMISSIONER shall submit a copy of such [final action] DECISION to the Administrator. Failure of the commissioner to act within such period shall not entitle the applicant to PERMIT issuance, modification or renewal of any Title V permit. The commissioner shall not issue a Title V permit, PERMIT MODIFICATION, OR PERMIT RENEWAL to the owner or operator of a Title V source unless the commissioner determines that [such owner or operator is likely to be able to comply] THE SUBJECT SOURCE IS IN COMPLIANCE OR WILL BE IN COMPLIANCE with all relevant and applicable requirements and [such] THE permit OR PERMIT MODIFICATION [provides as follows] CONTAINS THE FOLLOWING CONDITIONS:

(A) [The permit expires on a] AN EXPIRATION date no later than five (5) years after the date the commissioner issues such permit[.];

(B) [The permit contains a] A statement that [upon expiration of the permit the permittee shall not continue to operate the subject source, unless he has filed a timely and sufficient renewal application in accordance with subsections (g), (h) and (i) of this section and any other applicable provisions of law.] ALL OF THE TERMS AND CONDITIONS OF THE PERMIT SHALL REMAIN IN EFFECT UNTIL THE RENEWAL PERMIT IS ISSUED OR DENIED PROVIDED THAT A TIMELY RENEWAL APPLICATION IS FILED IN ACCORDANCE WITH THIS SECTION;

(C) [The permit contains a] A statement that the permittee shall operate the [subject] source in compliance with the terms of all applicable [administrative] regulations, the terms of such permit, and any other applicable provisions of law. In addition, the permit [states] SHALL STATE THAT any noncompliance [with such permit] constitutes a violation of the Act and is grounds for enforcement action[;], [for] permit termination, revocation[,] AND REISSUANCE, or modification[;], [or for] AND denial of a permit renewal application[.];

(D) [The permit identifies] A STATEMENT OF the legal authority AND TECHNICAL ORIGIN for each PERMIT term or condition [thereof], including any difference in form from the applicable requirement upon which the term or condition is based[.];

(E) [The permit identifies] A STATEMENT IDENTIFYING which terms or conditions [thereof] OF THE PERMIT are federally enforceable and which [terms or conditions thereof] are enforceable only by the commissioner, and [the permit states] EXPLAINING that the federally enforceable provisions, AND THOSE NOT OTHERWISE IDENTIFIED AS ENFORCEABLE ONLY BY THE COMMISSIONER, are enforceable by the Administrator and the citizens under the Act[.];

(F) If the subject source is required by an applicable requirement to limit emissions of a regulated air pollutant, the permit imposes such limits, provided that, where allowed by such applicable requirement:

[(i) such limits shall be no less than one (1) ton per year for each emission unit, for total suspended particulates, sulfur oxides, nitrogen oxides, volatile organic compounds, carbon monoxide, and PM 10; and]

[(ii)](i) such limits [shall be] ARE no less than 1,000 pounds per year or any quantity prescribed by 40 CFR [Part] 63, WHICHEVER IS MORE STRINGENT, for each emission unit, for any hazardous air pollutant[.], AND

(ii) FOR ALL OTHER REGULATED AIR POLLUTANTS SUCH LIMITS ARE NO LESS THAN ONE (1) TON PER POLLUTANT PER YEAR FOR EACH EMISSION UNIT;

(G) [The permit states that it] A STATEMENT THAT THE PERMIT shall not be deemed to:

(i) preclude the creation or use of emission reduction credits OR ALLOWANCES or the trading [of such credits] THEREOF in accordance with subparagraphs (I) and (P) of this subdivision[;],

(ii) authorize emissions of an air pollutant so as to exceed levels that [might otherwise be] ARE prohibited under 40 CFR [Part] 72 [;],

(iii) authorize the use of allowances pursuant to 40 CFR [Parts] 72 through 78, inclusive, as a defense to noncompliance with any [other] applicable requirement[;], or

(iv) impose limits on emissions from items or activities specified in subparagraphs (A) and (B) of subdivision (g)(3) of this section unless imposition of such limits is required by an applicable requirement[.];

(H) [For each emissions unit covered by such permit, the permit contains all] A STATEMENT OF ALL limitations, requirements, and standards that apply to [the subject source] EACH EMISSION UNIT.[, including without limitation] SUCH STATEMENT SHALL INCLUDE:

(i) those operational limitations, requirements and standards necessary to assure compliance with all applicable requirements, including 40 CFR [Part] 63 [;], and

(ii) any applicable requirement of 40 CFR Part 72 through 78, inclusive [.];

(I) [The permit contains] A STATEMENT OF all [allowable] alternative emission limits or means of compliance ALLOWED BY THE COMMISSIONER. Such alternative emission limits OR MEANS shall be quantified, AND legally enforceable, and the method for [achieving] DEMONSTRATING COMPLIANCE WITH such limits shall BE based upon replicable procedures. The permit may contain an emissions limitation facilitating [intra-premise] INTRA-PREMISES EMISSION REDUCTION trades allowed by [subparagraph (A) of subdivision (r)(3)] SUBSECTION (r) of this section and any other applicable requirements[.];

(J) [The permit contains] A STATEMENT OF all terms and conditions applicable to any [legally permissible] ALLOWABLE alternative operating scenario[.], INCLUDING A REQUIREMENT [The permit must provide] that each such alternative operating scenario shall meet all applicable requirements[.] AND NOT RESULT IN ADVERSE EFFECTS ON PUBLIC HEALTH OR THE ENVIRONMENT;

(K) [The permit requires] A REQUIREMENT THAT the permittee [to] monitor regulated air pollutants emitted by the subject source to determine compliance with applicable emission limitations and [standard] STANDARDS. Unless otherwise required by an applicable requirement, such monitoring shall cover items and activities other than those listed in subdivision (g)(3) of this section and other than emissions below the levels of emissions prescribed in subparagraph (1)(F) [of subdivision (1)] of this subsection. Such monitoring REQUIREMENTS shall consist of one or more of the following:

(i) all emissions monitoring and analysis procedures or test methods required [under the] BY applicable requirements, including any procedures and methods required pursuant to 40 CFR Part 70 [;], and

(ii) where an applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, [the permittee may be required by the permit to conduct] periodic monitoring or recordkeeping sufficient to yield reliable data [from] DURING the relevant time period [that] WHICH DATA is representative of the emissions or parameters required by the permit to be monitored. Recordkeeping [may] SHALL be sufficient to meet the requirements of this subsection IF SO DETERMINED BY THE COMMISSIONER[.];

(L) [The permit contains all permit] ALL requirements for emissions monitoring analysis procedures and test methods. SUCH REQUIREMENTS SHALL SPECIFY TO THE EXTENT APPLICABLE: WHAT MONITORING EQUIPMENT SHALL BE INSTALLED AND USED OR THE MONITORING METHOD THAT SHALL BE USED; MAINTENANCE PROCEDURES FOR THE MONITORING EQUIPMENT; AND UNITS OF MEASUREMENT, AVERAGING PERIODS, AND OTHER MEASUREMENTS CONVENTIONS, CONSISTENT WITH APPLICABLE REQUIREMENTS. [shall, as appropriate, specify the use, maintenance, and installation of monitoring equipment or methods, monitoring requirements, terms, units of measurement, averaging periods, and other statistical conventions consistent with the applicable requirement and good engineering practices.];

(M) [The permit provides] A STATEMENT that the commissioner may, for the purpose of determining compliance with the permit and other applicable requirements, enter the [subject source] PREMISES at reasonable times to inspect any facilities, equipment, practices, or operations regulated or required under the permit; to sample or OTHERWISE monitor substances or parameters; and to [have access to] review and copy relevant records[, at reasonable times,] lawfully required to be maintained at such [source] PREMISES in accordance with the permit[.];

(N) [The permit contains all] ALL [applicable] recordkeeping requirements and all reporting AND NOTIFICATION requirements pursuant to subsections (o), (p) and (q) of this section[.];

[(O) The permit contains a] INCLUDING A requirement that the permittee shall report in writing to the commissioner any DEVIATION PROVIDED UNDER SUBSECTION (p) IN ACCORDANCE WITH SUBSECTION (p) OF THIS SECTION [deviation caused by upset or control equipment deficiencies, any deviation from a permit requirement, the likely cause of such deviation, and any

corrective actions to address such deviation; such report shall be made within ninety (90)days of such deviation.];

(O) THE CONDITIONS UNDER WHICH THE PERMIT WILL BE REOPENED PRIOR TO THE EXPIRATION OF THE PERMIT AS IDENTIFIED IN 40 CFR 70.7(f)(1)(i) THROUGH (iv);

(P) [The permit contains any] ANY terms and conditions necessary to enable the permittee to create, use, and trade emissions reduction credits OR ALLOWANCES in accordance with sections 22a-174f and 22a-174i of the [general statutes] CONNECTICUT GENERAL STATUTES, ANY REGULATIONS ADOPTED THEREUNDER, and with the provisions of [the EPA's "Economic Incentive Program Rules", published April 7, 1994 (Federal Register, Volume 59, Number 67)] 40 CFR 51 SUBPART U. Such terms and conditions, to the extent that the applicable requirements provide for trading without the commissioner's or Administrator's case-by-case approval of each emission trade, shall meet all the applicable requirements[.];

(Q) [The permit contains a] A schedule [that identifies the methods the permittee shall use for achieving compliance with applicable requirements and the dates by which compliance shall be reached, in addition to dates] for monitoring, recordkeeping, and reporting with respect to [such actions. Such schedule may be based on information provided in] the compliance plan submitted in accordance with subsection (i) of this section[.];

(R) [The permit contains a] A severability clause to ensure the continued validity of provisions remaining in [such] THE TITLE V permit [after] IF other provisions [have been] ARE legally invalidated[.];

(S) [The permit may contain any] ANY term or condition of any other permit, OR REGISTRATION THEREUNDER, [to construct or operate] issued to the permittee pursuant to section 22a-174 of the [general statutes] CONNECTICUT GENERAL STATUTES OR ANY TERM OR CONDITION OF ANY ORDER ISSUED BY THE COMMISSIONER PRIOR TO ISSUANCE OF THE TITLE V PERMIT, MODIFICATION OR RENEWAL THEREOF[.];

(T) [The permit states that the permittee□s need to halt or reduce operations at the subject source shall not be a defense in an enforcement action concerning a violation of the permit.] A STATEMENT THAT IT SHALL NOT BE A DEFENSE FOR THE PERMITTEE IN AN ENFORCEMENT ACTION THAT IT WOULD HAVE BEEN NECESSARY TO HALT OR REDUCE THE PERMITTED ACTIVITY IN ORDER TO MAINTAIN COMPLIANCE WITH THE CONDITIONS OF THIS PERMIT;

(U) [The permit states] A STATEMENT that [it] THE PERMIT may be modified, revoked, reopened, reissued, or suspended by the [commissioner, or the] Administrator in accordance with [this section] 40 CFR 70.7(f), 40 CFR 70.7(g) AND 40 CFR 70,6(a)(6)(iii), AND THAT IT MAY BE MODIFIED, REVOKED OR SUSPENDED BY THE COMMISSIONER IN ACCORDANCE WITH [section] SECTIONS 4-182 AND 22a-174c of the [general statutes] CONNECTICUT GENERAL STATUTES, or [subsection (d) of section 22a-3a-5] SECTION 22a-3a-5(d) of the Regulations of Connecticut State Agencies[.];

(V) [The permit states] A STATEMENT that the filing of an application [by a permittee for a permit modification, reissuance, or termination,] or of a notification of planned changes or anticipated noncompliance does not stay [any condition of such permit.] THE PERMITTEE□S OBLIGATION TO COMPLY WITH THE PERMIT;

(W) [The permit states] A STATEMENT that the permit does not convey any property rights or any exclusive privileges[.];

(X) [The permit requires] A REQUIREMENT THAT the permittee [to] submit additional information IN WRITING, at the commissioner's request, within [a reasonable time] THIRTY (30) DAYS OF RECEIPT OF NOTICE FROM THE COMMISSIONER OR BY SUCH OTHER DATE SPECIFIED BY THE COMMISSIONER, WHICHEVER IS EARLIER, including [any] information [that the commissioner may request in writing] to determine whether cause exists for modifying, revoking, REOPENING, [and] reissuing, or [terminating] SUSPENDING the permit or to determine compliance with the permit[.];

(Y) [The permit specifies the] THE conditions under which the permit will be modified [prior to the expiration of the permit.] AND REFERENCES TO THE AUTHORITY FOR PERMIT MODIFICATION; AND

(Z) A STATEMENT THAT THE OWNER OR OPERATOR HAS PAID, AND WILL CONTINUE TO PAY, TO THE DEPARTMENT ALL FEES AS REQUIRED BY SECTION 22a-174-26 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, INCLUDING THOSE FEES DUE DURING THE TERM OF SUCH PERMIT.

[(2) The commissioner shall not issue a Title V permit unless the owner or operator of the subject source has paid to the department all fees AS required by section 22a-174-26 of the Regulations of Connecticut State Agencies.]

[(3)](2) The commissioner shall not issue a Title V permit unless all the requirements of subsections (l) and (m) of this section have been complied with.

(3) THE COMMISSIONER SHALL MAKE A SUMMARY OF THE LEGAL AUTHORITY AND TECHNICAL ORIGIN OF EACH PROPOSED PERMIT TERM AND CONDITION IDENTIFIED UNDER SUBDIVISION (1)(D) OF THIS SUBSECTION. THE SUMMARY SHALL PROVIDE THE LEGAL AND FACTUAL BASIS FOR EACH PROPOSED PERMIT TERM OR CONDITION.

(4) THE COMMISSIONER SHALL SEND TO THE ADMINISTRATOR, AND ANY INDIVIDUAL WHO SO REQUESTS IT IN WRITING, A COPY OF THE SUMMARY REQUIRED BY SUBDIVISION (3) OF THIS SUBSECTION.

(5) THE COMMISSIONER SHALL NOT ISSUE A GENERAL PERMIT UNDER SECTION 22a-174(*l*) OF THE CONNECTICUT GENERAL STATUTES WITH RESPECT TO A STATIONARY SOURCE WHICH IS SUBJECT TO ANY PROVISION OF 40 CFR 72 THROUGH 78, INCLUSIVE.

(k) TITLE V Permit Shield

(1) EXCEPT AS OTHERWISE PROVIDED, [The] THE commissioner may [include a condition] STATE in a new [or modified] Title V permit OR MODIFIED TITLE V PERMIT UNDER SECTION 22a-174-2a(d)(3) OR (4) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, [stating] that compliance with the TERMS AND conditions of such permit shall be deemed compliance with [any] A SPECIFICALLY IDENTIFIED applicable requirement, provided that:

(A) [such] SUCH applicable requirement is stated in such permit APPLICATION AND PERMIT and the legal authority for such requirement is specifically identified in the permit; or

(B) [such] SUCH requirement is specifically identified in the permit and determined by the commissioner not to be applicable to such Title V source, and the permit includes such determination or a concise summary thereof.

(2) Any Title V permit that does not expressly state that compliance with the conditions of such permit shall be deemed compliance with [any] A SPECIFICALLY IDENTIFIED applicable requirement shall be presumed not to provide [such] a [condition] PERMIT SHIELD as provided for by subdivision (1) of this subsection.

(3) Notwithstanding subdivision (1) of this subsection, [no such provision] THE [of a] Title V permit shall [alter or affect the following] COMPLY WITH THE PROVISIONS OF 40 CFR 70.6(f)(3)(i) through (iv), inclusive [:].

[(A) the provisions of section 303 of the Act, including the authority of the Administrator under the Act;

(B) the liability of an owner or operator of a Title V source for any violation of applicable requirements prior to or at the time of issuance of a Title V permit;

(C) the applicable requirements of the acid rain program under 40 CFR Part 72 ; and

(D) the ability of the Administrator to obtain information from the owner or operator of a Title V source.]

[(4) The commissioner may, upon granting a request for a permit modification pursuant to subdivision (1) or (2) of subsection (r) of this section, include a provision in the modified permit stating that compliance with the conditions of such modified permit, including the modification, shall be deemed compliance with any applicable requirement in accordance with subdivision (k)(1) of this section.]

[(5)] (4) The permit shield in subdivision (1) of this subsection shall not apply to:

(A) A modification of [the] A Title V permit pursuant to [subdivision (3) or (4) of subsection (r) of this section.] SECTION 22a-174-2a(e) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES;

(B) A REVISION OF A TITLE V PERMIT PURSUANT TO SECTION 22a-174-2a(f) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES, INCLUDING ADMINISTRATIVE ADMENDMENTS IMPLEMENTED PURSUANT TO SECTION 22a-174-2a(f)(2)(F) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES; OR

(C) OFF-PERMIT CHANGES OR OPERATIONAL FLEXIBILITY PROVIDED UNDER SUBSECTION (r)(2) OF THIS SECTION.

(l) Public Notice. THE REQUIREMENTS OF SECTION 22a-174-2a(b) AND 22a-174-2a(c) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES APPLY TO AN APPLICATION FOR A TITLE V PERMIT AND THE OWNER OR OPERATOR OF A TITLE V SOURCE.

[(1) For any general permit, the commissioner shall comply with the notification requirements for notice and opportunity for public comment pursuant to section 22a-174(l)(2) of the general statutes;

(2) For any individual permit, the applicant shall comply with the requirements of section 22a-6g of the general statutes:

(3) The commissioner shall publish in the area where the source is located, a notice of tentative determination pursuant to section 22a-6h of the general statutes and send a copy of such notice to:

(A) the Administrator;

(B) the Chief Executive Officer of the municipality where the subject source is or is proposed to be located;

(C) the appropriate Connecticut Regional Planning Agency;

(D) any federally recognized Indian governing body whose lands may be affected by emissions from the subject source;

(E) the Director of the air pollution control program in any affected state; and

(F) the individuals who request such notices in writing.

In addition to such notice, the commissioner shall contemporaneously send a copy of the tentative determination to the Administrator and to the Director of the air pollution control program in any affected state.

(4) In addition to the provisions set forth in subdivision (3) of this subsection said notice shall include the name and address of the department, the activities involved in the permit action, the emission changes involved; any permit modification involved; the name and address and telephone number of a person from whom interested persons may obtain additional information.

(5) If the commissioner does not accept the recommendations of any such Director the commissioner shall inform such Director, and the Administrator, of the reasons therefor.

(6) The commissioner shall not issue a general permit under section 22a-174(l) of the general statutes with respect to a stationary source which is subject to any provision pursuant to 40 CFR Parts 72 through 78, inclusive.]

(m) Public Hearings. THE REQUIREMENTS OF SECTION 22a-174-2a(c) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES APPLY TO AN APPLICATION FOR A TITLE V PERMIT AND THE OWNER OR OPERATOR OF A TITLE V SOURCE.

[(1) Any person may file, within thirty (30) days following the publication of a notice of a tentative determination under subsection (l) of this section, written comments on such determination. Any such comments opposing the issuance of the subject permit shall describe, in detail, the basis for such opposition and may be accompanied by a request for a public informational or adjudicatory hearing, or for both.

(2) Following receipt of a request for a public informational hearing, or upon the commissioner's own initiative, the commissioner shall, prior to the issuance of a Title V permit, hold such hearing.

The commissioner shall publish a notice of such public informational hearing in a newspaper of general circulation in the affected area at least thirty (30) days prior to such hearing. Such notice shall provide the date, time and location of the public informational hearing. The commissioner shall maintain a record of all comments made at a public informational hearing. The commissioner may consider more than one Title V permit application or renewal application at any such hearing, provided the notice requirements of this subdivision have been satisfied.

(3) Following receipt of a request for a public adjudicatory hearing or upon the commissioner's own initiative, the commissioner may, prior to the issuance of a Title V permit, hold such hearing pursuant to section 22a-3a-6 of the Regulations of Connecticut State Agencies. The commissioner shall publish a notice of such public adjudicatory hearing in a newspaper of general circulation in the affected area at least thirty (30) days prior to such hearing. Such notice shall provide the date, time and location of such hearing. Following the close of the public hearing, the commissioner shall make a decision based on the public hearing and recommendation of the hearing examiner, if any, as to whether to approve, deny or conditionally approve the issuance of the Title V permit sought.]

(n) Administrator's Review of [Tentative Determinations] PROPOSED PERMITS.

[(1) The commissioner shall not issue, renew or modify a Title V permit if the Administrator objects, in writing, within forty-five (45) days of receipt of the tentative determination issued pursuant to subdivision (1)(3) of this section. Pursuant to the Act, the commissioner shall provide the Administrator with an additional forty-five (45) day review period prior to the issuance, renewal or modification of the Title V permit if , within the previous forty-five (45) day period, the commissioner either:

(i) made any substantive changes to the tentative determination, or

(ii) received any written objection from any affected state or the Administrator recommending changes to the tentative determination which the commissioner does not accept.

Pursuant to the Act, the Administrator has the power to submit any such written objection to the commissioner and the owner or operator of the subject source. Such objection will state the reasons for the objection and describe the terms and conditions that the permit must include to resolve such objections. The reasons for such objection may be based on one or more of the following:

(A) the Title V permit does not comply with applicable requirements or THE requirements of 40 CFR Part 70;

(B) the applicant did not submit copies of the application and compliance plan to the Administrator pursuant to subdivision (h)(5) of this section;

(C) the commissioner did not send a copy of the tentative determination to the Administrator or each affected state pursuant to subdivision (l)(3) of this section;

(D) the commissioner did not notify in accordance with subdivision (l)(5) of this section each affected state of the commissioner's reasons for not accepting any recommendation submitted by such state; or

(E) failure to comply with a requirement of subsection (l) or (m) of this section.]

(1) THE ADMINISTRATOR IS AUTHORIZED BY THE ACT TO REVIEW THE COMMISSIONER'S PROPOSED TITLE V PERMITS WITHIN FORTY-FIVE (45) DAYS OF RECEIPT.

(2) THE COMMISSIONER SHALL COMPLY WITH THE APPLICABLE PROVISIONS OF 40 CFR 70.8.

(3) THE COMMISSIONER SHALL HAVE NINETY (90) DAYS FROM RECEIPT OF AN OBJECTION FROM THE ADMINISTRATOR TO RESOLVE SUCH OBJECTION.

[(2)](4) Pursuant to the Act, if the Administrator does not object in writing IN ACCORDANCE WITH [under subdivision (1) of this subsection] 40 CFR 70.8(c), any person may petition the Administrator TO OBJECT TO A PROPOSED PERMIT [within sixty (60) days after the expiration of the Administrator's time for making SUCH objections. The commissioner shall not issue a Title V permit to the owner or operator of such Title V source if the Administrator objects to the issuance of such permit, in writing, within forty-five (45) days of receipt of such a petition. Such objection shall include the reasons for the objection, and a description of the terms and conditions the permit must include to respond to the objections. Pursuant to the Act, any of the following constitutes grounds for objection by the Administrator] IN ACCORDANCE WITH 40 CFR 70.8(d)[:].

[(A) an objection to the permit that was raised with reasonable specificity during the public comment period under subsection (m) of this section; or

(B) an objection not raised by the petitioner within the Administrator's initial forty-five (45) day review period but which has been demonstrated by the petitioner to have been impractical to raise within that period; or

(C) the grounds for an objection arose after the Administrator's initial forty-five (45) day review period.]

[(3) If the commissioner does not, within ninety (90) days after receipt of an objection by the Administrator under subdivision (1) or (2) of this subsection, submit to the Administrator a revised tentative determination addressing such objection, under the Act, the Administrator has the power to issue or deny the subject permit in accordance with the requirements of the Act.]

(5) IF THE COMMISSIONER DOES NOT, WITHIN NINETY (90) DAYS AFTER RECEIPT OF AN OBJECTION RAISED BY THE ADMINISTRATOR PURSUANT TO 40 CFR 70.8(c), SUBMIT A REVISED PROPOSED PERMIT TO THE ADMINISTRATOR IN RESPONSE TO THE OBJECTION, THE ADMINISTRATOR WILL ISSUE OR DENY THE TITLE V PERMIT PURSUANT TO 40 CFR 71.

(6) THE COMMISSIONER SHALL NOT ISSUE A TITLE V PERMIT UNTIL ANY OBJECTION RAISED BY THE ADMINISTRATOR PURSUANT TO 40 CFR 70.8(d), IS RESOLVED. IF THE COMMISSIONER HAS ISSUED A TITLE V PERMIT PRIOR TO RECEIPT OF AN OBJECTION FROM THE ADMINISTRATOR PURSUANT TO 40 CFR 70.8(d), THE ADMINISTRATOR WILL MODIFY, TERMINATE OR REVOKE SUCH PERMIT IN ACCORDANCE WITH 40 CFR 70.7(g)(4) OR (5)(i) AND (ii).

[(4) Except with respect to an application for a Title V permit for a source subject to a deadline pursuant to 40 CFR Parts 72 through 78, inclusive, the commissioner shall issue or deny a Title V permit within eighteen (18) months, of the date of submittal of an application conforming with subsections (g), (h) and (i) of this section.]

(o) TITLE V Monitoring Reports AND MAKING AND KEEPING RECORDS.

(1) **MONITORING REPORTS**. A permittee required to perform monitoring pursuant to [the subject] A TITLE V permit shall submit to the commissioner, ON FORMS PRESCRIBED BY THE COMMISSIONER, written monitoring reports ON JANUARY 30 AND JULY 30 OF EACH YEAR OR on [the] A MORE FREQUENT schedule IF specified in such permit [but in no event less frequently than once each six months]. Such [a] monitoring [report shall provided the following:] REPORTS SHALL INCLUDE THE DATE AND DESCRIPTION OF EACH DEVIATION FROM A PERMIT REQUIREMENT INCLUDING, BUT NOT LIMITED TO:

(A) [the date and description of each deviation caused by upset or control equipment deficiencies, each deviation from a permit requirement] EACH DEVIATION CAUSED BY UPSET OR CONTROL EQUIPMENT DEFICIENCIES[, and];

(B) [each violation] EACH DEVIATION of a [Title V] permit requirement that has been monitored by the monitoring systems required under the Title V permit, which has

occurred since the date of THE last monitoring report; and

[(B)] (C) [the date and description of each occurrence of] EACH DEVIATION CAUSED BY a failure of the monitoring system to provide reliable data.

(2) **MAKING AND KEEPING RECORDS.** Unless otherwise required by the subject permit, the permittee shall MAKE AND KEEP [maintain] records of all required monitoring data and supporting information FOR AT LEAST FIVE (5) YEARS FROM THE DATE SUCH DATA AND INFORMATION WERE OBTAINED[,]. [and] THE PERMITTEE shall make such records available for inspection [by the department] at the site of the subject source, [for at least five years from the date such data and information were obtained,] and SHALL submit such records to the commissioner upon request. [Supporting information shall include:] THE FOLLOWING INFORMATION, IN ADDITION TO REQUIRED MONITORING DATA, SHALL BE RECORDED FOR EACH PERMITTED SOURCE:

(A) [the] THE type of monitoring[, which may include] OR RECORDS USED TO OBTAIN SUCH DATA, INCLUDING record keeping[, by which such data was obtained];

(B) [the] THE date, place, and time of sampling or [measurements] MEASUREMENT;

(C) THE NAME OF THE INDIVIDUAL WHO PERFORMED THE SAMPLING OR THE MEASUREMENT AND THE NAME OF SUCH INDIVIDUAL'S EMPLOYER;

[(C)] (D) [the] THE date(s) ON WHICH analyses of such samples or measurements were performed;

[(D)] (E) [the] THE NAME AND ADDRESS OF THE entity that performed the analyses;

[(E)] (F) [the] THE analytical techniques or methods used for such analyses;

[(F)] (G) [the] THE results of such analyses;

[(G)] (H) [the] THE operating conditions at the subject source at the time of such sampling or measurement; and

[(H)] (I) [all] ALL calibration and maintenance records relating to the instrumentation used in such sampling or measurements, all original strip-chart recordings or computer printouts generated by continuous monitoring instrumentation, and copies of all reports required by the subject permit.

(3) [A permittee shall, contemporaneously] CONTEMPORANEOUSLY with making a change from one alternative operating scenario to another pursuant to a Title V permit, A PERMITTEE SHALL maintain a record at the site of THE subject source INCLUDING AN IDENTIFICATION OR DESCRIPTION of the current alternative operating scenario AND THE DATE ON WHICH THE PERMITTEE CHANGED FROM ONE ALTERNATIVE OPERATING SCENARIO TO ANOTHER.

(4) Any [monitoring] report submitted to the commissioner pursuant to this subsection shall be certified in accordance with [subdivision (b)(4) of this] section 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

(p) Notifications OF DEVIATIONS

(1) A permittee shall notify the commissioner in writing, ON FORMS PRESCRIBED BY THE COMMISSIONER, of any [violation at the subject source] DEVIATION FROM [of an applicable requirement, including any term or condition of the subject permit] AN EMISSIONS LIMITATION, and shall identify the cause or likely cause of such DEVIATION, [violation and] all corrective actions and preventive measures taken with respect thereto, and the dates of such actions and measures, as follows:

(A) [any such violation, including an exceedance of a technology-based emission limitation, that poses an imminent and substantial danger to public health, safety, or the environment shall be reported immediately but no later than twenty-four (24) hours after the permittee learns, or in the exercise of reasonable care should have learned, of such violation] FOR ANY HAZARDOUS AIR POLLUTANT, NO LATER THAN TWENTY-FOUR (24) HOURS AFTER SUCH DEVIATION COMMENCED; AND

(B) [any exceedance of a technology-based emission limitation imposed by the subject permit, which does not pose an imminent and substantial danger to public health, safety, or the environment, shall be reported within two working days after the permittee learns of such exceedence; and] FOR ANY OTHER REGULATED AIR POLLUTANT, NO LATER THAN TEN (10) DAYS AFTER SUCH DEVIATION COMMENCED;

[(C) any other such violation shall be reported in accordance with subsections (o) and (q) of this section.]

[(2) For the purposes of this section an exceedance of a technology-based emission limitation means emission of pollutants beyond the level of emissions allowed by a term or condition of the subject permit.]

[(3)](2) [As an] AN affirmative defense to an administrative or civil action by the state with respect to a violation OF A TECHNOLOGY-BASED EMISSION LIMITATION MAY BE MADE BY THE PERMITTEE PURSUANT TO 40 CFR 70.6(g), PROVIDED THAT THE PERMITTEE MEETS ALL APPLICABLE PROVISIONS OF 40 CFR 70.6(g)(1) THROUGH (5), INCLUSIVE.[, a permittee may prove that compliance with an applicable requirement at issue was impossible due to the occurrence of an event beyond the reasonable control of the permittee. In order to prevail upon such affirmative defense:

(A) the permittee shall have the burden of going forward and of persuasion both, with respect to establishing that a violation was caused by an alleged event including the facts relevant to such alleged event;

(B) the permittee shall submit all information required by subdivision (1) of this subsection; and

(C) the permittee shall prove that:

(i) the subject source was being properly operated at the time that such event allegedly occurred; and

(ii) during such event the permittee took all reasonable steps to prevent emissions in excess of those authorized by law.]

[(4) For the purposes of subdivision (3) of this subsection, an event beyond the reasonable control of the permittee means an event which was reasonably unforeseeable and the results of which could not have been avoided or repaired by the permittee in order to prevent the subject violation. Increased cost shall not constitute an event beyond the reasonable control of the permittee. A violation to the extent it is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error, shall not constitute an event beyond the reasonable control of the permittee.]

[(5)](3) THE PERMITTEE SHALL CERTIFY [Any] ANY written notification submitted TO THE COMMISSIONER pursuant to [subdivision (1) of] this subsection [shall be certified] in accordance with [subdivision (b)(4)of this section] SECTION 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

(q) TITLE V Progress Reports and Compliance Certifications.

(1) **PROGRESS REPORTS.** A permittee shall, on [the schedule specified in the subject permit or every six months and] JANUARY 30 AND JULY 30 OF EACH YEAR, OR ON A MORE FREQUENT SCHEDULE IF SPECIFIED IN SUCH PERMIT [whichever is more frequent], submit to the commissioner A progress [reports] REPORT [which are] ON FORMS PRESCRIBED BY THE COMMISSIONER, AND certified in accordance with [subdivision (b)(4)

of this section] SECTION 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. [and which report the] SUCH REPORT SHALL DESCRIBE THE permittee's progress in achieving compliance under the compliance PLAN schedule CONTAINED in [such] THE permit. Such progress report shall:

(A) [identify] IDENTIFY those obligations under the compliance PLAN schedule IN THE PERMIT which the permittee has met, and the dates [by] ON which they were met; and

(B) [identify] IDENTIFY those obligations under the compliance PLAN schedule IN THE PERMIT which the permittee has not timely met, explain why they were not timely met, describe all measures taken or to be taken to meet [such obligations] THEM and identify the date by which the permittee expects to meet [such obligations] THEM.

(2) **COMPLIANCE CERTIFICATION.** A permittee shall, [on the schedule specified in the subject permit or every twelve months] ON JANUARY 30 OF EACH YEAR, OR ON A MORE FREQUENT SCHEDULE IF SPECIFIED IN SUCH PERMIT [whichever is more frequent], submit to the commissioner, A written compliance [certifications] CERTIFICATION [which are] certified in accordance with [subdivision (b)(4) of this section] SECTION 22a-174-2a(a)(5) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES and which [identify the terms and conditions contained in the subject permit for the subject source, including emission limitations. In addition, a compliance certification shall contain the following] INCLUDES THE INFORMATION IDENTIFIED IN TITLE 40 CFR 70.6(c)(5)(iii)(A) through (C), INCLUSIVE [:].

[(A) a means for monitoring the compliance of the subject source with emissions limitations, standards, and work practices;

(B) the identification of each permit term or condition with respect to which the certification is being made;

(C) the permittee's compliance status with respect to the subject permit;

(D) whether compliance, with respect to the subject permit, was continuous or intermittent since the date of the next prior compliance certification;

(E) the method(s) the permittee used for determining the compliance status of such source, currently and since the date of the next prior compliance certification;

(F) such other information as the subject permit may require to facilitate the commissioner's determination of the compliance status of such source, and additional requirements specified pursuant to 40 CFR Part 70; and

(G) whether the monitoring system, which may include record keeping, was functioning in accordance with the subject permit and this section.]

(3) Any progress report PREPARED AND SUBMITTED pursuant to subdivision (1) of this subsection, or COMPLIANCE certification PREPARED AND submitted pursuant to subdivision (2) of this subsection [to the commissioner] shall be simultaneously submitted BY THE PERMITTEE to the Administrator.

(r) TITLE V Permit Modifications, REVISIONS, OPERATIONAL FLEXIBILITY AND OFF PERMIT CHANGES.

[(1) Following receipt from a permittee of a request to modify his Title V permit, or upon the commissioner's own initiative the commissioner may modify such permit for any of the reasons specified in subparagraphs (A) through (G), inclusive, of this subdivision. The commissioner will take no more than eighteen (18) months from receipt of a written request from the permittee for a permit modification to take final action on such request. If the commissioner modifies a permit, whether on request of the permittee or his own initiative he will submit a copy of the modified permit to the Administrator. If the permittee has requested the modification he shall not deviate from the terms and conditions of the permit unless and until the commissioner has modified such permit in accordance with this subsection. If the commissioner on his own initiates a proceeding to modify a Title V permit, the commissioner shall comply with the procedural requirements of section 22a-3a-5 of the Regulations of Connecticut State Agencies and section 4-182 of the general statutes as may be applicable. The commissioner may modify a Title V permit under this subsection for any of the following reasons:

(A) to incorporate any applicable requirement adopted by the commissioner or the Administrator;

(B) to incorporate any change in the frequency, form or type of any monitoring, reporting or record keeping required by the permit;

(C) to incorporate an applicable MACT standard or determination under subdivision (e)(1) of this section, if there are more than three (3) years before such permit expires;

(D) to incorporate the requirements of any permit to construct or operate, or modification thereof, issued to the permittee pursuant to subsection (k) or (l) of section 22a-174-3 of the Regulations of Connecticut State Agencies;

(E) to incorporate any change to make a permit term or condition less stringent if such term or condition prevented the Title V source from being subject to an otherwise applicable requirement;

(F) to incorporate any change necessary to ensure compliance with any applicable requirement; and

(G) for any reason set forth in section 22a-174c of the general statutes or subsection (d) of section 22a-3a-5 of the Regulations of Connecticut State Agencies.

Following public notice and opportunity for public hearing and comment pursuant to subsections (l) and (m) of this section, the commissioner may modify such permit in accordance with section 40 CFR Part 70.7(a)(1), (4), (5) and (6).

(2)(A) A permittee may submit a written request to the commissioner for a permit modification to:

(i) correct a clerical error;

(ii) revise the name, address, or phone number of any person identified in such permit or to make another revision reflecting a similarly minor administrative change at or concerning the subject source;

(iii) require more frequent monitoring or reporting;

(iv) reflect a transfer in ownership or operational control of the subject source provided no other modification of the subject permit is required as a result of such transfer and provided that if a transfer of the permit will be sought, a request therefor has been submitted to the commissioner in accordance with this section; or

(v) incorporate the requirements of any permit to construct, or modification thereof, pursuant to section 22a-174-3 of the Regulations of Connecticut State Agencies except for such requirements pursuant to subsection (k) or (l) of sections 22a-174-3 of the Regulations of Connecticut State Agencies;

(B) Upon submitting to the commissioner a written request for a permit modification under Subpart (A) of this subdivision, a permittee may take action as if such a modification had already been made.

(C) The commissioner will take no more than sixty (60) days from the receipt of a written request under subparagraph (A) of this subdivision to take final action on such request and, if the commissioner modifies the subject permit, he will submit a copy of the modified permit to the Administrator. The commissioner may modify a permit under this subdivision without published notice or allowing opportunity for comment and hearing.]

(1) NON-MINOR PERMIT MODIFICATIONS, MINOR PERMIT MODIFICATIONS OR REVISIONS TO TITLE V PERMITS SHALL BE MADE IN ACCORDANCE WITH SECTION 22a-174-2a(d), (e) MODIFICATIONS OR (f) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(3)] (2) **OPERATIONAL FLEXIBILITY AND OFF-PERMIT CHANGES.**

(A) EXCEPT AS PROVIDED IN SUBPARAGRAPH (B) OF THIS SUBDIVISION, A PERMITTEE MAY ENGAGE IN ANY ACTION ALLOWED BY THE ADMINISTRATOR IN ACCORDANCE WITH 40 CFR 70.4(b)(12)(i) THROUGH (iii)(B) INCLUSIVE, AND 40 CFR 70.4(b)(14)(i) THROUGH (iv), INCLUSIVE [A permittee may engage in any of the following actions,] without A TITLE V NON-MINOR permit modification, MINOR PERMIT MODIFICATION OR REVISION and without requesting a TITLE V NON-MINOR permit modification, MINOR PERMIT MODIFICATION OR REVISION[:].

[(i) change his practices concerning monitoring, testing, record keeping, reporting, or compliance certification, provided such changes do not violate applicable requirements, including the terms and conditions of the applicable Title V permit;

(ii) engage in an intra-premise trade in emissions under an emissions cap established pursuant to subparagraph (I) of subdivision (j)(1) of this section;

(iii) relocate an emissions unit provided such relocation does not require a permit modification under section 22a-174-1(52)of the Regulations of Connecticut State Agencies and does not result in an increase in emissions violating any applicable requirements including the terms and conditions of the applicable Title V permit;

(iv) incorporate any requirements authorizing use of emission reduction credits in accordance with section 22a-174f or 22a-174i of the general statutes and EPA's "Economic Incentive Program Rules", published April 7, 1994 (Federal Register, Volume 59, No. 67); and

(v) engage in any other action, for which the permittee is not otherwise required to obtain a permit modification pursuant to this subsection.]

(B) [A permittee may engage in an] ANY action AUTHORIZED PURSUANT TO SUBPARAGRAPH (A) OF THIS SUBDIVISION [provided in subparagraphs (A)(i) through (v), of this subdivision, provided such action does] SHALL not:

(i) constitute a modification under 40 CFR [Part] 60, [or] 61[; and] OR 63,

(ii) exceed emissions allowable under the subject permit[.], .

(iii) CONSTITUTE AN ACTION WHICH WOULD SUBJECT THE PERMITTEE TO ANY STANDARD OR OTHER REQUIREMENT UNDER 40 CFR 72 THROUGH 78, INCLUSIVE, OR

(iv) CONSTITUTE A NON-MINOR PERMIT MODIFICATION UNDER SECTION 22a-174-2a(d)(4) OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

[(C) At least seven (7) days before initiating an action specified in subparagraph (A) of this subdivision, the permittee shall notify the commissioner in writing of such intended action.]

[(4) At the time a permittee changes any practice at the subject source, which practice is not addressed by the subject permit, and which change would be consistent with all applicable requirements, including the terms and conditions of such permit, the permittee shall provide written notice of the intended change to the commissioner and the Administrator, provided this subdivision shall not apply to a source subject to any standard or other requirement pursuant to 40 CFR Parts 72 through 78, inclusive.

(5) Written notification pursuant to subdivisions (3) and (4) of this subsection shall include a brief description of each change to be made, the date on which such change will occur, any change in emissions that may occur as a result of such change, any Title V permit terms and conditions that may be affected by such change, and any applicable requirement that would apply as a result of such change. The owner or operator of subject source shall thereafter maintain a copy of such notice with the Title V permit for subject source. The commissioner and the permittee shall each attach a copy of such notice to his copy of the subject permit.

(6) A permit modification pursuant to subdivisions (1), (2) or (3) of this subsection, shall be governed by 40 CFR Parts 72 through 78, inclusive.

(7) A copy of a request for a permit modification submitted to the commissioner pursuant to this subsection shall be submitted to the Administrator at the same time.

(8) The commissioner shall modify a Title V permit in accordance with subdivision (1) of this subsection if:

(A) a new or additional applicable requirement under the Act becomes applicable to a Title V source with a remaining permit term of three (3) or more years. Such a modification shall be completed not later than 18 months after promulgation of the new or additional applicable requirement. No modification is required if the effective date of such new or additional requirement is later than the date on which the permit is due to expire;

(B) an additional requirement, including an excess emission requirement, becomes applicable to subject source if such source is subject to any standard or other requirement pursuant to 40 CFR Parts 72 through 78, inclusive;

(C) the commissioner or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made during establishment of the emissions standards of the permit, or other terms or conditions of the permit; or

(D) the commissioner or the Administrator determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(9) The commissioner shall notify the permittee thirty (30) days prior to initiating a modification of such permit pursuant to subdivision (8) of this subsection.

(10) The commissioner shall, within ninety (90) days after receipt of notification from the Administrator to modify the subject permit, forward to the Administrator a tentative determination regarding termination, modification, or revocation of the subject permit. In the event that the commissioner requires the permittee to submit additional information, the Administrator, pursuant to the Act, has the power to extend such ninety (90) day period by an additional ninety (90) days.

(11) Pursuant to the Act the Administrator has the power to review the tentative determination from the commissioner within ninety (90) days of receipt.

(12) The commissioner shall have ninety (90) days from receipt of an objection from the Administrator to resolve any objection that the

Administrator makes and to terminate, modify, or revoke the permit in accordance with the Administrator's objection.

(13) If the commissioner fails to submit a tentative determination to the Administrator pursuant to subdivision (10)of this subsection or fails to resolve any objection pursuant to subdivision (12) of this subsection, pursuant to the Act the Administrator has the power to terminate, modify, or revoke the permit after taking the following actions:

(A) providing at least thirty (30) days' notice to the permittee in writing of the reasons for any such action; and

(B) providing the permittee an opportunity for comment on the proposed action by the Administrator, and an opportunity for a hearing pursuant to subsection (m) of this section.

(14) Proceedings to modify a permit shall follow the same procedures as apply to initial permit issuance pursuant to subsections (1) and (m) of this section and shall affect only those parts of the permit for which cause to modify exists.]

[(s) Transfers.

(1) No person shall act or refrain from acting under the authority of a Title V permit issued to another person unless such permit has been transferred in accordance with this subsection. The commissioner may approve a transfer of a permit if he finds that the proposed transferee is willing and able to comply with the terms and conditions of such permit, that any fees for such transfer required by any provision of the general statutes or regulations adopted thereunder have been paid, and that such transfer is not inconsistent with the Act.

(2) The proposed transferor and transferee shall submit to the commissioner a request for permit transfer on a form provided by the commissioner. A request for a permit transfer shall be accompanied by any fees required by any applicable provision of the general statutes or regulations adopted thereunder. The commissioner may also require the proposed transferee to submit with any such request:

(A) any information required by law to be submitted with an application for a Title V permit or an application for transfer of such permit; and

(B) any other information the commissioner deems necessary to process the transfer request in accordance with this subsection.

(3) Upon approving a request for transfer, the commissioner shall modify the subject permit to reflect such transfer, in accordance

with subdivision (r)(2) of this section. After the commissioner transfers a permit in accordance with this subsection, the transferee shall be responsible for complying with all applicable law, and all applicable requirements, including the terms and conditions of the transferred permit.]

(s) TITLE V PERMIT REOPENINGS. THE COMMISSIONER SHALL COMPLY WITH THE APPLICABLE PROVISIONS OF 40 CFR 70.7(f) AND (g).

[(t) Revocations.

(1) The commissioner may revoke a Title V permit on his own initiative or on request of the permittee or any other person, in accordance with section 4-182(c) of the general statutes, subsection (d) of section 22a-3a-5 of the Regulations of Connecticut State Agencies, and any other applicable law. Any such request shall be in writing and contain facts and reasons supporting the request. A permittee requesting revocation of a Title V permit shall state the requested date of revocation and provide the commissioner with satisfactory evidence that the emissions authorized by such permit have been permanently eliminated.

(2) The Administrator pursuant to the Act, has the power to revoke and reissue a Title V permit if the Administrator has determined that the commissioner failed to act in a timely manner on a permit renewal application.]

STATEMENT OF PURPOSE of section 22a-174-33: This amendment deletes several definitions that were moved to the general definition section of the regulations for the abatement of air pollution. (See, proposed amendment to section 22a-174-1, R.C.S.A.) This amendment also deletes several procedural requirements that were consolidated into one new section, 22a-174-2a R.C.S.A. Therefore, much of the contents of the following subsections were deleted and moved into sections 22a-174-1 and 22a-174-2a R.C.S.A.: (a) definitions, (b) signatory responsibilities, (l) notices, (m) public hearings, (r) modifications (except for operational flexibility and off permit changes), (s) transfers, and (t) revocations. This amendment also addresses a number of issues raised by EPA in "Clean Air Act Interim Approval of Operating Permits Program; Delegation of Section 111 and 112 Standards; State of Connecticut," Proposed Rule, 61 Fed. Reg. 64651 (December 6, 1996). The EPA issues not addressed herein are addressed in proposed amendments to sections 22a-174-1 and 22a-174-3a and the addition of section 22a-174-2a R.C.S.A.

XV. Conclusion

Based upon the comments submitted by interested parties and addressed in this Hearing Report, We recommend the proposed final regulation, as contained in Part XIV of this report, be submitted by the Commissioner of Environmental Protection for approval by the Attorney General and the Legislative Regulations Review Committee. Based upon the same considerations, we also recommend these proposed regulations, upon promulgation, be submitted to the EPA in accordance with the applicable law.

Christopher James
Hearing Officer

November 14, 2001
Date

Tracy Babbidge
Hearing Officer

November 14, 2001
Date

Attachment 1
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Attachment 2

TECHNICAL SUPPORT DOCUMENT FOR R.C.S.A. SECTIONS 22a-174-3b and 22a-174-3c

November 2001

I. INTRODUCTION

This document specifies the derivation of limitations on fuel use and purchase and coating use and purchase for five stationary source categories. The limitations are derived for the purpose of establishing enforceable conditions for the five source categories that would limit potential emissions of any single air pollutant to less than 15 tons per year. The values derived provide the basis for limitations included in revisions proposed for public comment to two regulations to control air pollution.

The values derived are included in two new proposed Regulations of Connecticut State Agencies (R.C.S.A.): section 22a-174-3b concerning exemptions from permitting for five source categories and section 22a-174-3c concerning limitations on potential to emit for the same five source categories. The five source categories included are external combustion units, automotive refinishing operations, emergency engines, nonmetallic mineral processing and surface coating operations. The fuel and coating use limits in new R.C.S.A. section 22a-174-3b limit potential emissions to less than 15 tons per year, while the fuel and coating purchase limits in R.C.S.A. section 22a-174-3c are designed to limit potential emissions to less than 7 tons per year. The owner or operator of a source operated in compliance with either Section 22a-174-3b or Section 22a-174-3c will be exempt from the requirement to obtain either a general permit pursuant to section 22a-174(*l*) of the Connecticut General Statutes or a permit pursuant to section 22a-174-3a of the R.C.S.A. Sections 22a-174-3b and 22a-174-3c differ in the administrative requirements imposed on the owners or operators.

The limitations derived are similar to requirements now included in general permits to construct and operate that the Department issues for automotive refinishing operations, surface coating operations and emergency engines. The information gained from the general permit program provides the Department with an extensive database to use to develop the requirements of Sections 22a-174-3b and 22a-174-3c and the calculations made in this document. The following pages provide the detail of the assumptions and background calculations used to develop each fuel or coating limitation and other operating procedures for each source category.

II. External Combustion Units

R.C.S.A. Section 22a-174-3b defines "external combustion unit" as a "device that combusts only natural gas, propane or fuel oil, which is not a stationary internal combustion engine or turbine, and includes, but is not limited to, a boiler, heater, drying oven, curing oven, or furnace."

The emission threshold for obtaining a permit under R.C.S.A. 22a-174-3a will be 15 tons per year. Since R.C.S.A. 22a-174-3b sets enforceable conditions on this source category to limit its potential emissions to below 15 tons per year, owners or operators may choose to operate in compliance with Section 22a-174-3b rather than obtain a permit issued pursuant to Section 22a-174-3a or a general permit issued under Section 22a-174(*l*) of the general statutes. Such owner or operator may select which of the three compliance options – a general permit, individual NSR permit or operation under Section 22a-174-3b – is best suited to its needs. An owner or operator willing to further reduce potential emissions may choose to operate under the more restrictive fuel purchase limitations in R.C.S.A. Section 22a-174-3c in exchange for less burdensome record keeping requirements offered. The emission thresholds derived below will limit the potential emissions to less than 15 or 7 tons per year, as indicated.

For this source category, the fuel use restrictions in Section 22a-174-3b and the fuel purchase restrictions in Section 22a-174-3c were developed for each of four types of fuel as follows: the pollutant with the highest AP-42 emission factor was used as the limiting pollutant.

A. Natural Gas Combustion

For natural gas combustion, NOx has the highest emission factor, therefore is the limiting pollutant.

Emission Factor Source: AP-42, Fifth edition, section 1.4

140 # NOx/MMscf
where MMscf is equal to million standard cubic feet.

Higher heating value of natural gas: 1,020 Btu/1 scf

140 # NOx/MMscf x 1 scf/1,020 Btu = 0.14 #/MMBtu,
which is below the NOx RACT limit of 0.20 #/MMBtu.

How much fuel can a unit burn to emit 15 tpy and 7 tpy?

1 MMscf/140 # NOx x 15 tons / year x 2,000 #/ton = 214 MMscf/yr, and

1 MMscf/140 # NOx x 7 tons/year x 2,000 #/ton = 100 MMscf/yr

B. Propane Combustion

For Propane combustion NOx is the limiting pollutant.

NOx Emission Factor: 19 # / 1000 gallons; AP-42, Fifth edition, Section 1.5

Higher heating value of propane: 91,600 Btu/gallon

Conversion factor: 36.64 scf/gallon propane

19 #/1000 gallons x 1 gallon/91,600 Btu = 0.21 #/MMBtu

How much fuel can a unit burn to emit 15 tpy and 7 tpy?

1000 gallons/19 # x 15 tons/yr x 2000 #/ton = 1,578,947 gallons, and

1000 gallons/19 # x 7 tons/yr x 2000 #/ton = 736,842 gallons, respectively.

C. Distillate Fuel Oil

Sulfur dioxide (SO_2) has the highest emission factor and therefore is the limiting pollutant. Section 21a-16 of the Connecticut General Statutes (C.G.S.) limits the sulfur content in distillate oil to 0.3%.

Emission Factor Source: AP-42, Fifth edition, section 1.3

142 (%S) # SO_2/1000 gallons
where: S is equal to the sulfur content in distillate oil.

Higher heating value of distillate oil = 139,000 Btu/gallon of distillate oil

142 (0.3) # SO_2/1000 gallons x 1 gallon/139,000 Btu = 0.31 #/MMBtu

How much fuel can a unit burn to emit 15 tpy and 7 tpy of SO_2?

1000 gallons/142 (0.3) # SO_2 x 15 tons/yr x 2,000 #/ton = 704,225 gallons, and

1000 gallons/142 (0.3) # SO_2 x 7 tons/yr x 2,000 #/ton = 328,638 gallons, respectively.

D. Residual Fuel Oil

Sulfur dioxide has the highest emission factor and therefore is the limiting pollutant. R.C.S.A. Section 22a-174-19 allows a maximum sulfur content in fuel of 1%. R.C.S.A. Section 22a-174-1 defines "residual fuel" as "any fuel oil of No. 4, No. 5, or No. 6 grades, as defined by Commercial Standard C.S. 12-48."

Emission Factor Source: AP-42, Fifth edition, section 1.3

157 (%S) # SO_2/1000 gallons
where: S is equal to the sulfur content in residual oil.

Higher heating value of residual oil (No. 6) = 150,000 Btu/gallon of residual oil

157 (1.0) # SO_2/1000 gallons x 1 gallon/150,000 Btu = 1.04 #/MMBtu

How much fuel can a unit burn to emit 15 tpy and 7 tpy of SO_2?

1000 gallons / 157(1.0) # SO_2 x 15 tons/yr x 2,000 #/ton = 191,082 gallons, and

1000 gallons / 157(1.0) # SO_2 x 7 tons/yr x 2,000 #/ton = 89,172 gallons, respectively.

A 0.5% sulfur content is required for residual fuel oil combustion in R.C.S.A. Section 22a-174-3b. This, combined with the fuel limitations above, will result in SO_2 emissions of 7.5 tpy.

E. Additional Requirements

Additional requirements have been included in R.C.S.A. Section 22a-174-3b for external combustion equipment. The regulation specifies a heat input limit and stack height requirement in addition to the fuel limitation. These limitations address compliance with the National Ambient Air Quality Standards. An annual tune-up is also required. EPA will grant the Department credit towards attainment if this provision is included in the 2001 NOx shortfall submission.

III. Automotive Refinishing Operations

Proposed R.C.S.A. Section 22a-174-3b defines "automotive refinishing operations" as "the process for coating, painting or repairing the pre-existing coat or paint applied to automobiles and automotive components at an automobile manufacturing plant, including, but not limited to surface preparation, primer application, topcoat application and applicator cleaning."

Through the automotive refinishing operations General Permit program, the Department has obtained extensive knowledge with this source category. The thresholds are based on paint or coating usage rather than emissions. Material balances are used to calculate the estimated emissions.

A. Assumptions

- 7 # volatile organic compounds (VOC) per gallon of coating (NB: experience shows 6 #/gallon is more realistic).
- All VOC is in the form of HAPs to ensure HAPs remain less 10 tpy.
- Coating usage is total for all automotive refinishing operations at the facility.
- Paints or coatings include solvents and exclude water.
- Field engineer staff believes that the yearly usage will be more than sufficient for a certain number of businesses to choose operation under this regulation.

B. Material balance

7 # VOC/gallon of coating x 1,000 gallons/yr x 1 ton/2000 # = 3.5 tpy VOC

7 # VOC/gallon of coating x 2,000 gallons/yr x 1 ton/2000 # = 7.0 tpy VOC

C. Additional Requirement

A requirement has been placed in R.C.S.A. Section 22a-174-3b to achieve additional VOC reduction credit for the ozone SIP. A high volume low pressure gun or an applicator with at least 65% transfer efficiency is required.

IV. Emergency Engines

In determining potential emissions for emergency engines, the Department relies on an EPA's Memorandum, Calculating Potential to Emit (PTE) for Emergency Generators, from John S. Seitz, Director, dated September 6, 1995 (attached). In this memorandum EPA identifies 500 hours as an appropriate number of hours to use in calculating potential to emit (PTE), not 8760 hours per year.

For an emergency engine with a NOx RACT limit of 8 grams/horsepower-hour (diesel) and operating the full 500 hours, it would take a 1,587 horsepower (1.2 MW) engine to emit 7 tpy.

For a natural gas fueled emergency engine with a NOx RACT limit of 2.5 grams/horsepower-hour and operating the full 500 hours, it would take a 5,080 horsepower (4 MW) engine to emit 7 tpy.

NOx has the highest emission factor and would be the limiting pollutant for diesel emergency engines.

For demonstration purposes, an emergency engine with a 1000 gallon limitation (size of engine not being a factor) would emit the following:

<u>For engines less than 600 hp:</u>

Emission Factor =4.41 # / MMBtu NOx. Source = AP-42, Fifth edition, Section 3.3.

4.41 #/MMBtu x 139,000 Btu/gallon x 1000 gallons/yr x 1 ton/2000 # = 0.3 tpy

<u>For engines greater than 600 hp:</u>

Emission Factor: 3.2 #/MMBtu NOx. Source: AP-42, Fifth edition, Section 3.4.

3.2 # / MMBtu x 139,000 Btu/gallon x 1000 gallons/yr x 1 ton/2000 # = 0.2 tpy

V. Nonmetallic Mineral Processing

R.C.S.A. Section 22a-174-3b defines "nonmetallic mineral processing equipment" as "any crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin or other equipment used to crush or grind any nonmetallic mineral."

A New Source Performance Standard (NSPS) exists for this source category, 40 CFR 60 Subpart OOO. Subpart OOO regulates particulate emissions. Therefore, Section 22a-174-3b addresses NOx as the limiting pollutant.

The fuel limitation is the fuel consumption total for operating all processing equipment. In most instances, all processing equipment is operated by one engine but as many as three engines may be used. An engine size threshold has been added because of the change in emission factor. The fuel limitations will restrict NOx emissions to less than 15 tpy.

A. For engines less than 600 hp

NOx Emission Factor: 4.41 # / MMBtu. Source: AP-42, Fifth edition, Section 3.3.

15 tons / yr x 2000 # / ton x 1 MMBtu/4.41 # x 1 gallon/139,000 Btu = 48,940 gallons

B. For engines greater than 600 hp

Emission Factor: 3.2 #/MMBtu; NOx. Source: AP-42, Fifth edition, Section 3.4.

15 tons/yr x 2000 #/ton x 1 MMBtu/3.2 # x 1 gallon/139,000 Btu = 67,446 gallons

C. Additional Requirements

An additional requirement has been included to limit the sulfur content of fuel oil to 0.05%. The Department believes that this will not place undue hardship on the source since most operations are portable and will be able to obtain and use the low sulfur fuel at each location. The cost differential between 0.3% and 0.05% is insignificant.

VI. Surface Coating Operations

R.C.S.A. Section 22a-174-3b defines "surface coating operation" as "a process used to add a layer of material to a surface including spray painting, dip coating, roller coating, and electrostatic deposition." Surface coating operations do not include printing, publishing, or packaging operations.

Powder coating and plasma spraying are considered to have controls as an integral part of the process.

Coating limitations will limit emissions to less than 10 tpy.

A. Assumptions

- Maximum of 6.3 # VOC per gallon of coating
- All VOCs are HAPs to ensure HAPs remain below 10 tpy
- Coating usage is total for all coating operations at the facility
- Paints or coatings include solvents and excludes water.

B. Material balance

6.3 # VOC/gallon of coating x 1,500 gallons/yr x 1 ton/2000 # = 4.7 tpy VOC

6.3 # VOC/gallon of coating x 3,000 gallons/yr x 1 ton/2000 # = 9.45 tpy VOC

ATTACHMENT 3

Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing State operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 1, 2001.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 01–20215 Filed 8–10–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CT–066–7223; A–1–FRL–7032–6]

Full Approval of Operating Permit Program; State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The EPA is proposing to fully approve the operating permit program for the State of Connecticut. Connecticut's operating permit program was created to meet the federal Clean Air Act (Act) directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources of air pollution and to certain other sources within the states' jurisdiction. EPA is proposing to approve Connecticut's program at the same time Connecticut is proposing changes to its state regulations to address EPA's interim approval issues. EPA will only finalize its approval of Connecticut's program after Connecticut finalizes its rule consistent with the program changes and interpretations described in this notice. The public comment period for Connecticut's program regulations (R.C.S.A. Sections 22a–174–2a and 22a–174–33) is open for comment from July 17, 2001 until September 7, 2001.

DATES: Comments on this proposed rule must be received on or before September 12, 2001.

ADDRESSES: Comments may be mailed to Donald Dahl, Air Permits Program Unit, Office of Ecosystem Protection (mail code CAP) U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. EPA strongly recommends that any comments should also be sent to Ellen Walton of the Department of Environmental Protection, Bureau of Air Management, Planning and Standards Division, 79 Elm Street, Hartford, Connecticut 06106–5127. Copies of the State submittal and other supporting documentation relevant to this action, are available for public inspection during normal business hours, by appointment at the above addresses.

FOR FURTHER INFORMATION CONTACT: Donald Dahl at (617) 918–1657.

SUPPLEMENTARY INFORMATION:

I. Why Was Connecticut Required To Develop an Operating Permit Program?

Title V of the Clean Air Act ("the Act") as amended (42 U.S.C. 7401 and 7661 *et seq.*), requires all states to develop an operating permit program and submit it to EPA for approval. EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs. See 57 FR 32250 (July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70 (Part 70). Title V directs states to develop programs for issuing operating permits to all major stationary sources and to certain other sources. The Act directs states to submit their operating permit programs to EPA by November 15, 1993, and requires that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act (42 U.S.C. Sec. 7661a) and the Part 70 regulations, which together outline criteria for approval or disapproval.

Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program either partial or interim approval. If EPA has not fully approved a program by two years after the November 15, 1993 date, or before the expiration of an interim program approval, it must establish and implement a federal program. EPA granted the State of Connecticut final interim approval of its program on March 24, 1997 (see 62 FR 13830) and the program became effective on April 23, 1997.

II. What Did Connecticut Submit To Meet the Title V Requirements?

The Governor of Connecticut submitted a Title V operating permit program for the State of Connecticut on September 28, 1995. In addition to regulations (Section 22a–174–33 of the Department of Environmental Protection Regulations), the program submittal included a legal opinion from the Attorney General of Connecticut stating that the laws of the State provide adequate legal authority to carry out all aspects of the program, and a description of how the State would implement the program. The submittal additionally contained evidence of proper adoption of the program regulations, application and permit forms, and a permit fee demonstration. This program, including the operating permit regulations, substantially met the requirements of Part 70.

III. What Was EPA's Action on Connecticut's 1995 Submittal?

EPA deemed the program administratively complete in a letter to the Governor dated November 22, 1995. On December 6, 1996, EPA proposed to grant interim approval to Connecticut's submittal. After responding to comments, EPA granted interim approval to Connecticut's submittal on March 24, 1997. In the notice granting interim approval, EPA stated that there were several areas of Connecticut's program regulations that would need to be amended in order for EPA to grant full approval of the state's program. EPA has been working closely with the state and has determined that the state is proposing to make all of the rule changes necessary for full approval. The following section contains details regarding the areas of Connecticut's

regulations where the state is proposing to address EPA's interim approval issues.

IV. What Were EPA's Interim Approval Issues and Where Has Connecticut Amended Its Regulation To Address the Interim Approval Issues?

1. Forty CFR 70.5(c)(6) requires sources to explain exemptions from applicable requirements. In Section 22a–174–33(g)(2)(G), the State's proposed rule now requires the applicant to explain any exemptions.

2. Forty CFR 70.5(c)(8)(ii)(B) requires a statement in the application that the source will comply with all future requirements that become effective during the permit term. In Section 22a–174–33(i)(1)(B)(ii), the State's proposed rule now requires a source to make such a statement.

3. Forty CFR 70.5(c)(8)(iii)(C) requires that compliance schedules must be as least as stringent as any judicial consent decree or administrative order. In Section 22a–174–33(i)(1)(B)(iv), the State's proposed rule removes the limitations on judicial consent decrees that were contained in the original rule.

4. Forty CFR 70.8(d) contains the provisions regarding a citizen's rights to petition EPA over a Title V permit. In Section 22a–174–33(n)(2) and (4) the State's proposed rule removes the 45 day deadline for EPA's objection due to a citizen's petition and clarifies that a citizen's right to petition EPA is a function of federal law, not state law.

5. Forty CFR 70.6(a)(7) requires each Title V permit to contain a condition that a source will pay fees on an annual basis. Section 22a–174–33(j)(1)(Z) of the State's proposed rule adds a requirement that all permits shall contain a statement requiring the annual payment of permit fees.

6. Forty CFR 70.5(b) requires a source to submit additional or corrected information whenever that source becomes aware that the original application was either incorrect or incomplete. Section 22a–174–33(h)(2) of the State's proposed rule now requires the applicant to submit additional and corrected information at anytime the source becomes aware its initial application is incomplete or incorrect.

7. Forty CFR 70.7(a)(5) requires the state to provide a statement of legal and factual basis for each permit. Sections 22a–174(33)(j)(3) and (4) of the State's proposed rule now require the State to develop the statement of legal authority and technical origin, as well as the factual basis for the permit terms. The rule also provides that DEP shall send these statements to EPA and anyone else who requests them.

8. Forty CFR 70.6(a)(3)(iii)(B) requires prompt reporting of permit deviations. Section 22a–174–33(o)(1) and (p)(1) of the state's proposed rule defines "prompt" consistent with how EPA defines prompt for the federal operating permit program at 40 CFR 71.6(a)(iii)(B).

9. Forty CFR 70.6(g) contains Title V's emergency provisions that uses the term "technology based emission limitation." Connecticut's rule had improperly included health based emission limits in its description of "technology-based emission limitations," along with other inconsistencies with 40 CFR 70.6(g). Section 22a–174–33(p)(2) of the State's proposed rule incorporates by reference the relevant sections of Part 70 with regards to the affirmative defense. The proposed rule also removes the previous definition of a technology based emission limit.

10. Forty CFR 70.4(b)(12) requires states to allow for facilities to make "Section 502(b)(10) changes" with just a seven day notice. Section 22a–174–33(r)(2) of the State's proposed rule incorporates the relevant sections of 40 CFR 70.4 governing "Section 502(b)(10) changes," but the state rule does not explicitly define "emissions allowable under the permit." Even though not explicitly stated, EPA interprets Connecticut's incorporation by reference of 40 CFR 70.4(b)(12)(i) to include the relevant definition of "emissions allowable under the permit" at 40 CFR 70.2. EPA understands that DEP agrees with this interpretation.

11. Connecticut's interim rule contained language regarding EPA's authority to reopen and reissue a Title V permit that included public hearing authority. Since EPA does not derive its hearing authority from state law, the hearing authority language has been removed and Section 22a–174–33(s) simply incorporates EPA's authority to reopen a permit under 40 CFR 70.7.

12. Forty CFR 70.2 defines "applicable requirements" as a list of Clean Air Act requirements. The State's proposed rule in Section 22a–174–33(a)(2)(D) now includes the entire list of requirements found in 40 CFR 70.2.

13. Forty CFR 70.3 contains the requirements that make a source subject to the Title V permit program and Section 22a–174–33(c)(3) of Connecticut's interim rule created confusion about the applicability of Title V. As EPA suggested, Connecticut has proposed to delete this language from Section 22a–174–33(c)(3) to make it consistent with Part 70.

14. Forty CFR 70.7(d)(4) allows a state to grant a permit shield for Administrative Amendments only when the change to the permit meets the requirements of a significant permit modification. Connecticut's Administrative Amendment requirements do not have to meet such requirements. Therefore, in Sections 22a–174–33(k)(1) and (4), the State's proposed rule correctly eliminates a permit shield for minor and administrative permit amendments and limits its applicability to new permits, major modifications, and renewals.

15. Forty CFR 70.8 contains the provisions for EPA review, including a 45 day review period of a proposed permit. Connecticut's interim program tried to merge EPA's review of the proposed permit with the draft permit that is subject to public comment. Although this can be done, safeguards must be in place in case the draft permit is changed. The interim program failed to provide EPA an additional 45 day review when a draft permit was changed after 45 days of being made available for public comment. Section 22a–174–33(n) removes this problem by incorporating the procedures for permit review contained in 40 CFR 70.8. Connecticut's rule no longer merges EPA review of the proposed permit with the public comment period on the draft permit.

16. Connecticut's interim program rule contained a cut-off date of 1994 when incorporating the requirements of Code of Federal Regulations. This would have required Connecticut to continually update its rule as EPA published new applicable requirements such as air toxic requirements. Connecticut amended its statute in Section 22a–174–1 to allow the state to delete the cut-off date in Section 22a–174–33, thereby incorporating changes to the CFR on an on-going basis.

17. Connecticut's interim program contained an incomplete list of "regulated air pollutants" because of the issue number 16 discussed above with the CFR cut-off date. Connecticut has amended its provisions in Sections 22a–174–33(a)(5), (e)(1), and (g)(2)(G) to make their proposed rule consistent with 40 CFR 70.2.

18. Part 70 requires permits to contain all applicable requirements, including provisions for controlling air toxic emissions required by section 112(g) of the Act. Sections 22a–174–3a(a)(1)(C) and 3a(m) in the State's proposed rule are now adequate for issuing permits that contain requirements resulting from a decision pursuant to section 112(g) of the Act.

19. Forty CFR 70.4(b)(10) states that a permit will not expire when a complete renewal application was submitted in a timely manner. Section 22a–174–33(j)(1)(B) of the State's proposed rule now allows continuation of a permit

provided a timely renewal application is submitted.

20. Forty CFR 70.3(b) allows a state to defer non-major sources from the Title V program until EPA makes a decision whether to include non-major sources in the Title V program. Section 22a–174–33(f)(3) of the State's proposed rule is now consistent with Part 70 with regard to the applicability of non-major sources.

21. Forty CFR 70.5(c) requires an applicant to determine the applicable requirements for every emission unit. Connecticut's interim Title V program shifted the determination burden from the applicant to the state. Section 22a–174–33(g)(4) of the State's proposed rule is now consistent with Part 70.

22. Connecticut's interim Title V program contained language describing EPA's authority to reopen and reissue a Title V permit. EPA's authority is not contained within state law. Therefore, Section 22a–174–33(r)(13) has been replaced with Section 22a–174–33(s) and Section 22a–174–33(j)(1)(U) has been amended in the State's proposed rule to remove any confusion.

23. Forty CFR 70.6(d)(1) states that a source will be deemed to be operating without a Title V permit if it is later determined to be ineligible to operate under a general permit. Section 22a–174–33(c)(4) of the State's proposed rule now makes it clear that a source which fails to qualify for a general permit under which it is operating shall be deemed to be operating without a permit.

24. Connecticut's current rule allows changes from the State's minor new source review program to be processed as administrative amendments to the Title V permit, and is inconsistent with 40 CFR 70.7(d)(1)(v). Forty CFR 70.7(e)(2) allows minor new source review permits to be incorporated into a Title V permit by using the minor permit modification procedures of Part 70. Section 22a–174–2a of the State's proposed rule have been developed to allow for such incorporation and no longer processes such changes as administrative amendments.

25. In Connecticut's interim Title V program, the state only had procedures for administrative and significant permit modification procedures. Forty CFR 70.7(e)(1) requires states to develop streamlined procedures for permit modifications. Section 22a–174–2a of the State's proposed rule allows the state to use the equivalent of Part 70's minor permit modification procedures and is consistent with 40 CFR 70.7(e)(1).

26. Forty CFR 70.5(a)(1)(iii) states that the procedures for submitting timely renewal applications must ensure that a permit does not expire. This requires a state to coordinate the timing of permit renewal with the deadline for sources to submit renewal applications. Sections 22a–174–33(f)(5) and (j)(1) of the State's proposed rule have now correctly aligned these time frames.

27. Part 70 requires that a written agreement between the involved parties be submitted to the state prior to any changes in ownership to ensure that the parties named in the permit have accepted liability for complying with the permit. Section 22a–174–2a(g)(2) of the State's proposed rule contains such a requirement by incorporating by reference 40 CFR 70.7(d)(1)(iv).

28. Forty CFR 70.6(a)(3)(i)(B) contains the requirements for periodic monitoring in a Title V permit. Section 22a–174–33(j)(1)(K)(ii) has been amended to make it clear that every Title V permit in Connecticut will contain periodic monitoring as necessary. This section of Connecticut's proposed regulations provides that recordkeeping "shall" be sufficient to meet the periodic monitoring requirements "if so determined by the Commissioner." EPA's periodic monitoring requirement provides that recordkeeping "may" be sufficient to serve as periodic monitoring. EPA understands that DEP's proposed regulation is the functional equivalent of EPA's regulation. DEP is not mandating that periodic monitoring shall be recordkeeping in all cases, but only in those cases where DEP affirmatively determines recordkeeping to be sufficient to collect data representative of a source's compliance status. EPA understands that DEP agrees with this interpretation.

29. Forty CFR 70.2 contains a definition of "responsible official" and requires that a corporate officer signatory must have the responsibility for overall operation of a facility, not just for environmental compliance. Section 22a–174–2a(a)(6) has been added to be consistent with Part 70.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no clear authority to disapprove a permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a permit program submission, to use VCS in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the

takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 3, 2001.

Ira W. Leighton,

Acting Regional Administrator, EPA-New England.

[FR Doc. 01–20264 Filed 8–10–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 96–98; DA 01–1658]

Update and Refresh Record on Rules Adopted in 1996 Local Competition Docket

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document invites parties to update and refresh the record on issues pertaining to the rules the Commission adopted in the First Report and Order in CC Docket No. 96–98, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996.*

DATES: Comments are due September 12, 2001 and reply comments are due September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Dennis Johnson, Attorney Advisor, Network Services Division, Common Carrier Bureau, (202) 418–2320.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document regarding CC Docket No. 96–98, released on July 12, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC. It is also available on the Commission's website at: *http://www.fcc.gov/Daily_Releases/Daily_Business/2001/db0712/da011658.doc.*

Synopsis

1. On August 8, 1996, the Commission released the *Local Competition Second Report and Order,* FCC 96–333, 61 FR 47284 (September 6, 1996), as required by the Telecommunications Act of 1996. Many of the parties filed petitions for reconsideration of that order. The Commission subsequently resolved a majority of these petitions but due to the significant litigation arising from the rules adopted in the *Local Competition Second Report and Order,* several petitions remain unresolved. Specifically, the remaining petitions seek reconsideration of the rules governing intraLATA toll dialing parity pursuant to section 251(b)(3) of the Telecommunications Act of 1996 (Act), and network change disclosure rules pursuant to section 251(c)(5) of the Act. Since many of these petitions were filed several years ago, the passage of time and intervening developments may have rendered the record developed by those petitions stale. Moreover, some issues raised in petition for reconsideration may have become moot or irrelevant in light of intervening events.

2. For these reasons, the Commission requests that parties that filed petitions for reconsideration following release of the *Local Competition Second Report and Order* identify issues from that order that remain unresolved now and supplement those petitions, in writing, to indicate which findings and rules they still wish to be reconsidered. To the extent that intervening events have materially altered the circumstances surrounding filed petitions or the relief sought by filing parties, those entities may refresh the record with new information or arguments related to their original filings that they believe to be relevant to the issues. The previously filed petitions will be deemed withdrawn and will be dismissed if parties do not indicate in writing an intent to pursue their respective petitions for reconsideration. The refreshed record will enable the Commission to undertake appropriate and expedited reconsideration of its local competition rules.

List of Subjects in 47 CFR Part 51

Communications common carriers, Interconnection.

Federal Communications Commission.

Diane Griffin Harmon,

Acting Chief, Network Services Division Common Carrier Bureau.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224 and 226

[Docket No. 010731194–1194–01; I.D. 070601B]

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Southern Resident Killer Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of finding; request for information.

SUMMARY: NMFS received a petition to list the Eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*) as endangered or threatened species under the Endangered Species Act (ESA) and to designate critical habitat for this stock under that Act. NMFS determined that the petition presents substantial scientific information indicating that a listing may be warranted and will initiate an ESA status review. NMFS solicits information and comments pertaining to these killer whale populations and their habitats and seeks suggestions for peer reviewers for any proposed listing determination that may result from the agency's status review of the species.

DATES: Information and comments on the action must be received by October 12, 2001.

ADDRESSES: Information and comments on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street—Suite 500, Portland, OR 97232. Comments will not be accepted if submitted via email or the internet. However, comments may be sent via fax to (503) 230–5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231–2005 or Tom Eagle, NMFS, Office of Protected Resources, (301) 713–2322 ext. 105.

SUPPLEMENTARY INFORMATION: