Statement of Reasons Pursuant to 4-168d
of the Connecticut General Statutes

Hearing Report

Amendment Concerning: Section 22a-174-33
of the Regulations of Connecticut State Agencies

Title V Permit Program

Hearing Held October 28, 1994
Record Closed November 14, 1994 @4:30 p.m.

Hearing Officer Patrick Bowe
July 20, 1995

On September 9, 1994, the Commissioner of the Department of Environmental Protection ("Department") signed a notice of intent to amend the Regulations of Connecticut State Agencies concerning the operating permits program. The purpose of this amendment is to adopt regulations implementing the provision of Title V of the Clean Air Act Amendments of 1990 ("CAA") concerning operating permits including provisions to enforce necessary requirements of the CAA, to the extent such provisions are addressed by Title V. These proposed revisions were the subject of a public hearing held on October 28, 1994.

PRINCIPAL REASONS IN SUPPORT OF THIS PROGRAM

One of the major components of the CAA is a national permit program for stationary sources that release pollutants into the air. Title V of the CAA requires states to establish a comprehensive air quality operating permits program. The existing permits only address individual units which require new source review in accordance with Section 22a-174-3 of the Regulations of Connecticut State Agencies ("RCSA"). Such permits do not contain all of the new applicable federal requirements necessary under the CAA. This regulation, in the interest of consolidation of requirements, will allow the Department to issue permits which will incorporate all applicable requirements pertaining to subject emission units or processes, at a qualifying premise, into one operating permit. The purpose of the regulation is to implement the provision of Title I Provisions for Attainment, Title III Hazardous Air Pollutants, Title IV Acid Rain, Title V Permits and Title VI Stratospheric Ozone of the CAA. This regulation

will also allow the Department to issue federally enforceable permits or orders by utilizing subsections (a) through (d), inclusive, of this section, to limit potential emissions from the subject source. By allowing the issuance of hundreds of federally enforceable synthetic minor permits and general permits, this regulation will enhance permit streamlining and service to the public.

CONTENTS OF THIS REPORT

As required by the Connecticut General Statutes ("CGS") 4-168, this report includes as Exhibit "A" the recommended final wording of the proposed regulation. This report also contains the comments and responses on each particular subsection and the proposed regulation language, for such subsection, as presented at the public hearing. The report also describes the principal reasons in support of the final regulations, discusses the principal comments and objections raised in opposition to the draft regulations, and offers the Department's reasons for accepting or rejecting each suggested change. Copies of the public comments are available for review at the Department. In order to respond effectively to commentors' concerns, the comments and responses have been organized by regulation citations as provided in the September 27, 1994 draft rather than by topic.

Attachment 1
Oral testimony and written testimony were received from the individuals listed in Attachment 1. Each individual who provided oral testimony or written testimony was assigned a number as indicated in Attachment 1. Each individual who provided testimony is identified by their given number throughout this hearing report. Such written testimony is available upon request.

Attachment 2
Proposed regulation as presented at the public hearing.

COMMENTS AND RESPONSES

Comments addressed were those written submittals received before November 15, 1994. Although there may be originals stamped "received" after November 14, 1994, these pieces of testimony were only considered part of the record if a copy of the same was received by fax, mail or hand-delivered before the close of business on November 14, 1994.

Comments not directly addressed were written submittals received after November 14, 1994.

Although in the Notice of Intent to Adopt Regulations the comment period was to end on November 4, 1994, at the hearing, in response to a request presented by Donald Dahl, of EPA Region I, the Department extended the comment period until the close of business on November 14, 1994.

Lon E. Solomita, Senior Environmental Engineer, Cytec Industries Inc., P.O. Box 425 South Cherry Street, Wallingford, CT 06492 submitted written testimony dated November 11, 1994 stamped received November 17, 1994. The testimony was three (3) days late and cannot be accepted after the date the hearing record has closed. However, the content of the submittal is similar to that of written testimony submitted by others and therefore this report may address the concerns of Mr. Solomita.

Brian R. Holmes, Director of Regulatory Affairs, Connecticut Construction Industries Association, Inc., 912 Silas Deane Highway, Wethersfield, Ct, 06109 submitted written testimony dated November 14, 1994 stamped received November 15, 1995. The testimony was one (1) day late and cannot be accepted after the date the hearing record has closed. However, the content of the submittal is similar to that of written testimony submitted by Devorsetz, Stinziano, Gilberti, Heintz & Smith and this report may address the concerns of Mr. Holmes.

The recommendations which follow are based upon my review of the oral and written testimony regarding proposed Section 22a-174-33 of the RCSA.

Definitions

The following language was presented at the October 28, 1994 hearing for comment:

(a) Definitions. For the purposes of this section, the following definitions shall be used:

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

(2) "Applicable requirements" means:

(A) Chapter 446c of the Connecticut General Statutes or any regulation adopted thereunder;

(B) any standard or other requirement adopted in the state implementation plan;

(C) any term or condition of any permits issued pursuant to section 22a-174-3 or section 22a-174-33 of the Regulations of Connecticut State Agencies;

(D) any standard or other requirement of the acid rain program under 40 CFR Parts 72 through 78, inclusive;

(E) any hazardous air pollutant standard or other requirement under 40 CFR Parts 60, 61, 63 and 68; and

(F) any monitoring and analysis requirements pursuant to subparagraph (G) of subdivision (i)(2) of this section.

(3) "Emissions unit" means any stationary source or part thereof that emits or has the potential to emit any regulated air pollutant.

(4) "Hazardous air pollutant" means, notwithstanding the definition in Section 22a-174-1 of the Regulations of Connecticut State Agencies, any air pollutant listed in 40 CFR Part 63, Subpart C or listed pursuant to 40 CFR Part 68.

(5) "Maximum achievable control technology" or "MACT" means an emission limitation or reduction in emissions of hazardous air pollutants, determined in accordance with subsection (e) of this section.

(6) "Regulated air pollutant" means the following:

(A) nitrogen oxides or any volatile organic compound;

(B) any pollutant which is a criteria air pollutant;

(C) any pollutant from a stationary source which is subject to any standards of performance for new stationary sources pursuant to 40 CFR Part 60;

(D) any substance subject to stratospheric ozone protection requirements pursuant to 40 CFR Part 82, Subpart A, Appendices A and B; or

(E) any pollutant subject to a national emission standards for hazardous air pollutants.

(7) "Title V operating permit" means any permit or group of permits issued, renewed, or modified pursuant to this section.

(8) "Title V source" means any premise and all emissions units contained therein subject to the requirements of this section.

Comments Regarding (a) Definitions:

Comments regarding the term "Affected Source":

22a-174-33(a) One commentor recommended the Department should include the definition of the phrase "affected source" for purposes of the acid rain portions of the State regulations. This commentor stated acid rain sources must be distinguished from other sources subject to Title V requirements because the requirements for acid rain sources differ at various points throughout the 40 CFR Part 70 rule.(41)
Response: I recommend the Department not include a definition for "affected source" because this term is only utilized within the context of the federal acid rain requirements pursuant to 40 CFR Parts 72 through 78, inclusive, and is defined therein.

Comments regarding the term "Affected States":

22a-174-33(a) One commentor recommended the Department should define the phrase "affected states." This commentor believes such a definition is necessary to enable the Department to develop regulations implementing 40 CFR §70.8(b). This commentor stated the reference to New Jersey, Massachusetts, New York, and Rhode Island in 22a-174-33(j)(4) is not sufficient for two reasons. First, it only addresses a requirement that an applicant submit public notices to affected States. There are other requirements within 40 CFR §70.8(b) that Connecticut should include in its regulation that relate to affected States. This commentor pointed out, for example, the Department should provide a statement to any affected State which submitted comments the Department did not accept. Such a statement should set forth the reasons why the affected State's comments were not addressed. In addition, this commentor stated, the Department's rule should provide that a final permit shall not be issued until the time period for EPA's review and affected States' review has lapsed, which is triggered by a notice that the Department is not accepting an affected state's comment. (41)
Response: I recommend the Department include a definition of affected states and expand the regulation to include those states which would be considered affected in accordance with

40 CFR Part 70. (See language in Exhibit A, subdivision (a)(3)) I recommend the Department tie the issuance of a permit to the review by EPA and affected states as provided in Exhibit A, subdivisions (n)(1) and (l)(5) and subparagraphs (n)(1)(C) through (E). Any permit which does not meet federal procedural requirements provides the public with the basis to petition the Administrator to object to the issuance of such permit.

22a-174-33(a) One commentor indicated the Department's list of affected states may not include all potentially affected states as defined in 40 CFR Part 70. This commentor questions whether New Hampshire and Vermont are within 50 miles of the Connecticut border? If they are, then these states should also be included in a list of affected states. This commentor pointed out the Department does have the option to include a 50 mile radius in its definition of affected states which would allow Connecticut to notify non-contiguous states only when they are within 50 miles of the particular source. (41)
Response: I recommend the Department include, in a definition for affected states, New Hampshire and Vermont only to the extent they are within 50 miles of the subject source in order to meet minimum federal requirements. (See language in Exhibit A, subdivision (a)(3))

Comments regarding the term "Designated Representative":

22a-174-33(a) One commentor recommended Section 22a-174-33(a) should include a definition of "designated representative" in order to adequately implement the acid rain requirements under Title IV of the CAA. (41)
Response: I recommend the Department not include a definition of Designated Representative in the regulation because this term is only utilized within the context of the federal acid rain requirements pursuant to 40 CFR Parts 72 through 78, inclusive, and is defined therein.

Comments regarding the term "Proposed Permit":

22a-174-33(a) One commentor suggested the Department should consider whether adding a definition of the phrase "proposed permit" to Section 22a-174-33(a) would clarify in the Department's regulations the important distinction between "tentative determination" (the term used by Connecticut for "draft permit") and "proposed" Title V permits. Different requirements apply to these two different versions of the permits. For example, this commentor stated, Section 22a-174-33(g)(6) references a "Tentative Determination." The phrase is not previously used in the Department's Title V regulations but is subsequently used; also, the phrase is not defined.

This commentor assumes the Department means to refer to the "draft" permit, which is the version of the permit that undergoes the public participation and affected state review procedures, and not to the "proposed" permit, which is the version of the permit that is provided to EPA for review under 40 CFR §70.8. (41)

Response: I do not recommend the definition of "proposed permit" be included in the Department's regulation, as it is not required under the federal rule. The issue is not the terminology used, but rather the level of review that has been taken prior to final issuance of the permit. It is therefore irrelevant whether the Department calls the permit "draft", "tentative" or "proposed". For more detail, please consult my General Response to 40 CFR 70.2, definitions, specifically, "proposed permit."

Comments concerning the terms "Emissions Allowable Under Permit" and "502(b)(10) Changes"

22a-174-33(a) One commentor encouraged the Department to include definitions for the phrases "emissions allowable under permit" and "502(b)(10) changes" consistent with 40 CFR Part 70 for purposes of implementing the "operational flexibility" provisions in 40 CFR §70.4(b)(12). If the Department chooses to use different terms to convey the same concepts included in the federal rule, this commentor believes the Department should ensure that the terms used and their definitions are equivalent to the federal requirements. (41)

Response: I recommend the Department not include definitions of "emissions allowable under the permit" and "502(b)(10) changes" for the reasons provided in my General Response to 40 CFR Part 70.2. I do recommend these concepts as provided in Exhibit A, subdivision (r)(3) be included in the regulation, in order to provide flexibility in the regulation for the regulated community, to the extent allowed by federal and state requirements.

Comments regarding the definition of "Insignificant Activities":

22a-174-33(a) Several commentors recommended adding a definition of insignificant activities or emissions (17, 18, 20, 21, 23 and 38).

Response: I recommend the Department not add a definition of insignificant activities or emissions. It is not necessary to use such terminology and may mislead an applicant to believe that certain activities or items are insignificant despite being regulated by an applicable requirement. However, I do recommend the regulation list activities or

items for which the emissions will not have to be individually listed unless required by an applicable requirement or to determine compliance with an applicable requirement as provided in Exhibit A, subdivision (g)(3) so that sources do not needlessly calculate emissions.

I believe by "insignificant emissions" the commentor was referring to emissions thresholds. With respect to emissions thresholds, I recommend the Department not regulate below certain thresholds unless required by an applicable requirement, as shown in Exhibit A, subparagraph (j)(1)(F), in order to prevent overregulation of sources. For more detail, please consult the General Response regarding 40 CFR Part 70.3(d)

One commentor mentioned the Department should make available the option to determine insignificant on a case-by-case basis. (21)

Response: The Department has the option to amend the RCSA when new categories of activities or items which can be left off of an application are determined by the Commissioner. I do not recommend adding any language to the regulation based on this comment because I do not believe the insignificant activity list is an area the Department and regulated community should emphasize. Rather, the emphasis should be on the applicable requirements and what is important to meeting such requirements.

Comments regarding the definition of "Applicable Requirements":

22a-174-33(a)(2) Several commentors indicated the definition of "Applicable Requirements" does not reflect the intent of 40 CFR Part 70.2 and the federal requirements should be separated from the state requirements. (1,5,7,8,10 and 13). Two commentors advocated deleting subparagraph (a)(2)(A) of this section. (13 and 38) One commentor, with respect to subparagraph (a)(2)(B) of this section, advised the Department to exclude the state requirements which are not necessary according to the act. (13) Two commentors, with respect to subparagraph (a)(2)(C) of this section, recommended the Department modify the proposed regulation to exclude state requirements not necessary according to the CAA. (7 and 13)

Response: First, I do not recommend the definition of applicable requirements be limited to federal-only requirements because there are existing state permitting requirements which could easily be folded into a facility-wide permit making the process more streamlined for the applicants. However, I do recommend subparagraph (a)(2)(A) be removed from

this section because it was too broad and would make permit issuance difficult. Yet, with respect to the comments on subparagraphs (a)(2)(B) and (C), I do not recommend the Department exclude state permitting requirements which are not necessary according to the CAA. Such requirements remain applicable to the source and should be handled in one concise document, where possible, to streamline the process and provide better service. I do recommend the definition of applicable requirements refer to existing federal regulations, in Title 40 CFR as referenced in Exhibit A, subparagraphs (a)(5)(C) and (D), rather than to the authority in the CAA to promulgate such federal regulations.

22a-174-33(a)(2) One commentor suggested the Department redefine "Applicable Requirements" pursuant to the June 7, 1994 draft regulation. (45)
Response: I do not recommend use of the June 7, 1994 definition. By referencing the CAA and not the regulations promulgated pursuant to the CAA, the definition provided on June 7, 1994 does not function as a working definition.

22a-174-33(a)(2)(B) One commentor noted that there is no reference to Federal Implementation Plans (FIPs). (41)
Response: I recommend the Department include reference to the FIP within the applicable requirements in order to meet minimum federal requirements. (See language in Exhibit A, subparagraph (a)(5)(A))

22a-174-33(a)(2)(E) One commentor indicated that, as written, Section 22a-174-33(a)(2)(E) is unclear. The provision refers to "hazardous air pollutant standards or other requirement[s] under 40 CFR Parts 60, 61, 63, and 68." This commentor stated not every requirement of the referenced parts involves a "hazardous air pollutant." In addition, although the provision appears to address requirements pursuant to Section 112 of the CAA by referring to 40 CFR Parts 63 and 68, the Department may not be able to implement Section 112(g) of the CAA by referencing 40 CFR Part 63. Regulations implementing Section 112(g) have not yet been promulgated and therefore have not been codified in 40 CFR Part 63. This commentor stated Section 112(g) will be triggered upon the effective date of Connecticut's Title V program regardless of whether the Section 112(g) regulations have been promulgated, and Connecticut must include such requirements in Title V permits. Such commentor believes the Department should rewrite Section 22a-174-33(a)(2)(E) as follows:

> "Any standard or other requirement under Section 111 or Section 112 of the CAA, including any requirement

concerning accident prevention under Section 112(r)(7) of the CAA." (41)

Response: I do not recommend the Department rewrite section 22a-174-33(a)(2)(E) as described above. Such definition is overly broad and is continually subject to change thereby failing to define hazardous air pollutants in a concise manner. As provided in Exhibit A, subdivision (a)(8), a list of pollutants is referenced to provide certainty to the owners and operators of subject sources. This list will enable such owners and operators to calculate hazardous air pollutant emissions knowing exactly what is defined, for the purposes of this section, as a hazardous air pollutant. However, I do agree that not every requirement pursuant to 40 CFR Parts 60, 61, 63 and 68 refer to hazardous air pollutants. Therefore, I recommend the term "hazardous air pollutant" be struck from this paragraph. (See language in Exhibit A, subparagraph (a)(5)(D))

22a-174-33(a)(2)(F) One commentor recommended the Department drop this subparagraph referring to the requirements of Title V itself. (38)

Response: I recommend the Department remove the reference to the monitoring and analysis requirements. The references to conditions in permits issued as provided in Exhibit A, subsection (j) and 40 CFR Parts 60,61,63, 68, 70, and 72-78 should adequately address monitoring required pursuant to one of the applicable requirements. It is premature to include monitoring systems in the definition of applicable requirements because they will be built into the Title V permit to ensure compliance with other requirements.

22a-174-33(a)(2)(F) One commentor indicated this subparagraph, as written, is not sufficient. This commentor pointed out this subparagraph defines applicable requirements for monitoring by referring to Section 22a-174-33(i)(2)(G) of the RCSA In turn, Section 22a-174-33(i)(2)(G) requires monitoring under "applicable requirements" leading the reader back to Section 22a-174-33(a)(2)(F), creating a circular definition. This commentor further states, that, as written, Section 22a-174-33(a)(2)(F) makes no reference to requirements of Sections 504(b) and 114(a)(3) of the CAA, including but not limited to, requirements of the enhanced monitoring program. Thus, Section 22a-174-33(a)(2)(F) should be amended to reference such requirements. (41)

Response: I do recommend the Department eliminate the circular nature of the definition because, as structured, the regulation does not specify in detail the monitoring. (See Exhibit A, subdivision (a)(5), for recommended language) I recommend the Department add requirements of Section 504(b) and 114(a)(3) of the CAA as provided in Exhibit A,

subparagraphs (q)(2)(A) through (G) and (j)(1)(K)(ii) to meet minimum federal requirements.

22a-174-33(a)(2)(F) One commentor recommended replacing this subparagraph with "any standard or other requirement under Section 111 of the CAA, including Section 111(d)." (13)
Response: I recommend not adding such language because federal regulations have not been promulgated pursuant to Section 111(d) of the CAA. I do not recommend replacing this subparagraph with the reference to Section 111 of the CAA. It is more accurate to reference existing federal regulations. To incorporate new federal requirements promulgated pursuant to Section 111 after the notification of hearing regrading this regulation, these regulations will have to be amended, in order to provide adequate public notice.

Comments regarding the definition of "Emissions Unit":

22a-174-33(a)(3) Three speakers were not in favor of the definition of "Emission Unit" provided in the proposed regulation. (1,2 and 15) In a related comment, one commentor recommended the Department use the term emissions unit consistently throughout all sections of paragraph (g). (45) Several commentors recommended use of the term "Emissions Unit" as defined in the federal definition, (20, 21, and 26), so that an emission unit is not broadened to be the same as a stationary source, but rather a part of one.(7, 29, 13, 15, 43, 17, and 18)
Response: I recommend the Department revise the definition of emissions unit to be consistent with the federal definition. By remaining consistent with the federal definition, this section will be compatible with other federal programs, and will prevent the proliferation of a separate state program where it appears unnecessary and inconvenient for the regulated community. (See language in Exhibit A, subdivision (a)(7)) I have also reviewed the use of the term in subsection (g) of the regulation and recommend consistent use.

22a-174-33(a)(3) One commentor pointed out that if a source is subject to Title V by virtue of being a New Source Performance Standard (NSPS) source, the Department should not impose additional requirements onto that source. This would avoid imposing additional requirements onto sources not intended by Subpart (000). (2)
Response: The CAA requires that certain types of sources become Title V sources because a particular NSPS applies to them, unless a standard has not yet been promulgated for that source or the standard has explicitly exempted a subcategory of sources. I recommend providing for exemptions or

deferrals as shown in Exhibit A, subdivisions (c)(2) and (f)(3), in order to preserve Department resources for the higher priority sources. However, with respect to nondeferred, nonexempted nonmajor (pursuant to 40 CFR Part 70.3) sources, such as NSPS sources, I recommend the Department require that all Title V sources have permits covering their facility to the extent required by applicable requirements. It is not necessary to have limitations for equipment or emissions if such limitations are not otherwise required by an applicable requirement.

22a-174-33(a)(3) One commentor suggested the Department correct a definitional problem that directly affects the crushed stone industry. This commentor pointed out Subpart 000 regulates only eight sources of air pollution; accordingly Connecticut's Title V regulation should include only those eight sources. (2)
Response: This commentor appears to be commenting on the definition of a Title V source or the definition of applicable requirements. Therefore, I will respond with these definitions in mind. I do not recommend the Department make a change based upon this comment. As an applicable requirement, if NSPS under Subpart 000 only regulates eight sources, the Department is in no way changing the number of sources regulated by such section. I believe the commentors real concern was that some premises will become Title V sources, as defined, by having an emission point which is subject to a NSPS. This does not mean the entire premise is now somehow subject to the NSPS, but, rather, only to the extent required by such applicable requirement.

22a-174-33(a)(3) One commentor recommended the term "Emissions Unit" be deleted. (35)
Response: I understand the need to limit the definition to the extent possible. However, the Title V Program, as well as other, interrelated, programs, are heavily reliant on the term "Emissions Unit". Therefore, I recommend the Department adopt a revised definition of Emissions Unit similar to the federal definition. (See language in Exhibit A, subdivision (a)(7))

Comments regarding the definition of "Hazardous Air Pollutant":

22a-174-33(a)(4) One commentor was not in favor of the definition of "Hazardous Air Pollutant" as is provided in the proposed regulation.(1) Several commentors noted that, by including 40 CFR Part 68 listed materials, this definition is too expansive. According to these commentors, the definition

should be limited to 40 CFR Part 63 listed materials. (7, 29, and 43) One commentor recommended Section 22a-174-33(a)(4), which defines Hazardous Air Pollutant, should refer only to air pollutants listed in 40 CFR Part 63 Subpart C and not the pollutants in 40 CFR Part 68. 40 CFR Part 68 pollutants are defined as regulated substances, not as hazardous air pollutants. For example, this distinction is important for purposes of limiting a source's potential to emit under Section 22a-174-33(d)(1)(A) and for determining applicability of Title V under Section 22a-174-33(c)(1)(E)(i). (41)
Response: I recommend the Department change the definition of Hazardous air pollutant to eliminate 40 CFR Part 68 listed materials. (See language in Exhibit A, subdivision (a)(8)) because 40 CFR Part 68 refers to regulated substances not pollutants as stated by this commentor.

22a-174-33(a)(4) One commentor pointed out that Subpart C of 40 CFR Part 63, which will include the list of Hazardous Air Pollutants (HAPs) and the petition process for adding and deleting pollutants, has not been proposed as of today. Therefore, this commentor suggested the Department use the following definition for "Hazardous Air Pollutant":

> "means any air pollutant listed pursuant to Section 112(b) of the CAA." (41)

Response: For the reasons stated by this commentor, I recommend the Department, in its definition of Hazardous Air Pollutant, reference the list of pollutant contained in Section 112(b) of the CAA. (See language in Exhibit A, subdivision (a)(8)) It is important to recognize that referenced documents in existence at the time the notice for hearing was published are being referred to in this section. In order to include newly promulgated federal regulations or statutes, Section 22a-174-33 of the RCSA will have to be amended in a timely manner.

22a-174-33(a)(4) One commentor suggested the definition should be modified as follows: ". . . notwithstanding the definition in 22a-174-1 of the RCSA, any air pollutant listed in 40 CFR part 63, subpart C." (13)
Response: I recommend the Department include the "notwithstanding" language, for the purpose of clarification. (See language in Exhibit A, subdivision (a)(8)) Any definition within this section of the RCSA takes precedence, for the purposes of this section, over definitions available in other sections of the RCSA.

22a-174-33(a)(4) One commentor believes having dual state and federal definitions is unworkable. (26)
Response: I recommend the Department change the definition of

Hazardous Air Pollutant to eliminate 40 CFR Part 68 listed materials which are not all HAPs. I will also recommend that the definition reference pollutants listed in Section 112(b) of the CAA. (See language in Exhibit A, subdivision (a)(8)) These changes will make the definition more clearly in line with the federal intent.

Comments regarding the definition of "Maximum Achievable Control Technology" or "MACT":

22a-174-33(a)(5) One commentor was not in favor of this definition as proposed.(1)
Response: To address this commentor's concern, I recommend this definition include Maximum Achievable Control Technology ("MACT") determination in accordance with 40 CFR Part 63. (See language in Exhibit A, subdivision (a)(10))

22a-174-33(a)(5) One commentor stated that MACT should reference industry-specific standards as well as case-by-case MACT and should be defined: "an emission limitation or reduction in emissions of hazardous air pollutants, determined in accordance with subsection (e) of this section or as promulgated in 40 CFR Part 63". (13)
Response: I agree the Department should include language similar to this suggested change and I propose the reference to 40 CFR Part 63 be included in this definition. (See language in Exhibit A, subdivision (a)(10))

22a-174-33(a)(5) One commentor suggested, in addition to referencing industry specific standards in cases where EPA has failed, those applications should be due 18 months after the EPA fails to meet the deadline. (26)
Response: I do not recommend a change to this definition based upon this comment because this is a substantive requirement and should be handled in the body of the regulation rather than in the definition of MACT. However, I do recommend that elsewhere in this regulation the timeframe be changed to be more stringent than the federal requirement with respect to submission of applications due after EPA fails to meet the deadline for promulgating a MACT standard. (See language in Exhibit A, subdivisions (e)(1), (e)(2) and (f)(2)). This 12 month application due date provides the Department with adequate time to determine the applicable MACT standard while taking into consideration an applicant's proposals for such standard.

Comments regarding the definition of "Regulated Air Pollutant":

22a-174-33(a)(6) One commentor stated dual federal and state definitions are unworkable. (26)
Response: I recommend the Department change the definition making it more clearly in line with federal intent. (See language in Exhibit A, subdivision (a)(12))

22a-174-33(a)(6) One commentor stated this subsection, defining regulated air pollutant, attempts to include pollutants covered by Section 112 of the CAA (in subparagraph (E)). However, when the Department amends its definition of "hazardous air pollutant" pursuant to this commentors comment, above, the Department will not be including "regulated substances" under Section 112(r) of the CAA as regulated air pollutants. This commentor notes that requirements applicable to "regulated substances" are codified in 40 CFR Part 68. Therefore, according to this commentor, the Department should either include a separate reference to 40 CFR Part 68 in its definition of "regulated air pollutant," or use a general reference to Section 112 as outlined below in this comment.

In addition, this commentor continued, 40 CFR Part 70 has specific language regarding the definition of regulated air pollutant for purposes of Section 112(j) and Section 112(g)(2) of the CAA. Therefore, the Department should amend Section 22a-174-33(a)(6)(E) as follows:

> "means any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the CAA, including Sections 112(g), (j), and (r) of the CAA, including the following:
>
> Any pollutant subject to the requirements of Section 112(j) of the CAA. If EPA fails to promulgate a standard by the date established pursuant to Section 112(e) of the CAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the CAA; and
>
> any pollutant for which the requirements of Section 112(g)(2) of the CAA have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

This commentor believes this language impacts what information

must be contained in permit applications as well as when sources must pay permit fees. What is the Department's intent? (41)
Response: (1) With respect to regulated substances and hazardous air pollutant, I recognize these terms are different and that hazardous air pollutants should not include within its definition regulated substances which are not otherwise hazardous air pollutants. Therefore I recommend the Department include a separate reference to 40 CFR Part 68 in its definition of regulated air pollutant. (See language in Exhibit A, subparagraph (a)(12)(G))

(2) With respect to using specific language from 40 CFR Part 70 that this commentor described above, I do not recommend the Department include this language as a part of the definition of regulated air pollutants because this language is more prescriptive than descriptive. Such substantive language should be included elsewhere in the regulation. I therefore recommend the Department address such language in a section regarding MACT requirements as provided in Exhibit A, subdivisions (e)(1) and (e)(2).

(3) With respect to the timeframe for paying fees, Section 22a-174-26 of the RCSA contains the fee provisions, and such section was not the subject of this hearing. Therefore, I do not recommend any changes based on this comment.

Comments regarding the definition of "Title V source":

22a-174-33(a)(8) One commentor was not in favor of this definition as is.(15)
Response: I recommend the Department define Title V source in terms of those facilities which have emission units to whom standards apply or whose emissions are over certain thresholds, thereby requiring them to obtain a Title V permit. This definition should be based upon federal requirements. (See language in Exhibit A, subdivision (a)(15))

22a-174-33(a)(8) One commentor said the Department cannot amend 22a-174-26 of the RCSA through this regulation. This commentor questions the Department's defining a Title V source differently in Section 22a-174-26 than it does here. This commentor believes requiring a synthetic minor to pay fees even though they have limited their potential emissions is a contradiction. (2)
Response: I do not recommend a change based upon this comment because the language determining the payment of fees is contained in Section 22a-174-26 of the RCSA which was not the subject of the hearing.

22a-174-33(a)(8) One commentor stated a source cannot be defined as any premise if an emissions unit is meant to be part of a source.(15)
Response: I do not recommend the Department make a change based upon this comment because the definitions of stationary source, premise, Title V source and emission unit may overlap simply because of the variety in the types of facilities and equipment that exist.

22a-174-33(a)(8) One commentor suggested changing the reference from source to premise. (35)
Response: The definitions which are contained within this regulation are connected with other federal and state definitions. I believe this commentor mistakenly believes that the term source only refers to equipment or emission units which are the source of pollutants. This is not the case. The term source, as it is provided in Section 22a-174-1 of the RCSA, allows for a source to be a unit or a group of units. The term premise on the other hand may be too narrow for the purposes of this definition because adjacent or contiguous facilities are not to be considered one location. For these reasons, I do not recommend the Department change the reference from source to premise.

Comments regarding the use of the term Natural Resources:

22a-174-33(a) Although the term natural resources is not a defined term, one commentor was not satisfied with the Department's use of this term.(15)
Response: What is intended by the term "natural resources" in this regulation will have to be determined in a prudent manner by the applicant when filling out the application or relevant report, depending on the facility being considered and may include; land, fish, wildlife, boita, air, water, ground water, and drinking water supplies.

Comments regarding Source, Stationary Source, Premises and Title V Source

One commentor stated the terms stationary source, premise and emissions unit are somewhat synonymous and are used interchangeably in the regulations. Such commentor suggested definitions for the term source, stationary source, premises, and Title V source. Such commentor also mentioned the term emissions unit should not be used. (35)
Response: I recommend the Department not use the terms stationary source, premise and emissions unit interchangeably. I do not recommend the Department redefine source, stationary

source, or premise as these terms are defined in Section 22a-174-1 of the RCSA. As stated previously, I have recommended the definition of emissions unit be changed to meet the federal definition and that the definition of Title V source be as provided in Exhibit A, subdivision (a)(15); to meet minimum federal requirements.

In addition, I recommend the following changes to the definitions to enhance clarity and, where necessary, to incorporate definitions required under the federal program.

1) I recommend the Department clarify the definition of the term "Act" by indicating the Act was amended in 1990. (See language in Exhibit A, subdivision (a)(1).)

2) I recommend the Department add a definition for the term "Administrator" to make it clear that the word Administrator means the Administrator of the United States Environmental Protection Agency, or his designee. (See language in Exhibit A, subdivision (a)(2))

3) I recommend the Department add a definition for the term "Alternative Operating Scenario" to identify various ways in which a facility may be operated or various materials which may be processed at such facility as provided in Exhibit A, subdivision (a)(4).

4) In the definition of "Applicable requirements" I recommend the reference to section 22a-174-33 be amended as provided in Exhibit A, subparagraph (a)(5)(B). Such language will allow the definition to reference federal regulations which exist at the time this regulation was noticed. In addition, I recommend referencing Section 22a-174-3 of the RCSA to allow existing permits to be incorporated into the Title V permit, to consolidate the regulated communities' requirements. I also recommend referencing the federal implementation plan and the state implementation plan as required by 40 CFR Part 70. I do not recommend referencing the sections of the CAA because the standards are actually contained in the regulations promulgated pursuant to the CAA, rather than contained in the CAA itself.

5) To provide certainty with respect to federal requirements, many of which contain applicable requirements, I recommend the Department add a definition for "Code of Federal Regulations" or "CFR" to identify, by specifying by date, the most recent CFR which is to be used as a reference in conjunction with this section. (See language in Exhibit A, subdivision (a)(6))

6) I recommend the Department include a definition for "Implementation date of this section". (See language in Exhibit A, subdivision (a)(9)) This will clarify when a source must obtain a Title V permit. However, this definition will allow the regulated community to have as much time to apply as allowed by the EPA, until June 1, 1997. The intent of this definition is to avoid unnecessarily requiring sources to apply for Title V permits prior to federal approval of the program.

7) I recommend the Department include in it's definition of "Maximum achievable control technology" or "MACT" the concept that MACT means a method of achieving the emission limit or reduction in emissions, as provided in Exhibit A, subdivision (a)(10), because MACTs are not necessarily emission limitations themselves.

8) I recommend the Department add a definition of "Monitoring" to this subsection. This definition will provide clarity throughout the regulation where the term monitoring is used. (See language in Exhibit A, subdivision (a)(11))

9) I recommend the following revisions to the definition of "Regulated Air Pollutant":

a) add, "any pollutant from a", to the subparagraph regarding stratospheric ozone protection requirements as provided in Exhibit A, subparagraph (a)(12(D), because the definition refers to pollutants, not substance, and I do not recommend improperly defining the substance, itself, as a pollutant;

b) add, "or other requirement under 40 CFR Part 63 and emitted by a source in a category listed in Federal Register Vol. 58 No.231, December 3, 1993", to subparagraph (E) as provided in Exhibit A, subparagraph (a)(12)(E), because not all Part 63 provisions that pollutants are subject to are standards;

c) Add another subparagraph referencing 40 CFR Part 61 as provided in Exhibit A, subparagraph (a)(12)(F), in order to meet 40 CFR part 70 requirements;

10) I recommend adding a definition of "Throughput" to this subsection. This will enable nontechnical readers to understand the type of information that the Department needs when an applicant submits an application for a Title V permit. (See language in Exhibit A, subdivision (a)(13))

11) I recommend the Department change the name of the permit from "Title V operating permit" to "Title V permit", in order to eliminate unnecessary verbiage to the extent possible. In addition, I recommend the Department delete the language, or group of permits, because such language does not properly convey the meaning of the term. (See language in Exhibit A, subdivision (a)(14))

12) I recommend the Department move the Title V source concepts contained in Exhibit A, subparagraphs (c)(1)(A) through (E) and insert it in the definition of Title V source, as provided in Exhibit A, subdivision (a)(15), because such language is definitional in nature. See my comments regarding the applicability subsection for more detail.

Signatory Responsibilities

The following language was presented at the October 28, 1994 hearing for comment:

(b) Signatory Responsibilities.

(b)(1) Any application for a Title V operating permit submitted to the Commissioner shall be signed by a responsible official as follows:

(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 manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(B) For the 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 (1) the chief executive officer, or (2) a senior

executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(b)(2) Any report or other document required by a Title V operating permit and any other information submitted to the Commissioner shall be signed by a person described in subdivision (b)(1) of this section or by a duly authorized representative of such person. A duly authorized representative may be either a named individual or any individual occupying a named position. Such named person or person occupying a named position is a duly authorized representative only if:

(A) the authorization is made in writing by a person described in subdivision (b)(1) of this section;

(B) the authorization specifies either an individual or a position having responsibility for the overall operation of the premise or activity, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and

(C) the written authorization is submitted to the Commissioner.

(b)(3) If an authorization under this section is no longer accurate because a different individual or position has assumed the applicable responsibility, a new authorization satisfying the requirements of this section shall be submitted to the Commissioner prior to or together with any reports or other information to be signed by an authorized representative.

(b)(4) Any person signing any application for a Title V operating permit or any other report or document required by a Title V operating permit shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate

and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

Comments regarding subsection (b)
Signatory Responsibilities:

22a-174-33(b)(1) One commentor suggested Section 22a-174-33(b)(1) should include a reference to designated representative in the definition of responsible official for purposes of the acid rain requirements applicable to affected sources. See subsection (4)(i) and (ii) in the definition of "responsible official" in 40 CFR §70.2. (41)
Response: I do not recommend the Department provide a definition of responsible official because it is a substantive section. Nor do I recommend the Department include a designated representative in the description of responsible official. An owner or operator of the Title V source is free to authorize those officials to be one and the same. However, a designated representative will have to meet the Department criteria for being a responsible official or a duly authorized representative. A designated representative is only required for sources subject to 40 CFR Part 72 through 78, inclusive, and such representative is required to meet 40 Part 72 through 78 requirements. Therefore, it is sufficient to reference 40 CFR Part 72 through 78, as provided in Exhibit A, subdivision (b)(5).

22a-174-33(b)(1)(A) One commentor suggests the Department should add the following language to Section 22a-174-33(b)(1)(A):

> ". . . for the corporation, or the manager responsible for overall operation of one or more . . ." (41)

Response: I recommend the Department allow a duly authorized representative responsible for overall operation of one or more subject facilities, to sign relevant documentation as provided for in Exhibit A, subdivision (b)(1). The Department has the authority to be more stringent than the CAA as provided in Exhibit A, subparagraphs (b)(2)(A) and (B). With respect to signatures, it is critical to have someone who has been authorized to take responsibility for such task. Being a manager alone, may not adequately prepare an individual to review and comprehend an application for a Title V permit. (See language in Exhibit A, subparagraph (b)(1)(A))

22a-174-33(b)(1)(C) One commentor suggested the Department

should identify Commissioners as the chief executive officers of the State Agencies, because each agency is accountable for its own facility and has the responsibility and the authority for maintaining the facility. (35)
Response: I do not recommend identifying Commissioners as "Chief Operating Officer" of State Agencies because that may not always be the case. State Agencies shall handle signatory responsibility as provided in Exhibit A, subparagraph (b)(1)(C) to meet minimum federal requirements.

22a-174-33(b)(2) One commentor suggested that Section 22a-174-33(b)(2) allows for "a duly authorized representative" to submit reports or other documents required by Title V. The definition of "responsible official" in 40 CFR Part 70.2 requires that such authorization be approved in advance by the Department. The Department should amend Section 22a-174-33(b)(2) to require that prior approval from the Department be obtained before the authorization can become valid. (41)
Response: I recommend the Department require that prior approval of a duly authorized representative be obtained by the Commissioner in order to meet federal requirements. (See language in Exhibit A, subparagraph (b)(2)(C))

22a-174-33(b)(4) One commentor stated it is unreasonable to have a report issued under subsection (n) signed by a responsible corporate official within one day in the event of an emergency. It is suggested the Department either remove the certification requirement from 22a-174-33(n)(1)(B) or allow such certification to follow after the actual notification. (2)
Response: I recommend the Department not remove the certification requirement as suggested. It is crucial that a responsible official or duly authorized representative be aware of reporting a violation that poses an imminent and substantial danger to public health or a technology-based exceedance. In order to ensure reasonableness, I recommend the section allow for a duly authorized representative so that an officer need not be located. (See language in Exhibit A, subdivision (p)(1))

22a-174-33(b)(4) Two commentors suggested we add the word "reasonable" to the certification such that it reads: "...Based on my reasonable inquiry of the person or persons who manage the system..." (13 and 43)
Response: I recommend the Department delete the language of the certification in (b)(4) and instead cite to the relevant section in the Department's Rules of Practice, embodied in Section 22a-3a-5 of the RCSA. Such certification provides the signatory, based on reasonable investigation, certify to the validity of information being submitted. (See language in

Exhibit A, subdivision (b)(4))

In addition, I recommend the Department revise subsection (b) as follows to improve clarity and, where necessary, to incorporate federal requirements:

1) The Department should add language to subdivision (b)(1) to reflect that signatures are required for all written submittals to the Department, not merely the application for a Title V permit. (See language in Exhibit A, subdivision (b)(1)) This change is meant to identify and list situations which require a signature pursuant to this section.

2) I recommend the Department delete the word "manager" and insert the words "duly authorized representative" in subparagraph (b)(1)(A). (See language in Exhibit A, subdivision (b)(1)(A)) Being a manager alone, may not adequately prepare an individual to review and comprehend an application for a Title V permit. In addition, it is necessary the document is signed by a person with the authority to do so in order to ensure accountability.

3) I recommend the Department create paragraphs within subparagraph (b)(1)(A) to clarify the circumstances under which a duly authorized representative can sign for a subject source in order to provide for the types of signatories allowed by 40 CFR Part 70. (See language in Exhibit A, subdivision (b)(1)(A)(i) and (ii))

4) I recommend the Department add in subdivision (b)(2), the requirement that a duly authorized representative must not only comply with subdivision (b)(2), but also comply with subparagraph (b)(1)(A) in order to ensure such signatory has the authority to take such action. The Department needs to be this stringent to ensure the signatory understands the content of the material submitted and that such material may be relied upon by the Department. (See language in Exhibit A, subdivision (b)(1)(A))

5) I recommend the Department delete the language, "Any report or other document required by a Title V operating permit and any other information submitted to the Commissioner shall be signed by a person described in subdivision (b)(1) of this section or by a duly authorized representative of such person." (See language in Exhibit A, subdivision (b)(2)) I further recommend the Department revise the following sentences in that subdivision to provide that a duly authorized representative under subparagraphs (A)(i) and (A)(ii) of subdivision (1) of this subsection may be either a

named individual or any individual occupying a named position as provided in Exhibit A, subdivision (b)(2)) These added provisions will allow the regulated community and the Commissioner the assurance that the signatory has been thoughtfully chosen to handle the certification of documents required by this program and that such documents can be relied upon as certified.

6) I recommend the Department delete the word "the" and add the words "his or her" to the beginning of the sentence in subparagraph (b)(2)(A). In addition, I recommend the Department delete the reference to " subdivision (b)(1)" in this subparagraph and instead refer to "subparagraph (A)(i) or (ii) of subdivision (1) of this subsection". (See language in Exhibit A, subparagraph (b)(2)(A)) Please refer to my response in note 5) for my reasons.

7) I recommend the Department change the format of subparagraph (b)(2)(B) so that such paragraph is split into (b)(2)(B)(i) and (ii) to clarify the language and make it easier to follow. (See language in Exhibit A, subparagraphs (b)(2)(B)(i) and (ii))

8) I recommend the Department revise subdivision (b)(3) to ensure authorizations are updated as signatories change. (See language in Exhibit A, subdivision (b)(3))

9) In the interest of brevity, I recommend the Department revise subdivision (b)(4) to reference the existing certification. (See language in Exhibit A, subdivision (b)(4))

10) I recommend the Department add a new subdivision (b)(5) to ensure documents are certified as prescribed by the acid rain provisions. (See language in Exhibit A, subdivision (b)(5))

Applicability

The following language was presented at the October 28, 1994 hearing for comment:

(c) Applicability.

(c)(1) The following are Title V sources. This section shall apply to the owner or operator of any premise which includes any of the following:

(A) any stationary source, subject to a New Source Performance Standard pursuant to 40 CFR Part 60;

(B) any stationary source, subject to a national emission standard for hazardous air pollutants, pursuant to 40 CFR Part 61 and Part 63;

(C) any stationary source, subject to Acid Rain Provisions or sulfur oxides emission reduction requirements or limitations under 40 CFR Part 72;

(D) any stationary source subject to Solid Waste Combustion requirements under Section 129(e) of the Act; and

(E) any stationary source, or any group of stationary sources, located on one or more contiguous or adjacent properties, that are under common control of the same person, or persons under common control, and such source or sources belong to the same two-digit Standard Industrial Classification code, as published by the Office of Management and Budget in the Standard Industrial Classification Manual of 1987, and such source or sources emit or have the potential to emit, including fugitive emissions to the extent quantifiable:

(i) in the aggregate, ten (10) tons or more per year of any hazardous air pollutant, or twenty-five (25) tons or more per year of any combination of such hazardous air pollutants;

(ii) one hundred (100) tons or more per year of any air pollutant;

(iii) fifty (50) tons or more per year of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area; or

(iv) twenty-five (25) tons or more per year of volatile organic compounds or nitrogen oxides in a severe ozone nonattainment area.

(c)(2) Notwithstanding subsection (c)(1) of this section, this section will not apply to any emissions unit which is only regulated by the following:

(A) Standards of Performance for New Residential Wood Heaters pursuant to 40 CFR part 60, subpart AAA;

(B) National Emission Standard for Hazardous Air Pollutants for Asbestos, Standard for Demolition and Renovation pursuant to 40 CFR part 61, subpart M, Section 61.145; or

(C) Accidental Release Program pursuant to 40 CFR Part 68.

Comments Regarding subsection (c) Applicability

22a-174-33(c) One commentor stated the applicability section is unclear and includes area sources the Department may not have intended to include, such as area sources and those regulated solely by Subpart OOO solely. (2 and 5)
Response: I recommend the Department make changes to this subsection to keep those sources which are not required by the CAA to obtain a Title V permit from having to do so either by; (1) exempting such sources or (2) allowing their application to be delayed until the applicable standard has been promulgated. (See language in Exhibit A, subdivision (f)(3) and subparagraphs (c)(2)(A)-(E))

22a-174-33(c) One commentor wrote that the Department should exempt fugitives of particulate because it is not a pressing air quality issue and there is no methodology capable of calculating fugitives with enough certainty to determine fees. This commentor believes these fugitives will not go uncontrolled because of other regulations controlling fugitives of particulate. (2)
Response: I do not recommend the Department implement regulations which are less stringent than the federal regulations. 40 CFR Part 70 requires the Department to consider fugitives, to the extent quantifiable, for the purposes of determining Title V applicability. (See language in Exhibit A, subdivision (g)(4)) Notwithstanding the above, to comply with 40 CFR Part 70, fugitives shall be counted from sources in categories provided in 40 CFR Part 70.2(i) through (xxvii).

22a-174-33(c) One commentor stated the regulation should exempt insignificant or minor sources from the Title V program.(13) One commentor recommended the Department should clarify its intent with regard to applicability and area sources such as dry cleaners and gas stations.(43) As one commentor understands it, it is the Department's intent to defer until EPA makes a determination that an area source would need a Title V permit.(5) One commentor stated the Federal program authorizes the states to temporarily exempt minor sources but the Department has not explicitly done so. (13)

Response: For the purposes of responding I assume the commentor means "non-major Part 70 sources," by the terms "insignificant or minor sources." I recommend the Department defer minor and area sources until EPA makes a determination that an area source would need a Title V permit. The Department should exempt those sources which are explicitly exempted by the standard itself as promulgated or exempted from the requirement to obtain a Title V permit by the Administrator. (See language in Exhibit A, subdivisions (c)(2) and (f)(3))

22a-174-33(c) Two commentors noted that so-called insignificant activities and deminimis thresholds mentioned in 22a-174-33(g)(2)(B) and (g)(3) should be exempted in the applicability section except for emissions-related information sufficient to determine the applicability of the Department's requirements. (13 and 43) Three commentors noted the proposed regulation does not clearly exempt insignificant activities and recommended that the Department should provide for such exemption.(6, 38, and 43) Another commentor believes insignificant activities should be treated according to 40 CFR Part 70. (44) With respect to 22a-174-33(c)(1), two commentors suggested adding insignificant activities as an exemption from the permitting process. (7 and 38) One commentor recommended this subsection should include a definition of insignificant activities for those activities identified in the June 7, 1994 draft proposal as well as those in (g)(2) and (g)(3) and list such activities. (37) Two commentors suggested language to exempt insignificant activities listed in subdivision (g)(3) and units with potential emissions below the thresholds in subparagraph (g)(2)(B)from Title V applicability. (13 and 17)
Response: I recommend the Department only require information on the application pertaining to what is commonly called "insignificant," (g)(3) listed activities or items as necessary to determine applicability or to determine what are the applicable requirements for such facility and whether such facility is in compliance with the applicable requirements. (See language in Exhibit A, subdivision (g)(4))

With respect to thresholds, I recommend the Department include the language provided in Exhibit A, subparagraph (j)(1)(F) to prevent sources from having to take unnecessary emission limitations below certain thresholds unless otherwise required by an applicable requirement. For the purposes of determining applicability, I do not recommend the Department allow for thresholds to be used, below which information will not be reported on the application, because this will interfere with obtaining the minimum information required by 40 CFR Part 70. I do recommend the Department attempt to limit record keeping, reporting and other permit requirements

for certain activities and thresholds, so long as there are no applicable requirements, as provided in Exhibit A, subparagraphs (j)(1)(F), (G) and (K).

22a-174-33(c) One commentor suggested the Department adopt the latest AP-42 Emission factors, reconcile 40 CFR Part 60 Subpart 000 within the Title V regulation in view of the fact that 40 CFR Part 60 Subpart 000 does not regulate a New Source Performance Standard (NSPS) source on a facility-wide basis, include in the calculation of potential emissions only the emissions from those sources subject to NSPS Subpart 000, calculate potential emissions as allowable emissions, and allow the source to verify their emissions through its annual Pre-Inspection Questionnaire (PIQ) submission. (39)
Response: I will respond in order of suggestions made: (1) The Department has authority to use the latest AP-42 emission factors up to September 16, 1994, and I recommend they do so. However, this need not be addressed in the regulation because AP-42 is not directly referenced by 40 CFR Part 70; (2) Under 40 CFR Part 70, there is no requirement that a standard or other requirement to which a stationary source is subject be applied to an entire premise. Although an entire premise can become subject to the requirement to obtain a Title V permit as provided in Exhibit A, subdivision (c)(1). I do not recommend the Department require the application of an NSPS on a facility wide basis unless such NSPS requires it. (See Exhibit A, subparagraph (a)(15)(A)) Therefore, I do not recommend a change based upon this comment. (3) I do not recommend the Department include only the potential emissions from those sources subject to NSPS Subpart 000. I believe, as explained in the General Response, nonmajor sources pursuant to 40 CFR Part 70 should be required by the Department to include all emissions from such facility to the extent necessary to determine what are the other applicable requirements and compliance with other applicable requirements. The reason for this is to allow all requirements to be contained in one document, to the extent practicable. This will cut down on the number of interactions, for the regulated community, with the Department; (4) I do not recommend the Department calculate potential emissions as allowable emissions. This would be less stringent than the federal requirements; and (5) I recommend, to the extent practicable, the Department combine current reporting requirements, which include the PIQ, with the Title V reporting requirements, as provided in Exhibit A, subsections (o) and (q), in order to streamline such requirements. Such melding of reporting requirements should be addressed in the program description, to be submitted to the Administrator as part of the Title V Program Package.

22a-174-33(c) One commentor suggested the Department should permit allowable emissions as an alternative to potential emissions.(39)
Response: As stated previously, I do not recommend the Department substitute allowable emissions for potential emissions as they do not mean the same thing and 40 CFR Part 70 refers to Title V applicability as being determined by calculating potential emissions.

22a-174-33(c) One commentor stated the Department should include a provision for radionuclides. This commentor suggested that a major source of radionuclides for Title V should be defined as it is defined in rules promulgated by the Administrator of EPA. See subsection (1)(ii) of the definition of "major source" in 40 CFR §70.2. This commentor further stated, if the Department cannot adopt such language, it should include a commitment as part of its program to expeditiously amend its regulations as EPA's requirements change. (41)
Response: I recommend the Department include provisions to cover radionuclide sources as provided in Exhibit A, subparagraph (a)(15)(A) and subdivision (c)(3), to ensure compliance regardless of whether or not radionuclide was defined by 40 CFR Part 61 as a major source at the time the notice for hearing was published. However, I recommend exempting sources subject to 40 CFR Part 61, Subpart I, from Title V, as provided in Exhibit A, subparagraph (c)(2)(D) because of a lack of resources to handle certain categories as Title V sources. I recommend the Department use its best efforts, subject to all statutory requirements, to amend this section as EPA's requirements change.

22a-174-33(c) One commentor noted this subsection includes certain minor sources as subject to Title V. Section 22a-174-33(d) allows certain sources to become minor, i.e., "synthetic minors" if the source limits its potential to emit. This commentor believes the two sections, as written, lead to the result that sources which do not need to "permit out" of major source status to become minor (because the source does not even have the potential to emit at major levels) would be required to obtain a Title V permit and "synthetic minors" would not be required to obtain a Title V permit. This commentor points out, for example, Section 22a-174-33(c)(1)(B) simply defines any stationary source subject to a national emission standard for Hazardous Air Pollutants (HAPs) as a Title V source. According to this commentor, the way this section is worded, it is unclear whether an area source (even if EPA exempts permit requirements) is required to obtain a Title V permit, since Connecticut does not address, in Section 22a-174-33(c)(2), area sources that the Administrator defers

or exempts by rulemaking. This commentor recognized the Department has indicated that this is not Department's intent, and therefore this commentor suggested Connecticut's regulations should be clarified. (41)
Response: I recommend the Department amend the regulation so that sources, which are Title V sources merely because a particular applicable standard applies to such source, are exempted where allowed by the federal regulations and/or do not have to apply until such standard is promulgated, unless the source triggers the Title V emission thresholds for determining applicability. (See language in Exhibit A, subdivisions (c)(2) and (f)(3)) In addition, certain sources may remain outside the scope of Title V by having a federally enforceable limitation on emissions while other smaller sources must comply with Title V requirements because a particular applicable requirement is the mechanism triggering Title V applicability.

22a-174-33(c) One commentor believes non-automotive paint booths should be exempt from the Title V program. This commentor suggested the Department look at schemes such like the ones proposed and used in Illinois and Oregon. (11)
Response: I do not recommend the Department exempt non-automotive spray booths which may be emit volatile organic compounds and/or hazardous air pollutants because 40 CFR Part 70 does not specifically provide for such exemption. However, I do recommend the Department allow for exemptions or deferrals provided by the Administrator or federal regulations as provided in Exhibit A, subparagraph (c)(1)(E) and subdivisions (f)(2) and (f)(3). In addition, I recommend the Department provide a mechanism for owners or operators of sources to obtain a federally enforceable limitation on emissions as provided in Exhibit A, subsection (d) which may mean certain sources will no longer need to obtain Title V permits.

22a-174-33(c) One commentor asked, "Does source here mean emissions unit?" (15)
Response: I recommend the Department delete the phrase "The following are Title V sources" as it adds confusion because Title V source is defined in the definition subsection. (See language in Exhibit A, subdivisions (a)(15) and (c)(1))

22a-174-33(c) Two commentors were troubled by the fact there is no specific provision to exempt non-major sources of air pollution which EPA may, at a future date, determine should be exempt. (13 and 29) One commentor suggested language to resolve this issue as well as language for subdivision (d) (to remain consistent with their suggested changes to (c)) regarding "synthetic minors." (29)

This commentor also pointed out there is a lack of exemption for insignificant sources. This commentor stated that EPA gives States latitude to exempt sources the State deems to be insignificant due to size, emissions level or production rates. This commentor stated exempting insignificant sources or insignificant emission levels from sources would improve Connecticut's competitive position. This commentor suggested language reflecting this comment. (29)

Response: I understand this commentor as referring to two issues: 1) Does the regulation allow for exemptions and deferrals from the Title V program to the extent the Administrator will allow the Department to exempt or defer such sources? 2) Does the Department provide an exemption for insignificant activities or items from the requirement to be listed on the application and subsequently listed on the permit? With respect to the first issue, for the purposes of determining applicability of this section, I do recommend the Department allow exemption of sources to the extent that EPA exempts such sources from standards. (See language in Exhibit A, subparagraph (c)(2)(E)) In addition, I recommend the Department create timeframes to allow sources a deferral until such time that an applicable standard is promulgated so that sources do not needlessly apply for Title V permits. This will also allow the Department to focus on the applicants who are immediately required to obtain a Title V permit and for whom there are existing applicable requirements. (See language in Exhibit A, subdivision (f)(3))

With respect to the second issue: 2) Does the Department provide an exemption for insignificant activities or items from the requirement to be listed on the application and subsequently listed on the permit? 40 CFR Part 70 does not provide an exemption for insignificant activities or items when determining applicability of the Title V Program. However, this does not preclude the Department from allowing insignificant activities and items as provided in Exhibit A, subdivision (g)(3) from being exempted from the requirement to be listed on the application unless otherwise required by an applicable requirement as provided in Exhibit A, subdivision (g)(4). In addition, such activities and threshold emissions as provided in Exhibit A, subparagraph (j)(1)(F) may be excluded from the permit as provided in Exhibit A, subparagraph (j)(1)(K). For more detail, see the 4th response provided above to comments pertaining to Applicability and my response to requests for adding a definition of "Insignificant Activities."

22a-174-33(c) One commentor proposed the Department exempt emergency generators with an electric output of 4,200 kilowatts. (33)

Response: I do not recommend a change based upon this comment. Although it certainly would be convenient to handle emergency generators in this manner, they do have potential emissions which must be evaluated. The Department has the ability to develop general permits to limit the potential emissions from these emission units.

22a-174-33(c)(1) One commentor recommended that Sections 22a-174-33(c)(1)(A) through (E) should be revised to " . . .any premises, subject to . . ." (35)
Response: I do not recommend that this language change be adopted by the Department because a premise might not actually be subject to such standard. Rather, it is the stationary source located at such premise, which is subject to such standard.

22a-174-33(c)(1) One commentor suggested the Department include the following language in Sections 22a-174-33(c)(1)(A) and (B):

"<u>any stationary source subject to a standard or other requirement under</u> . . . ."

This commentor stated the reason for this additional language is that the Department's rule only references "standards," which might be limited to emissions limits. The term "requirement" would include other obligations, such as monitoring or certification requirements. In addition, this commentor suggested the infrastructure programs (i.e. 112(j)) should also be covered.(41)
Response: I recommend the Department adopt language which refers to a stationary source subject to a particular Part of the CFR regardless of whether such Part contains standards or requirements to be as inclusive as required to meet federal requirements. (<u>See</u> language in Exhibit A, subparagraphs (a)(15)(A) and (B)) With respect to the infrastructure programs, the regulation will only reference those federal regulatory requirements which existed at the time the notice for hearing was published. (<u>See</u> language in Exhibit A, subdivision (a)(15))

22a-174-33(c)(1)(E) Some commentors do not favor counting fugitive emissions as they pertain to their industries (such as crushed stone and precious metals) and that this conflicts with the intent of 40 CFR Part 70.2. (2 and 15) One commentor suggested the Department revise this subparagraph to reflect that fugitive emissions not be considered unless the source belongs to one of the categories of stationary sources pursuant to 40 CFR 70.2. (11) One commentor suggested revising this subparagraph to reflect 70.2 list as well as all

other stationary source categories regulated by a standard promulgated under Section 111 or 112 of the CAA, but only with respect to those air pollutants that have been regulated for that category. (15)
Response: I recommend the Department, in this section, count fugitive emissions for the purposes of determining applicability of this section as required by 40 CFR Part 70. (See language in Exhibit A, subparagraphs (a)(15)(E) and (F)) The Department should include the reference to the list of 40 CFR Part 70.2 sources so that such list is consulted when determining regulated air pollutant levels. (See language in Exhibit A, subparagraph (a)(15)(F)) I also recommend the Department revise this section with respect to the applicability language to reflect categories regulated under 40 CFR Part 63, a federally promulgated regulation, rather than refer to sections 111 or 112 of the CAA which provide the authority for the federal regulations which actually provide standards in their text. (See language in Exhibit A, subparagraph (a)(15)(E))

22a-174-33(c)(1)(E) One commentor suggested the Department only include fugitives to the extent quantifiable. (15)
Response: I recommend the Department revise the language to this effect for the purposes of determining hazardous air pollutant levels to provide certainty for the owner or operator of the subject source with respect to making the initial determination as to whether they believe their source is a Title V source. (See language in Exhibit A, subparagraphs (a)(15)(E))

22a-174-33(c)(1)(E)(i) One commentor indicated that, by including flammable within the definition of HAP, the Department has substantially lowered the threshold for applicability with respect to Title V. (13)
Response: I recommend the definition of HAP be altered to not include the reference to 40 CFR Part 68 for the reason presented by this commentor. (See language in Exhibit A, subdivision (a)(8))

22a-174-33(c)(1)(E)(i) One commentor noted that Section 22a-174-33(c)(1)(E)(i) links the Title III major source definition language to the SIC code requirement. However, the SIC code requirement does not apply to Section 112 sources. In addition, this commentor suggested the Department include the following language in Section 22a-174-33(C)(1)(E)(I) as follows:

> ". . . or twenty-five (25) tons or more per year, or a lesser quantity as established by the Administrator. . . ."

This commentor further stated if Connecticut does not include the lesser quantity phrase, Connecticut will have to revise their operating permit rule if and when EPA publishes lesser quantities. Currently, EPA is planning to publish a notice of intent to establish lesser quantities this month. (41)
Response: I recommend the Department separate the hazardous air pollutant subparagraph from the criteria pollutant subparagraph for which the SIC code reference was relevant. (See language in Exhibit A, subparagraphs (a)(15)(E) and (F)) In addition, I recommend the Department include a similar phrase as suggested by this commentor with respect to other quantities of hazardous air pollutants established by the Administrator. (See language in Exhibit A, subparagraph (a)(15)(E))

22a-174-33(c)(1)(E)(ii) One commentor suggested the word regulated should be placed in front of air pollutant. (27)
Response: I recommend the Department make this change so that it is clear that the regulation is referring to a defined universe of air pollutants, not every air pollutant possibly in existence. (See language in Exhibit A, subparagraph (a)(15)(F)(i))

22a-174-33(c)(2) One commentor said the Department should amend Section 22a-174-33(c)(2) as follows:

> ". . . section will not apply to any premise which is only . . ."

This commentor stated Connecticut's regulation, as written, exempts individual units from Title V if those units are only subject to the requirements listed in Section 22a-174-33(c)(2). According to this commentor, the regulation should be changed because the other units at the premise may make the premise subject to Title V. If the premise is subject to Title V as a major source, then the individual unit which is, for example, only subject to regulation under Section 112(r) of the CAA for Title V purposes, should be included in the source's application for a Title V permit. See 40 CFR §§70.3(a)(3) and 70.3(b)(4) (41)
Response: I recommend the Department incorporate this change. I also recommend the Department include the language as provided in Exhibit A, subdivision (c)(2)

22a-174-33(c)(3) Another commentor provided the following change to Section (c):

> (c)(3)(NEW) Any stationary sources listed in subdivision (c)(1) of this section that are not major sources are exempt until such time as the EPA completes a rulemaking

to determine how the Title V program should be structured for non-major sources and the appropriateness of any permanent exemptions in addition to those provided for in subdivision (c)(2) of this section. (29)

Response: I recommend the Department adopt language which conveys the intent of the above suggested language in order to provide flexibility to the extent allowed by the Administrator so the Commissioner may allocate resources to high priority sources in accordance with federal standards. (See language in Exhibit A, subdivisions (f)(2) and (f)(3) and subparagraph (c)(2)(E)) However, I do not recommend the use of the above language verbatim, as such language is not necessary to convey the intent.

In addition, I recommend the Department make the following changes to further clarify this subsection and, where necessary, incorporate federal program requirements:

1) In the interest of brevity, delete the language in subdivision (c)(1) and replace it with "The provisions of this section shall apply to every Title V source" to refer to the definition.

2) The Department should move the concept contained in subparagraphs (c)(1)(A)-(E) and insert it in the definition of Title V source in subsection (a)(15) of this section, revising such section as recommended above because such language is descriptive of a Title V source and not a substantive requirement itself.

3) Delete the language in subdivision (c)(2) and replace it with: "Notwithstanding subdivision (1) of this subsection, this section shall not apply to any premise which is defined as a Title V source solely because a stationary source on such premise is subject to one or more of the following:"

4) In addition to minor grammatical changes in the paragraphs listed under (c)(2), I recommend the Department add new subparagraphs (D) and (E) (See language in Exhibit A, subparagraphs (c)(2)(A) through (E)) This will further clarify which federal regulations, alone, will not be the basis for requiring a Title V permit under certain circumstances.

5) I recommend the Department add new subdivisions (c)(3) and (c)(4) to this section. (See language in Exhibit A, subdivisions (c)(3), to clarify that an existing requirement still applies even if it is not a basis for requiring a Title V permit, and (c)(4), to allow sources to determine applicability for research and development facilities

separately as anticipated by the preamble to 40 CFR Part 70)

Limitations on Potential to Emit

The following language was presented at the October 28, 1994 hearing for comment:

(d) Limitations on Potential to Emit.

(d)(1) In lieu of requiring an owner or operator of a Title V source to obtain a Title V operating permit, the Commissioner may, by permit or order, limit potential emissions from such premise to less than the following:

(A) In the aggregate, ten (10) tons per year of any hazardous air pollutant, or twenty-five (25) tons per year of any combination of such hazardous air pollutants;

(B) one hundred (100) tons per year of any regulated air pollutant;

(C) fifty (50) tons per year of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area; and

(D) twenty-five (25) tons per year of volatile organic compounds or nitrogen oxides in a severe ozone nonattainment area.

(d)(2) Notwithstanding subdivision (d)(1) of this section, the Commissioner shall not issue such order or permit in lieu of a Title V operating permit unless the owner or operator of such premise demonstrates that the actual emissions of such pollutants from such premise in any calendar year after December 31, 1989 have not exceeded the levels in subparagraphs (A) through (D), inclusive, of subdivision (d)(1) of this section.

(d)(3) To demonstrate actual emissions have not exceeded such levels, the owner or operator shall submit to the Commissioner written documentation of the actual emissions from such premise for every calendar year, or portion thereof, from January 1, 1990 through the calendar year in which such information is submitted. Such written documentation shall include a certification pursuant to subdivision (b)(4) of this section.

(d)(4) Any permit or order issued pursuant to this subsection

shall include requirements that the owner or operator: conduct monitoring; submit compliance certifications to the Commissioner; record no less than semi-annually purchase records, production rate, ratios of materials used and total quantity of materials used; and maintain records at the premise for five (5) years and made available, upon request, to the Commissioner or his agent.

(d)(5) Notwithstanding a permit or order issued pursuant to subdivisions (d)(1) through (d)(3), inclusive, of this subsection, the owner or operator shall pay the Department all fees required by Section 22a-174-26 of the Regulations of Connecticut State Agencies.

Comments Regarding subsection (d)
Limitations on Potential to Emit

The Commissioner has the authority and discretion to implement through a SIP amendment and administer a federally enforceable state operating permit program limiting emissions from regulated sources. Such is the purpose of this section, in order to provide the regulated community with a common-sense means of limiting potential emissions, which may, in some cases, do away with the need for a Title V permit.

22a-174-33(d) Some commentors requested the Department include capping out exemptions for their industries. (2 and 15)
Response: I believe these commentors are using the term "capping out" to mean a federally enforceable limitation on emissions. Industry can certainly use this section, when applicable, to avoid having to obtain a Title V permit, if the limitation on potential to emit is in place prior to the requirement that the source obtain a Title V permit and there are no other standards applicable to the source which would otherwise require the owner or operator of the source to obtain a Title V permit.

22a-174-33(d) One commentor stated the Department should follow the June, 1989 guidance for this section.(5)
Response: I recommend the Department use the June 28, 1989 Vol. 54 Federal Register 27274 along with supplementary information to make this section federally enforceable for those sources who qualify for federally enforceable limitations of emissions through orders or permits.

22a-174-33(d) One commentor noted the Department indicated it intends to use Section 22a-174-33(d) to allow a facility to take permit restrictions on its potential emissions to avoid

40 CFR Part 70 requirements. (41) Two commentors stated the Department should submit this section and all other relevant regulations and information as a revision to the SIP. These commentors stated that EPA will then compare this submittal with the criteria for an acceptable state operating program found in 54 FR 27274. (e.g. this section should include public participation and notice to EPA of proposed and final permits.) These commentors also suggested the Department review and amend Section 22a-174-3(g) as necessary to make state operating permits (which grow out of the construction permit program) federally enforceable. (5 and 41)
Response: The Commissioner has the authority and discretion to amend the SIP with a permitting regulation which is federally and state enforceable, as provided in Exhibit A, subdivisions (d)(1) through (8), inclusive.

Section 22a-174-3(g) of the RCSA, the existing state operating permit program, was not the subject of the hearing on October 28, 1994, therefore the Department need not review or amend that section at this time.

22a-174-33(d) One commentor suggested this subsection should state the data that is necessary to establish the exemption rather than awaiting future rules or leaving the decision to the permit writer.(38)
Response: I recommend the Department describe the provisions required to be in the permit or order which is a federally enforceable limitation on potential emissions. (See language in Exhibit A, subdivisions (d)(1) and (d)(2)) The permit writer will have to design the permit to fit the emission units involved. Therefore, I do not recommend the Department be more specific than as provided, with regard to what must be included in the permit or order, lest sources end up with permit or order terms which are incongruous in relation to the subject source.

22a-174-33(d) One commentor suggested the Department revise this section to enable the synthetic minor program to be federally enforceable. This commentor also suggested the Department defer applicability of these rules for non-major sources. (24)
Response: I do recommend this section be made federally enforceable. As described above in the Applicability section, I recommended that sources be able to defer application until required to apply in accordance with the applicability and timeframes subsections. (See language in Exhibit A, subdivision (f)(2) and subparagraph (c)(2)(E))

22a-174-33(d)(1) One commentor suggested a provision should be added to subdivision (d)(1) which grants sources the right to achieve synthetic minor status. This commentor explained

the source would not be subject to Title V requirements if that source satisfies specified prerequisites, including the filing of a non-Title V application. In addition, this commentor would like the concept of federal flexibility (§70.3(b)) to be reflected in the Department's regulations. This commentor proposed the following language to revise Sections (c) and (d)(1):

> (c)(3)(NEW) All sources listed in paragraphs (c)(1) and (2) of this subsection that are not major sources under 40 CFR Part 70, affected sources, or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the CAA, are exempt from the obligation to obtain a Title V permit unless required to do so under applicable requirements.
>
> (d)(1) Notwithstanding subsection (c) of this section, upon submission of an application, the Commissioner shall ~~In Lieu of requiring an owner or operator of a Title V source to obtain a Title V operating permit, the Commissioner may,~~ by permit or order other than a Title V permit, limit potential emissions from such premise to less than the following: . . . .(13 and 29)

Response: I recommend the Department provide language as in Exhibit A, subsection (d) as a mechanism for a federally enforceable limit on potential to emit. The concept of exemptions similar to that suggested above should be captured in language for subsection (c) where allowed by federal requirements. (See language in Exhibit A, subdivision (c)(2))

22a-174-33(d)(1)(A) One commentor stated that if the Department plans to extend emission caps to sources which emit HAPs, then the state should submit the appropriate regulations and supporting information to EPA for approval pursuant to Section 112(l) of the CAA. As currently written, Section 22a-174-33(d)(1)(A) does not address the lesser quantities which may be established by the Administrator. This commentor points out another potential problem for Section 112(l) approval occurs when the Title III standard requires an area source to obtain a Title V permit anyway. This commentor suggested Section 22a-174-33(d)(1)(A) should be reworded to ensure an area source required by rulemaking to obtain a Title V permit cannot utilize this section's emissions cap to get out of obtaining a Title V permit. (41)

Response: The Commissioner has the authority and discretion to submit the appropriate regulations and supporting information to EPA for approval pursuant to Section 112(l) of the CAA.

I recommend the Department include in this section a

provision for other quantities as established by the Administrator to be as stringent as is intended by 40 CFR Part 70. (See language in Exhibit A, subparagraph (d)(1)(D)) Finally, to be as stringent as 40 CFR Part 70, I recommend the Department include a provision which precludes certain Title V sources, specifically those in Exhibit A, subparagraphs (a)(15)(A) through (D), from applying for a "synthetic minor" permit. (See language in Exhibit A, subdivision (d)(1)) Otherwise, the Department might not meet Title V program requirements.

22a-174-33(d)(2) and (d)(3) Some commentors say these subdivisions are too restrictive and unnecessarily limit the ability of sources to qualify. These commentors believe industry which has a good record for years after 1989 and 1990 should qualify for the limitation.(3 and 15) Several commentors feel subdivisions (d)(2) and (d)(3) should be omitted. Some believe many sources will not be able to take advantage of the limit on potential to emit because, although they have been able to reduce their emissions below the threshold levels in (d)(1)(A)-(D), these reductions do not show up until after the base year 1990. (3,7, 29, and 38) Two commentors, while not explicitly requesting the Department to omit subdivisions (d)(2) or (d)(3), are concerned with the same issue as the commentors mentioned above in this paragraph. (12 and 15) One commentor is a proponent of subdivision (d)(1), but believes the benefits of this section are "inadvertently scuttled" by the Department including paragraphs (d)(2) and (d)(3). (7) This commentor stated, rather than deleting (d)(2) and (d)(3), applicants should be able to show the required levels have been achieved for 2 years prior to application for the permit or order. One commentor feels past operations and emissions from a premise have no bearing on whether a premise can be held to a limit on future potential emissions. (27)
Response: I recommend the Department delete (d)(2) and (d)(3) thereby allowing for consideration of improvements made at the source up until permit issuance which resulted in reduced emissions. I recommend the Department allow the applicant to commit through permit or order, as provided for in Exhibit A, subparagraph (d)(2)(A), to reduce emissions resulting from any improvements or changes made at the source at any time, as long as they are effective the day the permit or order is issued.

22a-174-33(d)(2) and (d)(3) One commentor suggested the Department afford an alternative means of proving actual emissions pursuant to (d)(2) and (d)(3) to sources which exceed Title V applicability levels only for NOx. This commentor suggested the Department allow sources with approved

limitations under 22a-174-22 (control of NOx), to submit copies of these approvals to the Department. (32)
Response: Under the Title V permit program the Title V source can submit the approved NOx limitations with their permit application. (See language in Exhibit A, subparagraph (G)(1)(F)) If the limitations are federally enforceable, below Title V applicability thresholds, and the NOx source was the only reason the source would be a Title V source, there would be no reason to utilize subsection (d) pertaining to limitations on potential to emit because the source would be able to use the NOx limit as an alternative means of proving actual emissions. The source which has potential emissions of NOx over the applicability threshold, but actual emissions under the applicability threshold may qualify for a subsection (d) federally enforceable limitation on potential to emit to keep from having to obtain a Title V permit.

22a-174-33(d)(4) One commentor believes a definition of monitoring is lacking as it relates to this subsection. Referring to subsection (m), monitoring reports, this commentor pointed out that the only type of monitoring acceptable under Department's Title V program is sampling/analysis. This commentor questions the purpose of (d)(4)'s requirement to record purchase records, production rates, ratios of materials used and total quantity of materials used. She is concerned that if sampling/analysis is the only type of monitoring acceptable, then these tasks become costly busy-work. (15)
Response: In the September 27, 1994 draft, subdivision (d)(4) does not require the source to monitor purchase records, monitor production rates, etc...rather, this subsection states, "Any permit or order issued pursuant to this subsection shall include requirements that the owner or operator: conduct monitoring..." The September 27, 1994 draft does not require that the source conduct sampling and analysis. However, to further clarify, I recommend the Department include language which enhances the flexibility of the section with respect to monitoring. (See language in Exhibit A, subparagraph (d)(2)(B), i.e., "...sufficient to ensure...")

22a-174-33(d)(5) Several commentors stated the fees should not be paid by those who are not obtaining a Title V permit and that legally the Department does not have the authority to require them to do so through this regulation unless the fee regulation is adequately amended.(2, 2, and 24)
Response: The hearing held on October 28, 1994 did not concern Section 22a-174-26 of the RCSA. In any event, I concur that the Department cannot amend the fee regulation through this regulation nor is the opposite true. Payment of

the fee is contingent upon the requirements in Section 22a-174-26 of the RCSA, not whether or not an owner or operator of a source must obtain a Title V permit.

22a-174-33(d)(5) One commentor noted that Section 22a-174-33(d) still refers to sources which become "synthetic minors" in order to avoid Title V requirements as "Title V sources." This commentor feels this could become a problem if the State intends to use permit fees collected from these sources pursuant to subdivision (d)(5) to fund the Title V program. This commentor stated only fees collected from sources which are subject to Title V requirements, including the requirement to obtain a Title V permit, may be used to fund a State's Title V program. Such commentor suggested the most efficient way to resolve this problem is for the Department to adopt a definition of "major source" in Section 22a-174-33(a). This commentor believes this will also help the Department address the applicability comments listed above.(41)
Response: The separation of fees would enable the Department to demonstrate adequate funding of the Title V program. I do not recommend the Department adopt a definition of major source as this does not directly address the issue of adequate funding of the Title V permit program.

In addition, to clarify the regulations and, where necessary, to provide consistency with the federal program, I recommend the following changes:

1) I recommend the Department delete the language in subdivision (d)(1) and replace it with, "In lieu of requiring an owner or operator of a premise solely described in subparagraphs (E) and (F) of subdivision (a)(15) of this section to obtain a Title V permit, the Commissioner may, by permit or order, limit potential emissions from such premise to less than the following amounts:" (See Exhibit A, subdivision (d)(1)) This clarifies that only the owners and operators of sources described in Exhibit A, subparagraphs (a)(15)(E) and (F) will be able to avail themselves of this opportunity. Otherwise the Department would not be meeting the Title V program requirements.

2) I recommend the Department put subparagraph (d)(1)(A) at the end of the other subparagraphs in this subdivision and re-letter the subparagraphs accordingly.

3) I recommend the Department take some of the contents of (d)(4) and divide such information into subparagraphs to make the language more clear. (See language in Exhibit A, subdivision (d)(2) and subparagraphs (d)(2)(B), (D) and (E).) In addition, I recommend the Department delete the requirement

which was found in subdivision (d)(4) which states "record no less than semi-annually purchase records, production rate, ratios of materials used and total quantity of materials used" and replace it with language as in Exhibit A, subparagraph (d)(2)(C) because it is necessary that records be indicative of monthly parameters for this subsection to obtain federal approval.

4) I recommend the Department include in the regulation the following language as provided in Exhibit A, subdivision (d)(2):

> - The permit or order shall require the owner or operator of a subject premise to: (See language in Exhibit A, subdivision (d)(2)) to meet minimum federal requirements not otherwise addressed in supporting documentation to be submitted to the Administrator;
>
> - limit potential emissions at such premise to less than the amounts specified in the subparagraphs (A) through (D), inclusive, of subdivision (d)(1) of this subsection; (See language in Exhibit A, subparagraph (d)(2)(A)) to meet minimum federal requirements;
>
> - for each emission unit at such premise, maintain records indicating, for every month, throughput, hours of operation, and capacity; to meet minimum federal requirements (See language in Exhibit A, subparagraph (d)(2)(C)); and
>
> - 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 emissions to be allowed are quantified; (See language in Exhibit A, subparagraph (d)(2)(F)) to meet minimum federal requirements.

This will clarify what the minimum requirements are and the framework for such requirements.

5) I recommend the Department add new subdivisions which cover the procedural requirements to obtain a federally enforceable limitation on potential to emit because the Commissioner is not precluded from developing a program for federally enforceable state operating permits which limit emissions. To effectuate such program, the Department must include the language as provided in Exhibit A, subdivisions (d)(3) and (4).

6) I recommend the Department add a new subdivision which states, "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." This will ensure that compliance with all federally enforceable requirements is not compromised while accommodating the Department's willingness to issue such federally enforceable limitations on emissions. (See Exhibit A, subdivision (d)(5))

7) I recommend the Department add language which states, "The Commissioner shall provide the Administrator with a copy of any general permit issued pursuant to this subsection." (See Exhibit A, subdivision (d)(6)). Such language is necessary to meet minimum federal requirements for this subsection.

8) I recommend the Department revise subdivision (d)(5) to ensure that sources are aware of fee requirements pursuant to section 22a-174-26 of the RCSA. (See language in Exhibit A, subdivision (d)(7))

9) I recommend the Department add a new subdivision which excludes sources subject to a standard or requirement pursuant to 40 CFR Parts 72-78, inclusive, from obtaining a general permit pursuant to this subsection. (See language in Exhibit A, subdivision (d)(8)) This will ensure the acid rain provisions of 40 CFR Parts 72-78, inclusive, are complied with by all subject sources. In addition, including such language allows the Department to meet minimum Title V program requirements.

MACT and Acid Rain Requirements

The following language was presented at the October 28, 1994 hearing for comment:

(e) General Requirements.

(e)(1) The owner or operator of any Title V source shall operate such source in accordance with all applicable emissions standards, standards of performance and any other requirements which the Administrator has delegated the Commissioner and which delegation the Commissioner has accepted, including:

(A) 40 CFR Part 60, Standards of Performance for New

Stationary Sources;

(B) 40 CFR Part 61, National Emissions Standards for Hazardous Air Pollutants;

(C) 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories;

(e)(2) The Commissioner may determine MACT for an individual Title V source on a case-by-case basis. The Commissioner shall determine such MACT in accordance with the requirements of Section 112(d)(3)of the Act, and may consider the cost of achieving such emission reductions, and any health and environment impacts and energy requirements. In no event shall such MACT determination result in emissions of any hazardous air pollutant which would exceed the emissions allowed by an applicable standard under 40 CFR Part 60, Part 61, and Part 63. The owner or operator at such source shall operate such source in accordance with such MACT standard.

Comments Regarding subsection (e)
General Requirements

22a-174-33(e) Two commentors suggested the Department should incorporate by reference EPA's acid rain provisions in Section 22a-174-33(e) since Connecticut's regulations cannot stand alone and meet the federal acid rain requirements. (41 and 5) One such commentor suggested, in accordance with the August 9, 1993 guidance, that 40 CFR Part 72 should be incorporated by reference using the following, or similar, language:

> "The CT Department hereby adopts and incorporates by reference the provisions of 40 CFR Part 72, as in effect on [date of this action], for purposes of implementing an acid rain program that meets the requirements of Title IV of the CAA. The term "permitting authority" shall mean the Department and the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.
>
> If the provisions or requirements of 40 CFR Part 72 conflict with or are not included in the title V operating permit regulations at [cite state regulations], the Part 72 provisions and requirements shall apply and take precedence."(41)

Response: I recommend the Department incorporate EPA's acid rain requirements. I further recommend the acid rain requirements take precedence where they differ from Title V requirements because this is necessary to meet the minimum

Title V program requirements. (See language in Exhibit A, subdivision (e)(3)) However, the Department need not mimic the language above to incorporate acid rain requirements into this section.

22a-174-33(e) and 22a-174-33(e)(2) One commentor recommended case-by-case MACT only occur when EPA has failed to promulgate a standard and only 18 months after EPA fails to meet the deadline. (26) Two commentors suggested language for this section and stated the Department should not require case-by-case MACT for at least 18 months after EPA should have promulgated a standard. (13 and 29)
Response: First, I recommend the Department provide that the Commissioner will determine MACT for a source category in the event that EPA does not do so within eighteen months of the federal deadline. (See language in Exhibit A, subdivision (e)(1)) I do not recommend that the Commissioner be required to determine such MACT prior to the EPA's eighteen month period because this would create the possibility of having two different MACT standards developed for the same source category. However, this does not mean I recommend precluding the Commissioner from requiring notifications or application from subject sources prior to the expiration of the eighteen months in the event a MACT standard has not yet been promulgated by the Administrator. The Department will need time to develop the MACT and having a subject source at hand will enhance the ability of the Department to develop a reasonable MACT. (See language in Exhibit A, subdivision (f)(2) and subparagraph (r)(1)(C)) Both the notification by subject sources to the Commissioner prior to the expiration of the 18 months after EPA should have promulgated a standard and the ability of the Department to require, or the source to request, a modification pursuant to subparagraph (r)(1)(C), give the Department ample time to create a MACT standard for the subject source category and provide the subject source with an opportunity to propose such a MACT standard.

22a-174-33(e) Two commentors stated this subsection defeats the purpose of the CAA to have the Title V permit be a comprehensive statement of the sources's obligations under the CAA. (13) In addition, one commentor said this section should be deleted. (29)
Response: I do not recommend this subsection be deleted. This subsection should be maintained in order to provide a means for incorporating important elements into the Title V program such as the MACT requirements and the Acid Rain requirements as they are promulgated.

22a-174-33(e)(1) One commentor stated this subdivision requires a Title V source to comply with regulations that "the

Administrator has delegated the Commissioner and which delegation the Commissioner has accepted." This commentor believes that, as written, this provision appears to imply that Title V sources do not have to comply with regulations not delegated to the Commissioner, regulations which are not implemented pursuant to any delegation mechanism, or with regulations which are delegated to the Commissioner but which the Commissioner has "not accepted." This commentor stated that this would allow a Title V source to assert a legal defense in the context of an enforcement action, where the Title V permit did not contain the requirement being enforced and the requirement is not one of those explicitly enumerated in 22a-174-33(e)(1).

This commentor further stated that by enumerating only a few specific requirements, this commentor believes the provision might inadvertently exempt other regulations not contained in those specific requirements. This commentor uses as an example any applicable requirement that is part of Connecticut's SIP because the SIP is not a delegated program. Another example used by this commentor is Section 22a-174-33(e)(1)(E) of this provision which references acid rain requirements in 40 CFR Parts 72 through 78. This commentor stated such requirements are not implemented by the States through a delegation mechanism. Rather, they should be incorporated into State law by reference. Thus, these requirements are inappropriately listed in this section which references regulations that have been delegated. This commentor pointed out that if such requirement were not in a Title V permit for some reason, a source might argue that Section 22a-174-33(e)(1) implicitly exempts the source from compliance with such requirement.

If the Department's intent here is to address the problem of future promulgated regulations and the fact that the State of Connecticut as a matter of state law cannot reference regulations to be promulgated in the future, then this commentor suggested the provision be amended to refer to all CAA applicable requirements, not just delegated requirements. This would more precisely address the State's concern while avoiding the problems noted in this comment. (41)

Response: I recommend the Department include what is necessary to incorporate by reference federal MACT requirements, as provided in Exhibit A, subdivision (e)(1). This is a program which is being delegated to the Department. I do not recommend including other requirements beyond MACT and acid rain provisions in this subsection because as the commentor stated, it could be misconstrued to implicitly exempt the source from compliance with other applicable requirements. Also, I recommend the Department move the contents of subdivision (e)(1) to subsection (a), definitions, and, as detailed above in the definitions subsection, I

recommend the Department create a definition for "applicable requirements" to improve the clarity of the regulation. (See language in Exhibit A, subdivision (a)(5))

Where it is not possible to incorporate future requirements by reference, the Department should use its best efforts, subject to all statutory requirements, to amend this section in order to comply with the newly promulgated requirements.

22a-174-33(e)(1)(E) One commentor stated the need for the Department to expand and incorporate Acid Rain provisions, noting where the Acid Rain provisions override the Title V provisions. (5)

Response: I recommend the Department incorporate the Acid Rain provisions and note where the Acid Rain provisions differ from the Title V provisions such that they shall apply. This will allow the Department to meet the necessary minimum Title V program requirements. (See language in Exhibit A, subdivision (e)(3))

22a-174-33(e)(2) One commentor suggested the word individual should be removed because they are standards for categories. (36)

Response: I recommend the Department remove the word "individual" in the context of describing the Commissioner's ability to determine MACT for a particular source category because the MACT is for a category, not an individual subject source, even if there happens to be only one in the state of Connecticut. (See language in Exhibit A, subdivision (e)(1))

22a-174-33(e)(2) One commentor pointed out this subsection discusses case-by-case MACT. However, this section references 40 CFR Part 60, 61 and 63. Case-by-case MACT only applies to 40 CFR Part 63 and, in particular, Sections 112(g) and 112(j). Such commentor suggested the Department remove the references to 40 CFR Part 60 and 61.

Response: I recommend the Department remove the references to 40 CFR Part 60 and 61 for the reason stated by this commentor. In addition, I recommend the Department remove the reference to case-by-case MACT and simply provide that the Commissioner will determine MACT in the event the Administrator fails to do so within the eighteen month period following the federal deadline. "Case-by-case MACT" mistakenly implies that a MACT standard, as determined by the Commissioner would not apply to an entire source category. (See language in Exhibit A, subdivision (e)(1))

22a-174-33(e)(2) One commentor stated the Department should change the word "may" to "shall" in the first sentence of this subsection.(41)

Response: I recommend the Department change the word "may" to "shall," as this commentor suggests, to meet minimum federal requirements with respect to the Commissioner developing MACTs when the Administrator fails to do so. (See language in Exhibit A, subdivision (e)(1), first sentence)

In addition, I recommend the following revisions to this regulation in order to improve clarity and, where necessary, meet the federal requirements:

1) I recommend the Department change the name of this subsection to "MACT and Acid Rain Requirements." This will make it clear as to specifically what requirements are addressed by this subsection.

2) I recommend the Department revise subdivision (e)(2) to make such language clearer as to the Department's intention. (See language in Exhibit A, subdivision (e)(1))

3) I recommend the Department add a subdivision requiring the owner or operator of the subject source to be in compliance with the MACT standard as it applies to such source. This addition is necessary for the Department to meet minimum federal requirements which state that a source, within a reasonable timeframe, meets the MACT requirements as determined by the Commissioner. (See language in Exhibit A, subdivision (e)(2))

Timetable For Submitting An Application For A Title V Permit

The following language was presented at the October 28, 1994 hearing for comment:

(f) Timeframes for Submitting Applications.

(f)(1) The owner or operator of a Title V source shall submit an application for a Title V operating permit to the Department by the date specified within the notice or within ninety (90) days of receipt of notice from the Department that such application to the Department is required, whichever is later. If the owner or operator of an existing Title V source does not receive such notice on or before January 1, 1996, such owner or operator shall apply for such permit no later than April 1, 1996.

(f)(2) Any person who must obtain permit to construct pursuant to subparagraphs (B) or (D) of Section 22a-174-3 of the Regulations of Connecticut State Agencies shall apply for a Title V operating permit at the same time such owner or

operator applies for such permit to construct.

(f)(3) Notwithstanding subdivision (f)(1) of this section, the owner or operator of any Title V source which is subject to this section solely pursuant to subparagraph (B) of subdivision (c)(1) of this section shall submit a Title V operating permit application to the Department by the deadline in an applicable MACT standard promulgated by the Administrator. If no such MACT standard has been promulgated, such owner or operator shall apply for such permit by the deadline for such source category published in the Federal Register, Vol. 58 No.231, December 3, 1993.

(f)(4) Notwithstanding subdivision (f)(3) of this section, the owner or operator of any Title V source which has a Title V operating permit which will expire within eighteen (18) months of an applicable deadline for such source category published in Federal Register, Vol. 58 No. 231, December 3, 1993, is not required to renew such permit until such permit expires.

(f)(5) A copy of any such application submitted to the Commissioner pursuant to this subsection shall be submitted to the Administrator through Region I of the U. S. Environmental Protection Agency.

Comments Regarding subsection
(f) Timeframes For Submitting Applications

22a-174-33(f) Two commentors stated the Department must include completeness determination language. (5 and 13)
Response: I recommend the Department adopt the completeness determination concept provided in 40 CFR Part 70 but refer to it as a sufficiency determination. Sufficiency of an application is identified in the Department's Rules of Practice, Section 22a-3a-5(a)(1) and (a)(3) of the RCSA. The term "sufficiency" is equivalent to the term "completeness determination in 40 CFR Part 70, however using "sufficiency" will ensure consistency within the Department's regulations. (See language in Exhibit A, subdivisions (h)(1) and (h)(4)) See General Response section 70.5 (a)(2) for a more detailed explanation.

22a-174-33(f) One commentor stated this subsection does not specify a timeframe within which the Department will act on permit applications, including renewals and modifications. See 40 CFR Parts 70.5(a)(1)(iii) and (iv) and 70.7. This commentor believes such timeframes are essential so that permit applicants and other state citizens have the right to

seek judicial review of the State's failure to act in a timely manner as required by 40 CFR Part 70. For permit applications, renewals, and changes at a source which are processed under 40 CFR Part 70's "significant permit modification procedures," this commentor suggested the Department should act within eighteen (18) months of receiving a complete application. This commentor believes such provisions should be included in the Department's rule, including a provision specifying the right to judicial review upon the Department's failure to act in a timely manner. See 40 CFR §70.7(a)(2). (41)
Response: I recommend the Department include timeframes within which the Department will act on permit applications. (See language in Exhibit A, subdivisions (h)(1), (h)(4) and (n)(4)) It should be noted that the term application would be appropriate when referring to applications for renewals. Timeframes for processing modifications should be handled in the modification subsection. (See generally, language in Exhibit A, subdivisions (r)(1) and (r)(8) through (r)(13))

22a-174-33(f) One commentor noted that the CAA allows more time than the Department allows in the event that EPA fails to promulgate a particular MACT standard. (7)
Response: I recommend the Department allow the Commissioner to have some lead time prior to being required to promulgate such MACT. (See language in Exhibit A, subdivision (e)(1)) Under these circumstances I recommend the Department give an owner or operator of a Title V source up to 12 months to submit an application from the Administrator's projected promulgation date if the Administrator fails to promulgate by that date. (See language in Exhibit A, subdivision (f)(2)) With respect to an existing Title V source for which the Commissioner can require a modification to incorporate a MACT, pursuant to Exhibit A, subparagraph (r)(1)(C) I recommend the Department have such adequate time as needed to ensure the development of a MACT with opportunity for input from regulated sources.

22a-174-33(f) One commentor was supportive of the Department's notification regarding duty to apply and encourages compliance workshops.(24)
Response: Language in Exhibit A, subdivisions (f)(1), (2) and (3) provides the certainty of notification in certain circumstances. I recommend, to the extent allowed by statutory requirements, that the Department use methods of outreach to contact industries to which Title V requirements pertain well in advance of the deadline for application in addition to providing the notification. The Department's Small Business Ombudsman has been, and continues to be, a resource for all businesses in the State of Connecticut and

may be providing workshops regarding this program.

22a-174-33(f) One commentor feels that, as the proposed regulation is written, the Department can deem insufficient an application that is lacking even a minor piece of information. This commentor suggested Connecticut adopt the federal approach which provides that if the Department does not inform the applicant within sixty (60) days that its application is incomplete, the application will be deemed complete. (26)
Response: I recommend the Department revise the regulation to include provisions for application sufficiency determination timeframes. (See generally, Exhibit A, subsection (h)) Under this new section I recommend the Department include language similar to that suggested above, in order to address this commentor's concern. (See language in Exhibit A, subdivision (h)(1))

22a-174-33(f) One commentor suggested the Department include a permit shield. (7) One commentor suggested a permit shield be included in the regulation, indicating that compliance with the terms of the permit shall be deemed to be in compliance. (29)
Response: I recommend the Department include a permit shield in the subsection following the standards for granting a permits subsection. (See generally, language in Exhibit A, subsection (k)) Such language will provide the regulated community with certainty with respect to applicable requirements addressed in the subject permit.

22a-174-33(f) One commentor requests a permit shield be added to this section, but then goes on to describe an application shield.(36)
Response: I recommend the Department include an application shield because, if timely and sufficient application was made, there is little else a source can do to encourage the Department to take final action. Therefore, barring any extenuating circumstances, there is no reason to punish the owners and operators of such sources for failing to have a Title V permit. (See language in Exhibit A, subdivision (h)(4)) However, I recommend the Department provide the application shield in a new subsection entitled "Application Processing." (See generally, Exhibit A, subsection (h))

22a-174-33(f) Two commentors suggested adding language to this subsection for an application shield. In accordance with the suggested language, the shield would cease to exist in the event that the applicant fails to submit, by a deadline specified in writing by the Commissioner, any additional information identified as being reasonably required. (13 and 29)

Response: In order to meet federal requirements, I recommend that an application shield, subject to a condition similar to that suggested by the commentors, be included in the regulation in the subsection following the application subsection. (See language in Exhibit A, subdivision (h)(4))

Add to 22a-174-33(f) Two commentors suggested language for a permit renewal shield to keep an old permit from expiring in the event a renewal application was submitted on a timely basis, i.e., no earlier than eighteen (18) months before expiration and no sooner than six (6) months prior to expiration. (13 and 29)
Response: I recommend the Department require renewal no later than 6 months prior to expiration of the existing permit as provided in Exhibit A, subdivision (f)(5) in order to ensure the Department has adequate time to review new applications and determine whether existing permit terms and conditions should be extended. I do not recommend the Department adopt additional renewal shield language because the Department has existing authority in Section 4-182(b) of the General Statutes providing a renewal shield, whereby the existing permit will not expire until the application for renewal has been finally determined by the agency. In addition I recommend the Department provide a shield for an owner or operator of a Title V source who submits a timely and sufficient application whereby such owner or operator will not be liable for failure to previously have obtained such a permit. (See language in Exhibit A, subdivision (h)(4)) This language would apply regardless of whether or not the source had a Title V permit which was going to expire.

22a-174-33(f)(1) Two commentors suggested tying together program initiation with EPA Region I approval. (1 and 13) One commentor suggested that, by mandating dates, the Department may be requiring industry to comply with a federal and state program.(38) One commentor stated the Department will be reviewing applications for a program that EPA has not approved.(43) One commentor stated the permit application requirements should be triggered within the first twelve months after EPA approves the program. (29)
Response: I recommend the Department require the submission of applications to the Department within the first nine months after EPA approves the program, giving the Department an opportunity to identify tardy sources in the remaining 3 months. (See language in Exhibit A, subdivisions (a)(9) and (f)(1)) Linking the timeframe for application submittal to federal approval will: (1) help avoid the possibility of having state and federal Title V program running simultaneously in the event there is no federal approval of the state program; and (2) provide ramp-up time, prior to

federal approval, to train staff and prepare synthetic minor permits. However, the Department had to provide some certainty, and, in the event the program does obtain federal approval, the implementation date will be June 1, 1997.

22a-174-33(f)(1) One commentor suggested the Department establish a schedule to phase-in the submission of permit applications and reiterated the Department should use EPA approval as a trigger date. (13)
Response: The schedule for phase-in of the permit applications should be made available in the transition plan and is not a substantive requirement necessary to provide in the regulation for the regulated community. It is sufficient to require all applications within the first nine (9) months of federal approval of the program. (See language in Exhibit A, subsection (f), for more detail)

22a-174-33(f)(1) One commentor recommended the application should not be triggered until 180 days after EPA approves the program. (27)
Response: I recommend the Department require applications to be submitted within 9 months after federal approval in order to ensure the Department meets minimum federal requirements. (See language in Exhibit A, subdivision (f)(1), last sentence) To wait 180 days after EPA begins requiring applications might jeopardize the Department's ability to ensure all complete applications be submitted within the first 12 months as federally required.

22a-174-33(f)(1) One commentor stated this subsection does not appear to address existing sources which become Title V sources after April 1, 1996, by virtue of, for example, newly promulgated lower thresholds for sources of HAPs. This commentor questions when would such a source be required to apply for a permit under Connecticut's rule? 40 CFR Part 70 requires a source to apply for a permit within 12 months of becoming subject to a Title V program unless specifically stated otherwise in the state regulations. Therefore, this commentor recommends the Department clarify in Section 22a-174-33(f) to address this situation. (41)
Response: I recommend the Department modify this subdivision to require sources which become Title V sources after the implementation date of this section to apply for a permit within twelve (12) months of becoming subject to the Title V program. (See language in Exhibit A, subdivision (f)(2)) April 1, 1996 will not be used because it may not be the implementation date. (See language in Exhibit A, subdivision (a)(9))

22a-174-33(f)(2) One commentor pointed out this subdivision

should be corrected to say the source will obtain a Title V permit or modification of the Title V permit. (27)
Response: I do not recommend the Department add the suggested language to this subdivision because someone obtaining a modification is still obtaining a Title V permit. However, I do recommend the Department address modification timeframes in the modification subsection as provided in Exhibit A, subdivision (r)(1).

22a-174-33(f)(2) One commentor stated that 70.5(a)(1)(ii) provides the following useful language: any person who must obtain a permit to construct shall apply ". . . within twelve months of EPA's approval of these regulations". (29 and 13)
Response: I recommend the Department adopt appropriate timeframes for new Title V Sources who must apply for permits to construct in order to meet federal requirements. (See language in Exhibit A, subdivision (f)(4))

22a-174-33(f)(2) One commentor indicated this subdivision provides that an owner or operator should apply for any required preconstruction permits at the same time as an application for a Title V permit. This commentor suggested Connecticut's regulation should be amended to ensure that where an existing Title V permit would prohibit the construction or change in operation at the source, the Title V permit should be revised and reissued prior to commencing operation of the construction or change. See 40 CFR §70.5(a)(ii). (41)
Response: I recommend the Department provide timeframes for applying for a Title V permit when a subject source is required to obtain a permit to construct. (See language in Exhibit A, subdivision (f)(4)) In addition, I recommend the modification subsection be amended, in response to this comment, requiring incorporation of requirements pursuant to subsections (k) and (l) of Section 22a-174-3 of the RCSA, as a type of change necessitating a significant modification as provided in Exhibit A, subparagraphs (r)(1)(D). If not specifically picked up by (r)(1)(D), any modification at a Title V source (including construction) requiring a change because of a need to incorporate an applicable requirement would be picked up as provided for in Exhibit A, subparagraphs (r)(1)(A) or (r)(1)(F). These changes should meet minimum federal requirements by requiring Title V permits to be reissued prior to commencing a significant modification relating to commencing construction or operation. (See language in Exhibit A, subdivision (r)(1))

22a-174-33(f)(3) Two commentors recommended that applications which include a suggested MACT for sources subject to MACT

should be due eighteen (18) months after EPA has failed to establish a MACT standard. According to these commentors, this would ensure the Department has enough time and access to information to complete a case-by-case MACT determination. (7 and 26) Another commentor suggested adding 18-month extension language to this subdivision. (13) One commentor suggested adopting the timetable for compliance with MACT in accordance with the federal requirements of Section 112(j) of the CAA. (45)

Response: I recommend adopting a timetable for compliance with MACT which is more stringent than federally required, to allow for adequate Department review and consideration of subject sources' MACT proposals. (See language in Exhibit A, subdivisions (e)(1) and (f)(2) and subparagraph (r)(1)(C))

22a-174-33(f)(3) and (f)(4) One commentor noted that these subdivisions refer to the source category schedule in the December 3, 1993 Federal Register. This commentor stated since the schedule of source categories may change based upon EPA's revisions, Connecticut may have to periodically revise their regulation to reflect the most recent schedule of categories published in the Federal Register. (41)

Response: I recommend the Department use its best efforts, subject to all statutory requirements, to amend this section to comply with all newly promulgated regulations.

22a-174-33(f)(3) One commentor noted this subdivision states that a Title V source subject to Title V solely because of Section 22a-174-33(c)(1)(B) should submit a Title V permit application by the deadline for the source category established in the December 3, 1993 Federal Register. While this language does not conflict with federal requirements, this commentor points out, this section should be removed if Connecticut decides not to permit area sources when EPA does not require permits. (41)

Response: I recommend the Department make it clear in the applicability subsection which categories of sources are exempt by the standard and make it clear in the timeframes subsection that those who have been deferred do not have to apply until required by the applicable requirements through notification by the Commissioner in order to implement such applicable requirement as provided in Exhibit A, subdivision (f)(3). (See language in Exhibit A, subparagraph (c)(2)(E) and subdivisions (f)(2) and (f)(3))

22a-174-33(f)(4) One commentor stated they are unclear about what the Department's intent is in this subdivision. Such commentor stated it appears the Department wants to reopen permits to incorporate a MACT standard unless that permit has a remaining life of less than 18 months. If this is the

Department's intent, this subdivision should be clarified as follows:

". . . operating permit which will expire after eighteen (18) months . . .."

This commentor also pointed out that Connecticut already addresses this incorporation issue in Section 22a-174-33(l)(1)(C). Therefore, this commentor recommends that Section 22a-174-33(f)(4) be removed from the regulation. (41)
Response: I do recommend the Department remove the timeframe language from Section 22a-174-33(f)(4). However, I recommend the language added be more stringent than federally required, with respect to requiring applications, to allow for adequate Department review and consideration of subject sources' MACT proposals. This can be seen in Exhibit A, subdivisions (e)(1) and (2), (f)(2) and (5) and subparagraph (r)(1)(C), which provide that sources with more than 3 years until the permit expires to have the subject permit modified. Additionally, if less than 3 years remain, then the permittee must apply before 6 months are all that remain before the permit expires. (See language in Exhibit A, subdivisions (e)(1) and (2), (f)(2) and (5) and subparagraph (r)(1)(C))

22a-174-33(f)(3) One commentor indicated the regulation should contain EPA's address and a specific time when a copy of the permit application should be sent to EPA. (2)
Response: I do not recommend the Department incorporate EPA's address into the regulation because it is not a substantive requirement to be applied to the regulated community. Rather, it can be part of the application package. I do recommend that Section 22a-174-33(g) be clarified to require an application be sent to EPA upon submission of an application to the Department. (See language in Exhibit A, subdivision (h)(5))

I recommend the Department make the following revisions to this subsection in order to clarify the Department's intent and, where necessary, incorporate federal requirements:

1) I recommend the Department delete the language in subdivision (f)(1) and replace it with the language in Exhibit A, subdivision (f)(1) to provide as much certainty, as well as flexibility, as possible.

2) I recommend the Department add a subdivision covering cases where the owner or operator of the Title V source becomes subject to this section after the implementation date of this section in order to provide certainty for the regulated community and to meet minimum requirements for the

Title V program. (See language in Exhibit A, subdivision (f)(2))

3) I recommend the Department add a timeframe subdivision covering sources subject to this section solely pursuant to a standard in subparagraph (a)(15)(A). (See language in Exhibit A, subdivision (f)(3)) The Department should be accommodating to the extent the Administrator decides to defer a source's requirement to obtain a Title V permit. However, the Department must, at the same time, meet minimum requirements and the possibility of a change, such language must be drafted to require submission of an application within 90 day's notice from the Commissioner.

4) I recommend the Department delete the language of subdivision (f)(2) and replace it with the language in Exhibit A, subdivision (f)(4).

5) I recommend the Department add a timeframe for submitting applications for renewals in order to ensure compliance with the minimum federal requirement that a Title V source has a Title V permit. (See language in Exhibit A, subdivision (f)(5))

6) I recommend the Department add a timeframe for submitting applications for Title V sources subject to 40 CFR Parts 72-78, inclusive in order to meet federal requirements specifically to include acid rain provisions as required for approval of the Title V program. (See language in Exhibit A, subdivision (f)(6))

7) I recommend the Department delete subdivisions (f)(3) and (f)(4) because they do not clearly and adequately fulfill federal requirements.

8) I recommend the Department move the contents of (f)(5), pertaining to submitting the application to the Administrator, and place it in subdivision (h)(5). This provision more closely pertains to application processing because submission to the Administrator is a procedural requirement, not a timetable element, although such submission must be timely.

9) I recommend the Department change the name of this subsection to "Timetables For Submitting An Application For A Title V Permit".

Applications

The following language was presented at the October 28, 1994 hearing for comment:

(g) Applications.

(g)(1) The owner or operator of each Title V source shall apply for a Title V operating permit on forms provided by the Department. Such application shall not be deemed sufficient unless and until the information required under subparagraphs (A) through (E) of this subdivision and subdivisions (g)(2) and (g)(4) of this section is submitted to the Department.

(A) The application shall identify the company's legal name and address, or Title V source name and address if different from the legal company name, owner's name and agent for service, and names and telephone numbers of persons designated to answer questions pertaining to the Title V operating permit application.

(B) The application shall contain an executive summary clearly and concisely summarizing the information contained in the application as required under Section 22a-3a-5 of the Regulations of Connecticut State Agencies, the Department's Rules of Practice.

(C) The application shall contain a compliance plan pursuant to subsection (h) of this section, including information required pursuant to Public Act 94-205 Section 1. (b) and a statement certifying notification pursuant to subparagraph (j)(1)(A) of this section.

(D) The owner or operator of the Title V source may apply for more than one method of operation for such source. For each method of operation the owner or operator of the Title V source shall submit the information required in accordance with this subsection.

(E) If the applicant complies through an alternative means of compliance pursuant to section 22a-174-22 or 22a-174-32 of the Regulations of Connecticut State Agencies by order or permit or a certification as allowed by the Regulations of Connecticut State Agencies, the application shall identify and describe any and each alternative means of compliance. In addition, a copy of such order, permit or certification shall be submitted with the Title V operating permit application.

(g)(2) The owner or operator of the Title V source shall identify and describe on the Title V operating permit application the following information for each emissions unit at the Title V source:

(A) a description of all of the Title V source's processes, identified by four-digit Standard Industrial Classification code, including any method of operation identified by the applicant for each emissions unit at the Title V source;

(B) any emissions unit whose potential emissions when truncated, is greater than or equal the threshold for such

pollutant in tons per year as follows in Table 33-1:

Table 33-1

Pollutant	Tons Per Year
Total suspended particulate	2
Sulfur oxides	2
Nitrogen oxides	1
Volatile organic compounds	1
Carbon monoxide	1
Particulate matter less than 10 microns ("PM10")	1

(C) for all emissions units described in accordance with subparagraph (B) of this subdivision, the type and quantities of all potential and actual emissions, including fugitive emissions, for each pollutant for each calendar year, of regulated air pollutants;

(D) for all emissions units of hazardous air pollutants, the type and quantities of all potential and actual emissions, including fugitive emissions, for each pollutant for each calendar year, of regulated air pollutants;

(E) notwithstanding subparagraph (B) of this subdivision, if the emissions unit has a permit issued pursuant to Section 22a-174-3 of the Regulations of Connecticut State Agencies the applicant shall list such emissions unit;

(F) the application shall identify and describe the methodology used to quantify the emissions in subparagraphs (C) and (D) of this subdivision, the emission rates of regulated air pollutants in tons per year and the calculations used to determine applicability pursuant to subsection (c) of this section;

(G) the types of fuels, including the heat content of fuel, and the amount of each fuel to be used;

(H) all materials used, the amount of each material expected to be used, production rate and the hours of operation;

(I) all air pollution control equipment and compliance monitoring equipment to quantify emissions or to determine compliance;

(J) any operational limitations or work practice

standards which affect emissions, for all regulated pollutants;

(K) any applicable MACT source category as published in the Federal Register, Vol. 58, No. 231 Friday, December 3, 1993, and applicable requirements for each emissions unit, including those applicable requirements which have future effective compliance dates;

(L) any applicable test method for determining compliance with each applicable requirement listed pursuant to subparagraph (K) of this subdivision; and

(M) Any other information required by such applicable requirement listed pursuant to subparagraph (K) of this subdivision, including information related to good engineering practices for stack height.

(g)(3) Notwithstanding subdivisions (g)(1) and (g)(2) of this section, the owner or operator of the Title V source shall not be required to list the following items or activities specified in subparagraphs (A) and (B) of this subdivision.

(A) Any of the following item or activities are not the principle function of such Title V source:

(i) office equipment including but not limited to copiers, facsimile and communication equipment and computer equipment;

(ii) grills, ovens, stoves, refrigerators and other restaurant style cooking and food preparation equipment;

(iii) lavatory vents, hand dryers, noncommercial clothes dryer, not including dry cleaning machinery;

(iv) Garbage compactors and waste barrels;

(v) Aerosol spray cans; and

(B) Laboratory hoods used solely for the purpose of experimental study or teaching of any science, or testing and analysis of drugs, chemicals, chemical compounds, or other substances, or similar activities, provided that the containers used for reactions, transfers, and other handling of substances under the laboratory hood are designed to be easily and safely manipulated by one person. If a stationary source

manufactures or produces products for profit in any quantity using such laboratory hood, it shall be listed pursuant to subdivision (g)(2) of this section.

(g)(4) Notwithstanding subdivision (g)(3) of this section, the owner or operator shall include in the application all emissions from activities or items unlisted pursuant to subdivision (g)(3) of this section.

(g)(5) If while processing an application that has been determined or deemed sufficient, the Commissioner determines that additional information is necessary to evaluate or take final action on that application, the applicant shall submit such information in writing within forty-five (45) days of notification by the Commissioner that such information is necessary.

(g)(6) Any applicant shall submit additional information prior to release of the Tentative Determination by the Commissioner, to address any requirements that become applicable to the Title V source or upon becoming aware of any incorrect submittal, with an explanation for such action and a certification pursuant to subdivision (b)(4) of this section.

(g)(7) Any application for renewal shall include all of the information required pursuant to this subsection and any changes from the original application.

Comments Regarding subsection (g) Applications

22a-174-33(g) Several commentors noted the lack of an application shield and recommended the inclusion of an application shield in the regulations. (1,2,8,9, 2,7, 8, 15, 5, 17, 20, 21, 23, 37, 38, and 44) One commentor suggested the Department should include a provision in this regulations which states that upon submittal of a timely and complete permit application, a source's failure to have a Title V permit is not a violation of Department's Title V requirements until the Department takes final action on the permit application. See 40 CFR §70.7(b). (41) Many of these commentors also suggested inclusion of a renewal shield in the regulations. In addition, two commentors provided language to add to subsection (f) on this issue. (13 and 29)
Response: I recommend the Department adopt application shield language in a section concerning application processing following the application subsection. (See language in Exhibit A, subdivision (h)(4)) In addition, the Department has existing authority in Section 4-182(b) of the General Statutes providing a renewal shield whereby when the applicant makes a timely and sufficient application for renewal of a Title V

permit, such existing Title V permit shall not expire until the Commissioner has issued a final decision on whether to deny or issue such renewed Title V permit.

22a-174-33(g) One commentor suggested, in addition to including the concept of an application shield, the regulation must incorporate a time constraint of sixty (60) days on the Department to determine or fail to determine completeness of applications, after which the application shield will be triggered. (8) Some commentors noted the lack of the completeness determination language.(8 and 15) One commentor suggested the following language: "In the event that no notice is provided to the source within sixty (60) days after receipt of the application by the permitting authority, the application shall be deemed complete." (13) Similar language was suggested by another commentor. (29) Two commentors indicated that an application should be deemed complete unless the Department explicitly rejects an application within 60 days. (15 and 26) One commentor stated the Department should include a provision in its regulations which provides that the Department will notify an applicant of a completeness determination within 60 days of receipt of an application, and that if the Department has not acted within the 60 days, the application is deemed complete. See 40 CFR §§70.7(a)(4) and 70.5(a)(2). (41)

Response: I recommend the Department include a timeframe for determining sufficiency within 60 days in order to provide the regulated community with certainty with respect to the Department's procedures once an application has been submitted. (See language in Exhibit A, subdivision (h)(1)) In addition, I agree the application shield should be applied to those owners and operators of Title V sources who have a sufficient application which will provide the regulated community some certainty regarding their compliance status with respect to obtaining a Title V permit. (See language in Exhibit A, subdivision (h)(4))

22a-174-33(g) One commentor suggested the Department allow for a means to accept applications electronically. (2)

Response: I recommend the Department, to the extent practicable and allowed by statutory requirements, explore the possible future use of electronic filing, as it will allow for increased efficiency. However, the Department is not currently prepared to accept electronic filing of Title V permit applications.

22a-174-33(g) One commentor requested the Department reinsert the term "alternative operating scenario" into this subsection.(29)

Response: I recommend the Department use this phrase to

enable the owner and operator of Title V sources to describe various relevant modes of operation. (See generally, Exhibit A, subdivision (a)(4) and subsection (g))

22a-174-33(g) One commentor indicated that in various portions of 40 CFR Part 70 where Title V and acid rain regulations conflict, the acid rain regulations shall take precedent. This commentor further stated that once the Department incorporates the acid rain regulations, the Department will also need to make some revisions to this rule to address the areas where acid rain regulations override Title V requirements. For example, stated this commentor, 40 CFR §§70.5(a)(1)(iv) and 70.5(c)(8)(v) will need to be addressed in Section 22a-174-33(g) for permit applications. (41)
Response: I do recommend the Department incorporate acid rain requirements by reference and, where required, allow the acid rain regulations to take precedence over other, conflicting, federal requirements as federally required. (See language in Exhibit A, subdivisions (b)(5), (d)(8), (e)(3), (f)(6), (i)(5), (j)(1)(G)(iii), (j)(1)(H)(ii), (k)(3)(C), (l)(6), (n)(4), (r)(4), (r)(6) and (r)(8)(B))

22a-174-33(g) One commentor indicated that the Connecticut Attorney General's Opinion states that Public Act 93-428 "empowers the Commissioner to authorize and enforce operation under a permit beyond its expiration date if the permittee has filed a timely renewal application . . .." This commentor stated that unless Connecticut's Attorney General views such authority as self-implementing, i.e., is effective without specific regulatory provisions, the Department should amend its regulation to cover the following situation. If a timely and complete application for a permit renewal is submitted but the Department has failed to either issue or deny the renewal permit before the end of the previous permit, then the permit shall not expire and all terms and conditions shall remain in effect and hence are enforceable until the renewal permit has been issued or denied. See 40 CFR §70.4(b)(10). (41)
Response: I do not recommend the Department adopt additional renewal shield language because the Department has existing authority in Section 4-182(b) of the General Statutes providing a renewal shield, whereby the existing permit will not expire until the application for renewal has been finally determined by the agency. In addition I recommend the Department provide a shield for an owner or operator of a Title V source who submits a timely and sufficient application whereby such owner or operator will not be liable for failure to previously have obtained such permit. (See language in Exhibit A, subdivision (h)(4))

22a-174-33(g) One commentor indicated the Department should

require in Section 22a-174-33(g) that a source certify compliance with all applicable requirements in its application. See 40 CFR §70.(c)(9)(I) through (iii). (41)
Response: I do not recommend the Department require a source to certify compliance with all applicable requirements in its application because this is neither realistic nor attainable. Rather, I do recommend the Department require a compliance plan as part of the application wherein the source shall certify compliance with those applicable requirements with which the source is compliant. In addition, the source shall include a schedule for complying with each applicable requirement not currently being met. (See language in Exhibit A, subdivisions (i)(2), (i)(3) and (i)(4) and subparagraph (g)(1)(D))

22a-174-33(g) One commentor indicated the Department may want to add to its regulations a provision which deals with confidential information submitted by the applicant. This commentor suggested adding the following language to this subsection:

> "For information claimed to be confidential, the permittee may forward these records directly to the EPA along with a claim of confidentiality." (41)

Response: I do not recommend the Department adopt this language. The State of Connecticut has statutory requirements dictating when and what information may be treated in a confidential manner. This does not preclude the owners or operators of a Title V source from sending confidential information directly to the EPA. Any information submitted to the Department will be treated in accordance with the General Statutes.

22a-174-33(g) One commentor indicated the Department must include timeframes within which a permit will be issued. (5)
Response: I recommend the Department adopt timeframes within which final action will be taken to provide the regulated community with certainty and the knowledge that a response will be given with respect to their application for a federally enforceable permit. (See language in Exhibit A, subdivision (j)(1))

22a-174-33(g) One commentor indicated the Department should include a provision in its regulations ensuring that priority is given to taking actions on applications for construction and modification under Department's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) rules. See 40 CFR §70.7(a)(3). (41)
Response: I recommend the Department, as part of the Program Description for implementation of the Title V program, use its

best efforts, subject to all statutory requirements, to ensure that applications for construction and modification under the Department's PSD and Nonattainment NSR rules are given high priority status. However, I do not recommend this become part of this section because it is not necessary as it is not a substantive requirement for the regulated community. Rather, prioritization is governed through internal management of the agency and furthermore, priority and resources may vary from time to time depending upon specific circumstances.

22a-174-33(g) One commentor indicated the Department should include a provision in its regulations which states that expiration of a permit terminates the source's right to operate unless a timely and complete renewal application has been filed. See 40 CFR §70.7(c)(1)(ii). (41)
Response: I recommend the Department adopt similar language in order to meet minimum federal requirements for a Title V program. (See language in Exhibit A, subparagraph (j)(1)(B))

22a-174-33(g) One commentor suggested the Department should act within 18 months of receiving a complete application for significant permit modification procedures. (41)
Response: I recommend that the Department incorporate into the modification subsection the requirement to act within eighteen (18) months of receiving a complete application for a significant permit modification pursuant to requirements which can be seen in Exhibit A, subdivision (r)(1). This will provide certainty for the regulated community with respect to Department procedures as well as meeting minimum federal requirements.

22a-174-33(g)(1)(D) Two commentors noted that a definition for "method of operation" is lacking here. In addition, the definition of "emissions unit" impacts this subparagraph. (15 and 45)
Response: I recommend the Department eliminate the phrase methods of operation and return to the phrase, alternative operating scenarios. (See generally, language in Exhibit A, subdivisions (a)(4) and (g)(1)) This provides the regulated community with a measure of comfort knowing the Department will be flexible and consider varying practices to the extent each is allowed by the applicable requirements. I also recommend the term "emissions unit" be used only as defined in Section 22a-174-33(a) and not be used to limit the application format in a way that precludes reporting of information in a more practical format, such as by process or material used or pollutant. (See language in Exhibit A, subdivision (g)(2))

22a-174-33(g)(1)(E) One commentor recommended the Department include a provision in the Title V permit application,

allowing an alternative means of compliance, in addition to copies of approved orders or permits, in situations where the Bureau has not given final approval of those items. (32)
Response: I recommend the Department allow for alternative means of compliance with respect to Sections 22a-174-22 and 22a-174-32 of the RCSA for nitrogen oxides and volatile organic compounds, as long as such means of compliance has received final approval from the Commissioner. (See language in Exhibit A, subdivision (g)(1), generally, and subparagraph (g)(1)(F)) Since such alternative means have been provided for in the RCSA, the parameters for such alternatives are not suspect. However, I do not recommend allowing alternative means of compliance unless such means will be spelled out in the permit, or the referenced document has been given final approval by the Commissioner. (See language in Exhibit A, subparagraph (g)(1)(F))

22a-174-33(g)(1)(E) One commentor stated this subparagraph refers to when an applicant complies through an alternate means of compliance pursuant to Sections 22a-174-22 or 22a-174-32. This commentor asked the following questions: (1) What is meant by an alternate means of compliance? (2) Is this trying to address 40 CFR §§70.5(c)(7) or 70.6(a)(1)(iii)? (3) Who is allowed to apply and what is the criteria for determining the alternate? This commentor stated the Department should clarify this provision and make sure it complies with 40 CFR Part 70. (41)
Response: (1) The Department was referring to the NOx RACT and VOC RACT Sections 22a-174-22 and 22a-174-32, respectively, of the RCSA which were designed and implemented by the Department to place enforceable limitations on sources of NOx and VOCs. (See language change to this subparagraph in Exhibit A, subparagraph (g)(1)(F)) The criteria allowing for alternative means of compliance is set out in those sections. Those sections have already been through the public review process and were not the subject of this hearing. (2)40 Part 70.5(c)(7) is alternative operating scenarios and is covered by the language as provided in Exhibit A, subparagraph (g)(1)(E). Certainly, any alternative means of compliance would have to meet 40 CFR Part 70.6(a)(1)(iii), where applicable. (3) Those subject to Sections 22a-174-22 and 22a-174-32 of the RCSA are identified through criteria specified in those sections.

22a-174-33(g)(2) One commentor recommended the Department add the following language to this subdivision. See 40 CFR §70.5(c)(3)(I)

> " . . . for each emissions unit at the Title V source in sufficient detail to establish the basis for fees and

applicability to all requirements:"

This commentor stated this added language requires the applicant to review information to ensure enough detail is supplied in the application. (41)
Response: I do not recommend the Department incorporate language similar to that suggested above. Section 22a-174-26 of the RCSA, the fee regulation, was not the subject of this hearing. The subparagraphs of the applicability subsection should be clarified to ensure sufficient detail is provided in the applications. (See generally, language in Exhibit A, subdivision (g)(2))

22a-174-33(g)(2) and 22a-174-33(g)(2)(A) One commentor indicated any method of operation does not convey the same meaning as alternate operating scenarios and, in fact, has a meaning all its own in the context of new source review. (8) Another commentor suggested language. (13)
Response: I recommend the Department make the language change to "alternative operating scenarios" to avoid causing confusion with respect to the terminology method of operation, which is a term of art, and is not identical to "alternative operating scenario." (See language in Exhibit A, subparagraph (g)(1)(E) and subdivision (a)(4))

22a-174-33(g)(2)(A) Two commentors indicated the Department should not limit Section 22a-174-33(g)(2)(A) to just emission units. As defined in Section 22a-174-33(a)(3), an emission unit is the part of a source that emits emissions. (15 and 41) One commentor continued, for example, this could just apply to the drying oven on a coating line and leave out information on the coating process which may be necessary to determine applicable requirements. This commentor further suggested the Department should require that the applicant also describe products in Section 22a-174-33(g)(2)(A) because some VOC regulations are segmented by the product that is actually being coated. See 40 CFR §70.5(c)(2). Such commentor suggested moving Section 22a-174-33(g)(2)(A) to Section 22a-174-33(g)(1) and making the following changes by adding the language which is underlined and removing the language in parenthesis:

> "A description of all of the Title V source's processes and products, . . . by the applicant (for each emission unit) at the Title V source." (41)

Response: I recommend the Department amend (g)(2)(A) to not require each process to be defined by its emission units, rather include a list of those emission units which are part of the subject process. This will enable the application to duplicate the situation at the facilities more realistically

and will give the permit engineers better information as well as easing the application burden. However, I do not recommend the Department include products because they do not provide as good an indicator of emissions as do materials used. (See language in Exhibit A, subdivision (a)(13))

22a-174-33(g)(2)(B) Two commentors pointed out that this subparagraph contains so-called "de minimis" thresholds below which applicants do not need to submit information during the application process. They suggested the Department require that sources list insignificant activities on their applications when those activities are based on size or production rates. See 40 CFR §70.5(c). (5 and 41)

In addition, one commentor suggested the Department should also note that the "de minimis thresholds" listed in this section may be set too high. This commentor stated the Department should consider lowering the threshold for criteria pollutants to one ton per year and adding the following language with regard to hazardous air pollutants:

> "1,000 lb per year or the de minimis level established under Section 112(g) of the CAA, or lesser quantities as established by the Administrator, whichever is less."

In the event Department does not lower the thresholds, the Department must justify in its program submittal that any applicable requirement is not triggered at an emission unit if that unit's emissions are less than the thresholds stated in Section 22a-174-33(g)(2)(B).

This commentor suggested the Department add the following language to Sections 22a-174-33(g)(2)(B) and (g)(3):

> "Notwithstanding Section 22a-174-33(g)(2)(B) and (g)(3), no activity or emission levels shall be exempt from the requirements of Section 22a-174-33(g) if the information omitted from the application is needed to determine the applicability of, or to impose, any applicable requirement or the requirement to obtain a Title V permit. No activity or emission unit of a source may be exempted when determining whether a source is major." (41)

Response: First, I recommend the Department adopt a list of activities and items for which information need not be included on an application unless necessary to meet an applicable requirement, determine compliance with such applicable requirements or determine application of this section. (See language in Exhibit A, subdivisions (g)(3) and (g)(4). Second, I recommend the Department adopt thresholds for criteria and hazardous air pollutants to limit permit requirements to those required by an applicable requirement and to provide flexibility to the extent permitted by federal

requirements. (See language in Exhibit A, subparagraph (j)(1)(F)) For more detail, see 4th response to comments provided above pertaining to applicability and my response to requests for adding a definition of "Insignificant Activities."

22a-174-33(g)(2)(B) One commentor pointed out that excluding certain emission units from the listing requirements on the application (as provided for in this subparagraph) should be understood as exempting them from the requirement to be included under the Title V permit application, as well as the permit itself. This commentor also asked the Department to exempt these activities from the payment of fees, since such de minimis emissions would generate minimal fees, yet would involve much work to track in order to submit annual emissions fees.(13)
Response: These activities may be excluded from the application if not required to determine applicability, not required by an applicable requirement nor needed to determine compliance with an applicable requirement. (See language in Exhibit A, subdivision (g)(3)) With respect to fees, fees are determined by Section 22a-174-26 of the RCSA which was not the subject of this hearing. Therefore, I cannot recommend exempting the use of emissions from these activities from the fee calculation pursuant to Section 22a-174-26 of the RCSA.

22a-174-33(g)(2)(B) One commentor asked the Department to provide a definition for truncated. (15)
Response: I recommend this subdivision be rewritten and utilized in the standards for issuing and renewing Title V permits subsection, as described above. (See language in Exhibit A, subparagraph (j)(1)(F) I do not recommend the term truncated be used because it causes unnecessary confusion as to its meaning and is not necessary to meet federal requirements.

22a-174-33(g)(2)(B) One commentor requested the Department provide for future additions to the insignificant activities list. (24)
Response: The Department has the authority to amend the RCSA at any time. To specifically provide for future additions is not necessary and will not enhance the Department's ability to provide for such additions.

22a-174-33(g)(2)(B) One commentor stated, with respect to insignificant activities, applicants do not have to spend time and resources estimating emissions from such sources that are not subject to any applicable requirement or are not significant from an air quality standpoint. (40)
Response: In order to meet federal requirements I recommend

the Department consider all emissions to the extent provided in Exhibit A, subdivision (a)(15) and subsection (c), when determining applicability with respect to this section. (See language in Exhibit A, subdivisicn (g)(4))

22a-174-33(g)(2)(C) One commentor questioned the sense of requesting 1990 emissions data for processes and emissions units which are either extinct or clearly under thresholds. (15)
Response: 1990 emissions data was not requested in this subsection. However, I have addressed this issue in my responses to subdivisions (d)(2) and (d)(3), above regarding the federally enforceable limitations on emissions subsection.

22a-174-33(g)(2)(C) One commentor believes subdivision (g)(2) deviates substantially from the federal rule. This commentor stated they do not know what is meant by "each pollutant for each calendar year" in this subsection. (44)
Response: To clarify the Department's intent with respect to this subparagraph, I recommend the Department revise the language as can be seen in Exhibit A, subparagraphs (g)(2)(B) and (g)(2)(C).

22a-174-33(g)(2)(C)and(D) One commentor suggested the following language changes to this subparagraph: "for all emissions units described . . . and actual emissions, ~~including fugitive emissions~~ for each pollutant for each calendar year, of regulated air pollutants, expressed in tons per year and in such terms as are necessary to establish compliance with the applicable standard reference test method, if any. (13) Another commentor supports the removal of the reference to fugitive emissions. (38)
Response: I do not recommend excluding references to fugitive emissions because there may be applicable requirements to place on fugitive emissions or the point of egress of such emissions. I do recommend fugitive emissions "to the extent quantifiable" to ensure a standard of reasonableness is being utilized. I recommend the regulation require that pollutants be expressed in tons per year (TPY) and in such terms as are necessary to establish compliance with the applicable standard reference test method, if any, in order to give the regulated community a sense of what will be asked for on the application. (See language in Exhibit A, subparagraph (g)(2)(B))

22a-174-33(g)(2)(D) One commentor stated sources will need operational flexibility provisions to be available to them because of the need to make changes quickly based upon marketplace demands. (34)
Response: I do not recommend the Department make any changes

based on this comment because the regulation already allows for operational flexibility through the provisions in the modification subsection. (See generally, Exhibit A, subdivision (r)(3))

22a-174-33(g)(2)(D) One commentor stated this subparagraph causes a unique problem for combustion sources by requiring the permittee to list the type and quantities of all potential and actual emissions of regulated air pollutants. This commentor pointed out that to identify all HAPs emitted would be extremely burdensome and would not be cost-effective. This commentor further stated that, considering the low concentration of most HAPs in the in combustion exhaust gas, the accuracy of using periodic stack tests to project long-term emissions would also be in doubt. (36)
Response: I recommend a change based on this comment. Please see language provided for in Exhibit A, subdivision (g)(2) which requires such information to the extent necessary to determine compliance with an applicable requirement, to determine applicability of this section, or as to what the applicable requirement requires. It is a federal requirement that hazardous air pollutant emissions be reported but the purpose is to ensure Title V program requirements are being met.

22a-174-33(g)(2)(D) One commentor stated the requirement to include fugitives for each emissions unit is impractical. (38)
Response: I recommend the Department eliminate the reference to emissions unit in this context for the reason expressed by this commentor. (See language in Exhibit A, subparagraph (g)(2)(B))

22a-174-33(g)(2)(F) One commentor indicated the Department does not need information on fugitives unless specifically required for that category. This commentor suggested the Department clarify whether something besides sampling and modeling is acceptable.(15)
Response: First, I recommend the Department require information on fugitive emissions to the extent quantifiable for the purposes of determining applicability of the regulation. (See language in Exhibit A, subparagraph (g)(2)(B) and subdivision (g)(4))) Second, I recommend the Department should not be precluded from accepting recordkeeping as monitoring if it does not conflict with other state, or federal requirements. (See language in Exhibit A, subdivision (a)(11) and subparagraphs (j)(1)(K)(ii), last sentence, and (o)(2)(A))

22a-174-33(g)(2)(F) One commentor noted the Department should add the following language to this subparagraph to ensure the

applicant states emission rates in the units which allow the Department to determine compliance with all applicable requirements: See 40 CFR §70.(c)(3)(iii).

> ". . . the emission rates of regulated air pollutants in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method and the calculations used . . . ."

This commentor also stated the Department should require in Section 22a-174-33(g)(2)(F) that supporting calculations be included in an application for all information pursuant to Sections 22a-174-33(g)(2)(G), (H), and (J). (41)
Response: I recommend the Department include language that requires pollutants to be in such terms so as to establish the applicable standard reference test method and the calculations used. (See language in Exhibit A, subparagraphs (g)(2)(C) and (D))

22a-174-33(g)(2)(G) and (H) One commentor needs to know what the time frame is for requesting materials used. Do you need hours, months, days? (15)
Response: I recommend the Department indicate the calendar year or other time period deemed appropriate by the Commissioner on the application, since it will be dependant upon equipment and processes. (See language in Exhibit A, subparagraph (g)(2)(A))

22a-174-33(g)(2)(G) and (H) One commentor suggested consolidating (G) and (H) into one paragraph and add a new (H) linking information regarding fugitives to the pollutant rather than the equipment since the fugitives may not come from the equipment. (29)
Response: I recommend the Department link information regarding fugitive emissions to the pollutant rather than the equipment because emissions generally are not emitted from traditional exit points, they may be emitted between units. (See language in Exhibit A, subparagraph (g)(2)(B))

22a-174-33(g)(2)(G) One commentor believes the requirement to describe the heat content of fuel is exhaustive and should be deleted. This commentor points out that the Fed Reg 57:140,pp32303 does not require such exhaustive descriptions. (44)
Response: I recommend the Department remove the requirement to describe the heat content of fuel. Information required pursuant to the language in Exhibit A, subparagraph (g)(2)(A) and subdivision (a)(13) ought to be adequate and certainly the Commissioner may ask for additional information if necessary

pursuant to the language in Exhibit A, subdivision (h)(1).

22a-174-33(g)(2)(G) One commentor suggested the Department should explicitly exclude insignificant activities from the permitting process and exempt non-major sources altogether. In addition, this commentor suggested the Department should only require information in (G) and (H) that is required to determine or regulate emissions. (13)
Response: I recommend the Department allow insignificant activities or items to be excluded from the application unless otherwise required by an applicable requirement as provided in Exhibit A, subdivisions (g)(3) and (g)(4). For more detail, see 4th response provided above to comments pertaining to Applicability and my response to request for adding a definition of "Insignificant Activities."

I have recommended that owners and operators of sources required to apply by virtue of being "non-major sources" as described by 40 CFR Part 70, be given deferrals and exemptions where allowed by the federal standard. (See language in Exhibit A, subdivisions (c)(2), (f)(2) and (f)(3))

22a-174-33(g)(2)(H) One commentor suggested the following language be added to this subparagraph: ". . . the following information to the extent it is needed to determine or regulate emissions, the types of fuels, including the heat content of the fuel to be used, raw materials to be used, the amount of raw materials expected to be used, production rates and operating schedules". (13)
Response: I do not recommend the Department adopt language described above because language as provided in Exhibit A, subparagraph (g)(2)(A), and subdivision (a)(13), definition of "throughput", will be adequate to determine and regulate emissions. Additional information can be requested if necessary as provided in Exhibit A, subdivision (h)(1).

22a-174-33(g)(2)(H) One commentor suggested the following language be added to this subparagraph: ". . . fugitive emissions, expressed in tons per year, for each pollutant pursuant to subparagraph B of this subsection and each hazardous air pollutant listed pursuant to subparagraph D of the paragraph. (29)
Response: I recommend the Department adopt language which requires consideration of fugitive emissions for determining applicability of this regulation. However, I do not recommend the Department adopt the language this commentor suggests verbatim. (See language used in Exhibit A, subparagraph (g)(2)(B))

22a-174-33(g)(2)(I) One commentor asked whether equipment which is not permitted by the Department as control equipment,

should be counted in this section since it is not federally enforceable? (15)
Response: If the control equipment is not made a federally enforceable limitation on emissions it cannot be considered in calculating emissions. The source may have the opportunity to make the limitation on emissions federally enforceable by complying with Section 22a-174-33(d) of the RCSA.

22a-174-33(g)(2)(J) One commentor suggested the limits or standards may not exist for all regulated pollutants and therefore the following language was suggested, "Any applicable operations limitations or work practice standards which affect emissions for regulated pollutants." (13)
Response: I recommend the Department adopt language which includes any applicable operational limitations and work practice standards. This is necessary in order to give the permit engineer a realistic idea of how the facility works and what the emissions are likely to be. (See language in Exhibit A, subparagraph (g)(2)(F))

22a-174-33(g)(2)(K) One commentor pointed out this subparagraph references the December 3, 1993 Federal Register as the initial list of source categories. This commentor stated the initial list of source categories actually appears in the July, 16, 1992 Federal Register notice. Such commentor suggested Connecticut should change the Federal Register reference to July, 16, 1992. In addition, this commentor stated, the list of categories may change based on EPA review. Since the list of source categories may change, Connecticut may have to periodically revise their regulation to reflect the most recent list of categories published in the Federal Register. (41)
Response: I recommend the Department change the reference as suggested (See language in Exhibit A, subparagraph (g)(2)(G)). I recommend the Department use its best efforts, subject to all statutory requirements, to revise this regulation to reflect the most recent list of categories published in the Federal Register.

22a-174-33(g)(2)(L) One commentor noted this subparagraph, requiring a permit applicant to submit any applicable test method for determining compliance with MACT reiterates the Department's demand that sampling/analysis is the only acceptable monitoring procedure. (15)
Response: I do not believe the language provided requiring any applicable test method precludes the Department from merely requiring sampling or analysis or recordkeeping where the Department has determined it is sufficient. Therefore, I do not recommend a change based upon this comment.

22a-174-33(g)(2)(M) One commentor argued this subparagraph is unnecessary and seemingly boundless and subparagraph (K) already requires information on applicable requirements for each emissions unit subject to a MACT standard. (13)
Response: I believe this subparagraph is useful to the permit engineers who will be evaluating the applications and who need a clear idea of the various operating scenarios for which the emission units will be configured. Therefore, the Department need not remove this paragraph.

22a-174-33(g)(3) One commentor believes the owner/operator should not be subjected to various interpretations of potential to emit from "insignificant activities," and thus requests a definition of "insignificant activities" be included in (g)(3) and added to (c) as an exemption. (38) One Commentor noted it was not clear, but, insignificant activities needed to be included on the application.(5) One commentor suggested the activities listed in (g)(3) and the thresholds listed in (g)(2) function as exemptions. (13) One commentor suggested the Department list types of insignificant activities rather than thresholds. (40)
Response: I do not recommend a definition of "insignificant activities" is necessary or appropriate because the emissions from such activities or items may not be insignificant. I recommend the application subsection include lists of activities or items for which emissions can be excluded from the application unless otherwise required by an applicable requirement or to determine applicability of this section or to determine applicability of an applicable requirement, as provided in Exhibit A, subdivisions (g)(3) and (g)(4))

I recommend the Department move the reference to thresholds from this subsection to the permitting subsection as can be seen in Exhibit A, subparagraph (j)(1)(F) because this is where it will do the most good, i.e., allowing limits to be required only as required by an applicable requirement. I recommend the emissions below certain thresholds and activities be excluded from permit requirements as provided in Exhibit A, subparagraphs (j)(1)(F)(i) and (ii), (j)(1)(G)(iv) and (j)(1)(K) to the extent allowed by applicable requirements. For more detail, see 4th response to comments above pertaining to Applicability and my response to comments to requests for adding a definition for "Insignificant Activities."

22a-174-33(g)(3) One commentor recommended exempting roof and wall ventilation of enclosed spaces, not including those directly connected to a process source under subdivision (g)(3), because it would be difficult to prove emissions are low enough in order to use the thresholds exemption. (36)
Response: I recommend the Department allow roof and wall vents

which are not connected to emission-related processes as provided in Exhibit A, subdivision (g)(3), to not be listed on the application, for the reason given by this commentor. (See language in Exhibit A, subparagraph (g)(3)(B)(vi)) Such insignificant activities may require less or no recordkeeping by the Department, as allowed by applicable requirements. (See language in (j)(1)(K))

22a-174-33(g)(3) One commentor noted the term emissions unit, as it is used here, conflicts with the definition of the term where it indicates it could be a stationary source. (15)
Response: I do not recommend the Department make a change based upon this comment because neither the draft presented at hearing nor the Exhibit A, subdivision (g)(3) use the term emissions unit.

22a-174-33(g)(3) One commentor suggested the Department include language which states, "[and] . . . any emission unit determined to be an insignificant activity by the Agency" (24)
Response: I do not recommend adding this language because it is not necessary since there is nothing in the application section precluding/excluding any emissions units, activities or items unless necessary to determine applicability of this section or to determine applicability of an applicable requirement. In addition, to the extent the Department has the authority, the Department can amend this list from time to time. (See language in Exhibit A, subdivision (g)(2)).

22a-174-33(g)(3) One commentor recommended this section should include aerosol spray cans used for routine painting. (27) Another commentor has provided a table with additional insignificant activities, including aerosol spray cans for routine cleaning, which should be listed. This table also included non-routine activities for which, this commentor believes, potential emission calculations will yield unrealistically high pollutant levels. (27)
Response: Aerosol spray cans have already been included as an activity or item which can be grouped for the purposes of the application as described in this subdivision if they are not the principle function of such Title V source. (See language in Exhibit A, subparagraph (g)(3)(B)(v)) I do not recommend the Department include nonroutine activities in this subdivision as the applicant will have the opportunity on the application to provide the actual and potential emissions so that the Department will get a realistic idea of the pollutant levels.

22a-174-33(g)(3)(A) One commentor recommended the Department include small fuel burning devices with heat input capacities of less than five thousand gallons. (32)

Response: I do not recommend the Department add emission units such as small fuel burning devices to the list of activities or items as provided in Exhibit A, subdivision (g)(3), because the emissions from such devices may need to be regulated through an applicable requirement.

22a-174-33(g)(3)(B) One commentor believes this subparagraph discriminates against recycling and an industry which is represented by at least two facilities in Connecticut. This business demands that every trace of precious metal captured in a laboratory hood or ventilation device be recovered and accounted for to the customer or to the subsidiary who owns the sample being analyzed. Such commentor fears this will be considered "produces for profit any quantity" thus preventing them from being exempt from listing under this subsection. This commentor specifically asked whether recovery from pollution control equipment constitutes such "produces for profit." (15)
Response: I am not recommending a change to the regulation based on this analysis. The precious metals industry is not being singled out by this regulation. In an effort to be reasonable, I recommend the language of the regulation remains the same, so that nonhazardous fugitive emissions reporting be limited to, "the extent quantifiable". (See language in Exhibit A, subparagraph (g)(2)(B)) With respect to whether recovering precious metals from pollution control equipment constitutes "produces for profit in any quantity", this poses a legal question beyond the scope of the hearing and my authority, as hearing officer.

22a-174-33(g)(3) One commentor submitted testimony regarding 22a-174-33(g)(2)(G)(i) and (ii). While there are no subparagraphs (g)(2)(G)(i)and (ii) in the September 27, 1994 draft that was the subject of the October 28, 1994 hearing, this commentor stated that, based upon the language in this section, there can be research and development facilities in the state which will be reporting only because they are associated with a reporting Title V facility. This commentor believes this should be reconsidered to ensure that potentially unnecessary reporting and review burdens for both the regulated community and regulators at these particular locations is avoided. This commentor also states that the requirement for aerosol spray can capacity should be more specific. (12).
Response: I recommend the Department include provisions which allow research and development operations to be treated as separate premises to the extent allowed by federal regulations for the purposes of determining applicability. (See language in Exhibit A, subdivision (c)(4)) This does not preclude a research and development operation from being a Title V

source. The September 27, 1994 draft contains an allowance to permit sources with laboratory hoods solely for the purpose of experimental study or teaching to have emissions excluded from the application as provided in Exhibit A, subparagraph (g)(3)(A) and subdivision (g)(4). With respect to aerosol spray cans, the September 27, 1994 draft did not specify any capacity for these cans.

22a-174-33(g)(3) One commentor recommended the Department add the following language, ". . . safely manipulated by one person by hand. If. . . " (41)
Response: I recommend the Department adopt language which allows laboratory hoods which can be handled by one person so that the laboratory hood is not a completely automated manufacturing hood. (See language in Exhibit A, subparagraph (g)(3)(A))

22a-174-33(g)(4) One commentor suggested the Department add, ". . . for purposes of determining the applicability of this section, and to determine permit fees." (13)
Response: I do not recommend the Department alter the language for the purposes of determining fees because fees are determined pursuant to Section 22a-174-26 of the RCSA.

22a-174-33(g)(4) One commentor stated since the federal analog to this subsection (§70.5(c)) specifies that only insignificant activities exempted based upon size or production rate need be listed in the permit application, (g)(2)(B) items, and not (g)(3) items should be cross referenced in this subdivision. (13 and 36)
Response: I do not recommend a change based upon this comment because the language as provided in Exhibit A, subdivision (g)(4) ensures that the necessary information will be provided to meet minimum federal requirements.

22a-174-33(g)(4) One commentor asked if this is the Department's way of rejecting the federal exemption for "insignificant activities"? According to this commentor, this section should contain the federal regulatory language concerning insignificant activities. (15)
Response: I recommend the Department adopt a list of activities and items which the applicant will not have to list in the application, as provided in Exhibit A, subdivisions (g)(3) and (g)(4). I do not recommend the Department adopt a definition for the term "insignificant activities" because the language in Exhibit A, subdivision (g)(3) does not have to mimic 40 CFR Part 70.5(c), as the federal regulation merely delineates how to design the Title V program. For more detail, please consult my General Response to 40 CFR Part 70.5(c).

22a-174-33(g)(5) This commentor meant the comment to pertain to (g)(5) and suggested that Department has no limit on the amount of time the Department has to rule on applications. (15) One commentor recommended adding language regarding completeness. (13)
Response: To address the first commentor's point, I recommend the Department add a timeframe within which to rule on applications so that the Department meets the minimum federal requirements with respect to this issue. (See language in Exhibit A, subdivision (j)(1)) In addition, I recommend the Department include sufficiency determination language with timeframes in the regulation so the Department meets the minimum federal requirements with respect to this issue. (See language in Exhibit A, subdivision (h)(1))

22a-174-33(g)(6) One commentor recommended the Department should consider whether adding a definition of the phrase "proposed permit" to Section 22a-174-33(a) would clarify in the Department's regulations the important distinction between "tentative determination" (the term used by Connecticut for "draft permit") and "proposed" Title V permits. Different requirements apply to these two different versions of the permits. For example, this commentor pointed out, this subdivision references a "Tentative Determination." The phrase is not previously used in Department's Title V regulations but is subsequently used; also, the phrase is not defined. This commentor assumes the Department means to refer to the "draft" permit, which is the version of the permit that undergoes the public participation and affected state review procedures, and not to the "proposed" permit, which is the version of the permit that is provided to EPA for review under 40 CFR §70.8. (41)
Response: I do not recommend the Department include the term proposed permit for reasons stated in the General Response regarding 40 CFR Part 70.2 definitions. However, I do recommend the Department clarify each stage the public's and Administrator's review. (See generally, Exhibit A, subsections (l) and (n))

22a-174-33(g)(6) One commentor recommended the Department clarify this subdivision to state the applicant is required to promptly submit supplemental information at any time when he or she becomes aware that a previous submittal was either incorrect or incomplete. This commentor stated the requirement to submit incorrect or missing information does not end when the Department releases its tentative determination. See 40 CFR §70.5(b). (41)
Response: I recommend the Department clarify its intent that the requirement for correcting information continues beyond the release of the tentative determination. (See language in

Exhibit A, subdivision (h)(2))

22a-174-33(g)(6) One commentor recommended the Department require that an applicant explain any exemptions from an otherwise applicable requirement. For example, an applicant may believe it is not subject to a new source performance standard due to its construction date; however sources have frequently misinterpreted the actual construction date as defined by 40 CFR Part 60, Subpart A. This commentor believes this information should be included in the application. See 40 CFR §70.5(c)(6). (41)
Response: I do not recommend the Department require an applicant to explain any exemptions from an otherwise applicable requirement. The applicant shall determine what requirements he/she believes are applicable to such source and the Department, as part of the permitting process, will determine which requirements are applicable and will result in terms and conditions of the permit. The applicant should remain liable for failure to comply with any applicable requirement other than those exceptions which are carved out with a permit shield and compliance schedule.

22a-174-33(g)(7) One commentor indicated the timeframe with respect to submittal of a renewal application is missing. This commentor also pointed out the renewal shield is missing as well. (15)
Response: I recommend the Department include timeframes for submission of an application for renewal. (See language in Exhibit A, subdivision (f)(5)) I recommend the Department include the shield insofar as that concept means a source is shielded from Department action for not having a Title V permit when the source has a sufficiency determination from the Department regarding the application which includes an application for a renewal. (See language in Exhibit A, subdivision (h)(4)). In addition, the Department has existing authority in Section 4-182(b) of the General Statutes providing a renewal shield, whereby when the applicant makes a timely and sufficient application for renewal of a Title V permit, such existing Title V permit shall not expire until the Commissioner has issued a final decision on whether to deny or issue such a renewed Title V permit.

I recommend the Department revise this subsection as follows to improve clarity and, where necessary, to incorporate federal requirements:

1) Subdivision (g)(1) is now (g)(1)(A) and the subparagraphs (B) through (E) have been re-lettered accordingly. The language "deemed sufficient" should be deleted. Such changes

were necessary to eliminate unnecessary verbiage. The content of this revised subdivision is similar to the original content. (See language in Exhibit A, subparagraph (g)(1)(A))

2) The language in subparagraph (g)(1)(A) be changed slightly to make it less wordy. (See language in Exhibit A, subparagraph (g)(1)(B))

3) The reference to Public Act 94-105 Section 1.(b) be deleted from (g)(1)(C), as it is not necessary to reference applicable statutes. (See language in Exhibit A, subparagraph (g)(1)(D))

4) The words "owner or operator" in (g)(1)(D) be replaced with the word "applicant" to provide more appropriate language reflecting a broader spectrum of possible applicants. (See language in Exhibit A, subparagraph (g)(1)(E)

5) I recommend the Department add a new subparagraph to subdivision (g)(1) which states, "The application shall contain a certification pursuant to subdivision (b)(4) of this section." (See Exhibit A, subparagraph (g)(1)(G)) Such addition is necessary in order to meet minimum federal requirements.

6) Subdivision (g)(2) should be changed to provide, An application for a Title V permit, 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, shall provide the following information about the subject source... Such change was necessary in order to eliminate unnecessary language and to focus the applicant on applicable requirements.

7) The language in subparagraph (g)(2)(A) has been changed to clarify the Department's intent of that subparagraph and to focus on the information necessary for determining the applicability of applicable requirements. (See language in Exhibit A, subparagraph (g)(2)(A))

8) The contents of subparagraph (g)(2)(B) should be moved to subparagraph (j)(1)(F) because such thresholds can only be useful to the regulated community in minimizing unnecessary permit limitations.

9) Subparagraph (g)(2)(I) be revised to clarify that it is the phrase "monitoring equipment" which is modified by "to quantify emissions", rather than "control equipment". (See language in Exhibit A, subparagraph (g)(2)(E))

10) The Department should switch the order of subdivisions (g)(3)(A) and (B) to improve readability.

11) The Department should add various activities to the list in subparagraph (g)(3)(A) because such list is useful in ensuring that extraneous information is not required on the application. (See language in Exhibit A, subparagraph (g)(3)(B)(ii) and (vi) through (x))

12) The Department should expand the content of subdivision (g)(4) as can be seen in language in Exhibit A, subdivision (g)(4), in order to ensure that the Department will obtain all necessary information relating to applicable requirements.

Application Processing

I recommend the Department create this subsection as follows to improve clarity and, where necessary, to incorporate federal requirements:

The Department should take the content of subdivisions (g)(5) through (g)(7) and incorporate it into a section dealing with application processing. (See generally, language in Exhibit A, subdivisions (h)(1), (2) and (3)) because such provisions dealt more with process rather than application content specifically.

To accomplish the above recommendation, I recommend the Department add a new subsection (h) to this section, entitled "Application Processing", incorporating select subdivisions of subsection (g), "Applications". (See generally, Exhibit A, subsection (h))

Compliance Plans.

The following language was presented at the October 28, 1994 hearing for comment:

(h) Compliance Plans.

(h)(1) As part of the application on forms provided by the Commissioner the owner or operator of a Title V source shall submit to the Commissioner in writing a compliance plan which describes the compliance status of the Title V source with respect to all applicable requirements, including information pursuant to Public Act 94-205 Section 1. (b) and subdivisions (h)(2) through (h)(4), inclusive, of this section.

(h)(2) For applicable requirements with which the Title V

source is in compliance, a statement that the Title V source will continue to comply with such requirements shall be submitted to the Commissioner.

(h)(3) A schedule of compliance for Title V sources that are not in compliance with all applicable requirements at the time of application shall be submitted to the Commissioner as part of the compliance plan. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the Title V source will be in noncompliance at the time of Title V operating permit issuance. Any such submittal of a compliance schedule shall not preclude the Commissioner from taking enforcement action based on such noncompliance.

(h)(4) For applicable requirements that have future effective compliance dates, during the Title V operating permit term, a statement that the Title V source will meet such requirements by such dates shall be submitted to the Commissioner.

Comments Regarding subsection (h) Compliance Plans

22a-174-33(h) One commentor advised the Department to cross reference Section 22a-174-33(h) in Section 22a-174-33(i)(2)(L) because the permit's schedule of compliance should be consistent with the compliance plan. See 40 CFR §70.6(c)(3). (41)
Response: Although the compliance plan and compliance schedule are related, they are not identical. The plan is the applicant's submittal and the schedule is ultimately determined by the Department and incorporated into the permit. I recommend the Department reference the plan when discussing the schedule to make the connection clear. (See language in Exhibit A, subparagraph (j)(1)(Q))

22a-174-33(h)(1) One commentor stated the Department's reference to P.A. 94-205 is "poor drafting, and arrogant." This commentor suggested the Department put the relevant language from that act into this section. (15)
Response: In the interest of brevity, I recommend the Department edit this regulation in order to avoid poor drafting, where possible, based upon this comment. I do recommend repeating language otherwise provided in statutes, in this case, so that the content requirements for a compliance plan are clear. (See language in Exhibit A, subdivision (i)(1))

22a-174-33(h)(3) One commentor feels subdivision (h)(3), which grants the Commissioner the option of taking enforcement

actions based on noncompliance, could face a constitutional challenge based on the principles of ex post facto regulations. This commentor believes if a facility is not sure of what actions to take to satisfy compliance at the time of negotiating the permit, the Department's retroactive enforcement would amount to "setting the rule, then retroactively enforcing it." This commentor suggests the "dilemma" would be cured if the Department incorporated the application shield of the federal regulations into their proposed regulation. (15)
Response: I believe such provision merely preserves the Commissioner's power to enforce against the applicant's past and current status of noncompliance. I do recommend the Department incorporate an application shield to provide protection to applicants who have submitted sufficient applications from being subject to enforcement actions brought by the Department, due to lack of having a permit during pendency of an application. (See language in Exhibit A, subdivision (h)(4)) However, I do not believe the application shield shields the applicant for past violations of applicable requirements.

22a-174-33(h)(3) One commentor recommended the Department add the following language to Section 22a-174-33(h)(3):

> ". . . will be in noncompliance at the time of Title V permit issuance. The compliance plan shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.."

This extra language will make it clear to the applicant that a compliance plan in a Title V permit cannot relax an already binding compliance plan. (41)
Response: I recommend the Department adopt language which makes it clear that a compliance schedule in a Title V permit cannot relax an already binding compliance plan, as provided in Exhibit A, subdivision (i)(1).

I recommend the Department revise the subsection regarding compliance plans as follows, to clarify its intent and, where required, include federal elements of the Title V program:

1) This subsection is now letter (i), not (h), because of the addition of the new subsection (h) on Application Processing. However, the title, "Compliance Plans" remains the same.

2) The Department should reword subdivision (h)(1) as can be seen in Exhibit A, subdivision (i)(1) to clarify the depth and breadth of information required. The Department should add

subparagraphs (A) through (C) listing the types of proceedings involving the owner/operator that need to be discussed in the compliance plan and include the information which should be provided therewith, again, to clarify the depth and breadth of information required. (See language in Exhibit A, subdivision (i)(1) and subparagraphs (i)(1)(A), (B) and (C))

3) Subdivision (h)(2) should be reworded slightly to make it more clear to the reader that continued compliance must be addressed by the plan. (See language in Exhibit A, subdivision (i)(2))

4) Subdivision (h)(3) should be revised as can be seen in Exhibit A, subdivision (i)(3) to make it more clear to the reader that the plan shall contain a schedule for bringing the source into compliance with the applicable requirements where compliance has not already been accomplished.

5) Subdivision (h)(4) should be revised as can be seen in Exhibit A, subdivision (i)(4) to make it more clear to the reader that the plan shall contain dates by which compliance will be reached.

6) The Department should add a provision in this subsection which expressly states that sources subject to 40 CFR Parts 72 through 78, inclusive, shall comply with the subsection unless specifically superseded by such Parts 72 through 78, inclusive in order to meet minimum federal requirements. (See language in Exhibit A, subdivision (i)(5))

7) The Department should require that certified progress reports be submitted at least every six (6) months in order to meed minimum federal requirements. (See language in Exhibit A, subdivision (i)(6))

8) The Department should require compliance certifications be submitted at least every twelve (12) months in order to meet minimum federal requirements. (See language in Exhibit A, subdivision (i)(7))

Standards For Issuing And Renewing Title V Permits

The following language was presented at the October 28, 1994 hearing for comment:

(i) Standards for granting Title V operating permits and renewals of Title V operating permits.

(i)(1) The Commissioner may impose reasonable conditions

within any permit to operate, including requirements beyond normal due diligence in operation and maintenance.

(i)(2) The Commissioner shall not grant a Title V operating permit to operate a Title V source to the owner or operator of that Title V source unless the Commissioner determines that the owner or operator of the Title V source will comply with the relevant and applicable provisions of subdivision (i)(1) and subparagraphs (A) through (M), inclusive, of subdivision (i)(2) of this section, and such relevant and applicable provisions are included in the Title V operating permit.

(A) The permit contains an expiration date which does not exceed a term of five (5) years.

(B) The permit contains a statement that the owner or operator is required to operate the Title V source in compliance with the applicable regulations or terms of an order or permit of the Commissioner for that Title V source.

(C) The permit contains a description of allowable emissions for each regulated air pollutant through an emission limitation or emission rate. Such description will not preclude the creation or use of emission reduction credits in accordance with subparagraph (K) of this subdivision.

(D) For each emissions unit, the permit contains all limitations and standards, including those operational requirements and limitations necessary to assure compliance with all applicable requirements.

(E) The permit contains all alternative emission limits or means of compliance.

(F) The permit contains all terms and conditions applicable to any method of operation.

(G) The permit contains requirements for performing monitoring or regulated air pollutants from such source to determine compliance with emission limitations or standards of this section. Such monitoring shall include any combination of the following:

(i) all emissions monitoring and analysis procedures or test methods required under the applicable requirements;

(ii) all monitoring requirements, terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement and good engineering practices; and

(iii) all emissions monitoring analysis procedures and test methods shall contain specifications concerning the use, maintenance, and where appropriate, installation of monitoring equipment or methods.

(H) The permit contains all applicable record keeping and reporting requirements pursuant to subsections (m) and (o) of this section.

(I) The permit contains a statement that the owner or operator of the Title V source had submitted and the Commissioner has received and approved a comprehensive operation and maintenance plan for all air pollutant emitting activities and the air pollution control equipment, which will ensure continuous compliance with applicable requirements or Title V operating permit requirements.

(J) The permit contains a statement that the owner or operator of the Title V source has submitted an emergency abatement or standby plan, and such plan has been approved by the Commissioner as required by section 22a-174-6 of the Regulations of Connecticut State Agencies.

(K) The permit contains all the terms and conditions enabling the creation and use of any emissions reduction credits in accordance with Public Act 93-235, Public Act 94-170, the provisions of the EPA's "Economic Incentive Program Rules", published April 7, 1994 (Federal Register, Volume 59, Number 67), and EPA's "Emissions Trading Policy Statement", published December 4, 1986 (Federal Register, Volume 51, Number 233).

(L) The permit contains the compliance schedule that identifies the methods for achieving compliance and the dates by which compliance will be reached, in addition to the monitoring, recordkeeping and reporting dates.

(M) The permit contains a severability clause to ensure the continued validity of the various Title V operating permit requirements in the event of a challenge to any portions of the Title V operating permit.

(N) The permit contains all terms and conditions of any permit previously issued to such owner or operator pursuant to Connecticut General Statute 22a-174.

(i)(3) The Commissioner shall not grant a Title V operating permit unless the owner or operator has paid to the Department all fees required by Section 22a-174-26 of the Regulations of Connecticut State Agencies.

Comments Regarding subsection (i)
Standards for granting Title V operating permits
and renewals of Title V operating permits.

22a-174-33(i) One speaker indicated the Department should make insignificant activities explicitly exempt from all permit requirements. (2)
Response: I recommend the Department allow insignificant activities to be excluded from a Title V permit unless otherwise required by the imposition of an applicable requirement. I recommend the Department allow emissions below certain thresholds to be without limitation unless required by an applicable requirement. (See language in Exhibit A, subparagraph. (See language in Exhibit A, subparagraphs (j)(1)(F) and (G)) In addition, I recommend monitoring and recordkeeping be required for such activities, items and emissions thresholds to the extent required by an applicable requirement. (See language in Exhibit A, subparagraph (j)(1)(K))

22a-174-33(i) One speaker testified that the final permit's determination information needs to be included in this section or in subsection (f), above.(5)
Response: I am not clear on the intent of this statement. I am assuming the speaker is referring to the completeness determination and I do recommend the Department adopt sufficiency determination language in an application processing subsection to meet the federal completeness determination requirements. (See language in Exhibit A, subdivision (h)(1)) I also recommend the Department adopt the federal 18-month timeframe for taking final action on a sufficient application. (See language in Exhibit A, subdivision (j)(1))

22a-174-33(i) One commentor argued the Department has not adequately addressed portions of 40 CFR §70.6 which deals with permit content. The CAA and EPA's 40 CFR Part 70 regulations require that a permitting authority commit in the program's regulation to incorporate critical permit elements. This commentor believes it is this regulatory commitment that makes the permitting authority accountable not only to EPA but also

to citizens and the regulated community. This commentor stated it is also unclear what options are available to the public if the Department omits a critical permit term which is not required by regulation to be in a permit. Therefore, the Department must include language in Section 22a-174-33(i) that will address all of the items which have to be contained in an operating permit as required by 40 CFR §70.6. (41 and 5)
Response: In addition to recommendations regarding inclusion of 40 CFR Part 70 requirements as provided in the General Response to 40 CFR Part 70.6. I recommend the Department clarify procedural protection objections available to the public and Administrator as provided in Exhibit A, subsection (n) and subdivisions (r)(8) through (r)(14).

22a-174-33(i) One commentor stated for permit applications, renewal, and changes at a source which are processed under 40 CFR Part 70's "significant permit modification procedures," the Department should act within eighteen (18) months of receiving a complete application. This commentor further stated such provisions should be included in the Department's regulation, including a provision specifying a right to judicial review upon the Department's failure to act in a timely manner. See 40 CFR §70.7(a)(2) This commentor also stated that should the Department include a provision that for "minor permit modifications" the Department must act within ninety (90) days of receipt of an application. (41)
Response: I recommend the Department add a subsection to Section 22a-174-33 which provides for a decision to be rendered within 18 months after receiving a sufficient application or request for modification. (See language in Exhibit A, subdivisions (j)(1) and (r)(1)) I do not recommend the Department specify, within this section, the right to judicial review upon the Department's failure to act in a timely manner. The right to judicial review is governed by statutes and case law.

22a-174-33(i) One commentor noted that the Department should provide statements in Section 22a-174-33(j) regarding the legal and factual bases for the draft permit conditions (including references to the applicable statutory or regulatory provisions). This commentor stated the regulation should require the Department to send these statements to EPA and any other person who requests them. See 40 CFR §70.7(a)(5). (41)
Response: I recommend the Department require that the permit provide the legal bases for the draft permit conditions. (See language in Exhibit A, subparagraph (j)(1)(D)) Such legal authority will provide the applicable legal provisions which should contain or refer to the factual connection to the requirement, justifying why such requirement is applicable. I

also recommend the Department adjust the notice subsections to state that the permit be sent to anybody who requests it. (See generally, language in Exhibit A, subdivisions (h)(5) and (l)(3))

22a-174-33(i) One commentor advised that subsection (i) should contain no new authority for the Department.(38) Several commentors noted that, as written, the program extends beyond what is required federally.(37, 26, 7, 17, 20, 21, and 27)
Response: I recommend the Department not contain any new authority in the standards for issuing and renewing Title V permits subsection other than what is required by the CAA and what is necessary for the Department to create a unified permit including state requirements. Therefore, I recommend the Department remove subdivision (i)(1).

22a-174-33(i) One commentor advised that the Department needs to address the procedural requirements of 70.7 and 70.8. (5)
Response: I recommend the Department meet the requirements of 40 CFR Part 70.7 and 70.8 as provided in the General Response to 40 CFR Part 70.7 and 70.8.

22a-174-33(i) One commentor suggested new paragraphs should be added to limit enforcement to matters addressed in the permit, distinguish federal and state provisions, codify the operational flexibility provisions, and allow for off-permit changes and trading without revisions. (7)
Response: I recommend the Department distinguish between federal and state provisions, within the context of the application and permit forms created by the Department to implement this section, and require in this section that the permit cite legal authority for requirements. (See language in Exhibit A, subparagraphs (j)(1)(D) and (E)) I do not recommend the Department limit enforcement to matters addressed in the permit other than to the extent allowed by a permit shield. To do so would jeopardize the Department's ability to meet minimum federal requirements with respect to Title V program. (See generally, Exhibit A, subsection (k)) I recommend the Department adopt language in the modification subsection to not require a modification to the permit in the event that operational flexibility or an off-permit change is exercised. (See generally, Exhibit A, subdivisions (r)(3) and (r)(4)) I recommend a change to the modifications subsection to allow a Title V source to notify the Department in the event they want to trade or utilize emission credits not already handled in the Title V permit in order to verify compliance with federal requirements to meet federal requirements with respect to use of emission credits. (See language in Exhibit A, subparagraph (r)(3)(A)(iv))

22a-174-33(i) One commentor suggested the Department withdraw the current rulemaking and replace it with federal rules verbatim. (16)
Response: I do not recommend the Department replace this regulation with 40 CFR Part 70. The Department has made an effort to make this subsection compatible with existing state and federal requirements.

22a-174-33(i) One commentor stated the Department did not address 40 CFR §70.6(e) in this rule which allows a temporary source to obtain one Title V permit. Although this commentor recognized this provision of the 40 CFR Part 70 permit rule is optional for the permitting authority, without this provision, the Department would be required to issue or modify a Title V permit each time a temporary source relocated. (41)
Response: I recommend the Department adopt language in the modifications subsection to provide for relocation of an emission unit providing it does not violate any other applicable requirement and is not a modification as defined in section 22a-174-1 of the RCSA.
(See language in Exhibit A, subparagraph (r)(3)(A)(iii))

22a-174-33(i) One commentor noted on-site ambient temperature asphalt emulsion stabilization recycling of contaminated soils will be rendered impractical in Connecticut if accommodation cannot be made to streamline the permit process for these temporary sources. (34:p1&2)
Response: As stated above, I recommend the Department adopt language to provide for relocation of an emission unit in the modifications subsection. However, this does not exempt portable sources from other applicable sections. (See language in Exhibit A, subparagraph (r)(3)(A)(iii))

22a-174-33(i) Some commentors noted the lack of a permit shield.(1, 2, 8, 15, 26, 40, 7, 8, 15, 18, 43, and 44) One commentor noted the lack of a revision shield. (15) Three commentors suggested language for the permit shield. (2, 29 and 13) One commentor suggested the Department provide for a permit shield in the regulation for general permits, minor, group minor and significant permit modifications. (24)
Response: I recommend that a permit shield subsection be included in this section to provide certainty to the regulated community with respect to applicable requirements addressed in the subject permit. (See generally, Exhibit A, subsection (k)) I also recommend the Department incorporate the federal limitations on the permit shield in such subsection. (See language in Exhibit A, subdivisions (k)(2), (3) and (5)) In addition, I recommend the Department include a revision shield which provides protection for sources who have submitted timely renewal applications as provided in Exhibit A,

subdivisions (f)(5) and (h)(4) and in accordance with Section 4-182(b) of the General Statutes, as described earlier in this report and in the General Response.

22a-174-33(i) One commentor suggested the Department allow for operational flexibility under 502(b)(10). (7) One commentor suggested the Department comport with operational flexibility language in that sources should be able to adjust their permitted operations at will, as long as there is no increase in permitted emissions or emission rates. (2) One commentor suggested the Department allow for operational flexibility per 40 CFR 70 (44) One commentor recommended the Department reinstate federal provisions for operational flexibility (as in the June 7 draft) which have been removed from September 27 draft. (45) One commentor suggested language for 502(b)(10) changes. (13)
Response: I recommend the Department accommodate, not necessarily institute verbatim 502(b)(10) language, the 40 CFR Part 70 operational flexibility provisions, in the modifications subsection. (See language in Exhibit A, subdivision (r)(3)) I recommend that in this manner Title V sources with Title V permits be able to institute operational flexibility by merely notifying the Department.

22a-174-33(i) Several commentors advised that operating permits should differentiate between permit terms that are federally enforceable and those that are not. (2, 7, 8, 13, 29 and 43)
Response: I recommend the Department include language to identify, by citation, the applicable legal requirements, thereby distinguishing state from federal requirements. (See language in Exhibit A, subparagraphs (j)(1)(D) and (E))

22a-174-33(i) One commentor advised the Department to provide for general permits to ease the burden on small business. (24) One commentor recommended that general permit provisions be implemented for small boilers with heat input rates of five million BTU's per hour or less. (32)
Response: I recommend the Department use its best efforts, subject to all statutory requirements, to issuing Title V general permits where it is appropriate. I do not recommend the Department provide additional general permit provisions in this subsection as it is not necessary, as provided in Exhibit A, subsection (l), because the Department has the existing authority to issue general permits pursuant to Section 22a-174(l)(1) of the General Statutes.

22a-174-33(i) One commentor stated this section needs to include a timeframe for issuing a final permit. (5)
Response: I recommend the Department incorporate an 18 month

timeframe for taking final action on an application. (See language in Exhibit A, subdivision (j)(1))

22a-174-33(i)(1) Two commentors stated this subdivision goes beyond Title V requirements. (2 and 8) Several commentors recommended this paragraph should be deleted. (7, 8, 13, 27, 29, 36) One commentor requested that an explanation clarifying when this statement would apply should be added. (12) One commentor recommended, to the extent Section 22a-174-33(i)(1) leads the Department to put terms in the permit not mandated by the applicable requirements, the state should make clear in the Title V permit that such requirements are enforceable only by the state and would need to be delineated in the state-only requirement section of the permit.(41) One commentor stated that this paragraph is vague and meaningless. (15) One commentor argued this paragraph is contradictory. This commentor questioned the Commissioner's authority to impose reasonable conditions beyond normal due diligence. (45)
Response: I recommend this paragraph be deleted. I recommend the Department limit this subsection to requirements of, and pursuant to, the CAA, other federally enforceable requirements, and any state permitting requirement necessary to facilitate the issuance of a unified-permit from the Bureau of Air Management. For more detail, please consult the General Response to 40 CFR Part 70.3(c) and as described in responses concerting the definition of applicable requirements, above.

22a-174-33(i)(2) One Commentor argued it is unclear what the Department's intent is with respect to this subdivision. This commentor questioned whether the Department is trying to state that a permit would not be issued to a source which could not comply with such permit? Such commentor pointed out that Title V does not exempt violating sources from the requirement to have a permit. This commentor believes if the Department denies a violating source a Title V permit, the source must cease operation. (41) One commentor suggested the Department revise this paragraph so as not to require compliance with the subparagraphs prior to permit issuance. (13)
Response: I recommend the Department make this change, while still meeting the minimum federal requirements, to eliminate in this regulation the requirement to comply with the subparagraphs in this subdivision prior to permit issuance. In order to be consistent with the concept that the Department may issue permits which include a compliance schedule if the source is not already in compliance, I recommend the language provided in Exhibit A, subdivision (j)(1) which states, in part, "...Commissioner determines that such owner or operator is likely to be able to comply..."

22a-174-33(i)(2) One commentor recommended the Department delete references to the U.S. Environmental Protection Agency's trading guidance documents. (25)
Response: I recommend the Department delete the reference to the EPA's "Emissions Trading Policy Statement", published December 4, 1986 (Federal Register, Volume 51, Number 233) to allow the Department further flexibility which may be restricted by the outdated federal guidance. However, I do not recommend deleting the reference to the more recent Federal Economic Incentive Program Rules, as trading will have to meet minimum federal requirements. (See language in Exhibit A, subparagraph (j)(1)(P))

22a-174-33(i)(2) One commentor indicated the Department should bind itself, within the regulations, to issuing permits only if the permit contains all of the elements set forth in 40 CFR §70.6. This commentor continued by stating the CAA and EPA's 40 CFR Part 70 regulations require that a permitting authority commit in the program regulations to incorporate critical permit elements. It is this regulatory commitment that makes the permitting authority accountable not only to EPA but also to citizens and the regulated community. It is also unclear what options are available to the public if the Department omits a critical permit term which is not required by regulation to be in a permit. Therefore, this commentor stated, the Department should include language in Section 22a-174-33(i) that will address all of the items which have to be contained in an operating permit as required by 40 CFR §70.6. It appears that the Sections 22a-174-33(i)(2)(A) through (N) address portions of 40 CFR §70.6. Such commentor recommends rewording Section 22a-174-33(i)(2) as follows:

> "Each Title V permit shall include the following elements:"

In addition, this commentor suggested the following requirements be added to complete the Department's provisions currently in Section 22a-174-33(i)(2)(A) through (M):

> a. The permit will need to specify the origin and authority for each term or condition.
>
> b. The Department should state in Section 22a-174-33(i)(2)(A) that the permit term for an affected source is fixed for five years.
>
> c. The Department should include enhanced monitoring in Section 22a-174-33(i)(2)(G)(I). As written, Section 22a-174-33(i)(2)(G)(I) may address enhanced monitoring if the Department rewords the definition of "applicable

requirement."

d. The Department's regulation does not appear to provide a "gap filling" monitoring requirement, i.e., a provision which allows for adequate monitoring provisions to be included in a permit where there is no underlying applicable requirement that does so. Such measures are necessary to ensure that the relevant emissions limits and permit terms are enforceable as a practical matter. See 40 CFR §70.6(a)(3)(I)(B).

e. The permit should incorporate all applicable recordkeeping requirements. For example, a permit would need to contain the recordkeeping requirements for 40 CFR Part 60, Subpart Db if a source had a boiler subject to Subpart Db. Section 22a-174-33(i)(2)(H) only covers monitoring reports.

f. The permit should state that reports for any required monitoring be submitted at least every six months. In addition, all deviations should be clearly identified in each report and that the reports should be signed by the responsible official as stated in Section 22a-174-33(b). See 40 CFR §70.6(a)(3)(iii)(A).

g. The permit should state that deviations from permit requirements, probable cause of such deviations, and any corrective actions be reported promptly. See 40 CFR §70.6(a)(3)(iii)(B). This will allow a state to respond in a timely manner to a hazardous situation that could be created by an excess emission of a HAP or any other permit violation.

h. The permit should state that a source could not state the need to halt or reduce activity as a defense. See 40 CFR §70.6(a)(6)(ii). Without this permit provision a source may be allowed to assert such a defense pursuant to other applicable state laws.

i. The permit should contain the following provision regarding permit reopening, modifying, revoking, and reissuing: See 40 CFR §70.6(a)(6)(iii).

> "The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by a permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition."

j. The permit should contain a provision stating that the permit does not convey any property rights or any exclusive privilege. See 40 CFR §70.6(a)(6)(iv).

k. The permit should contain a provision similar to 40 CFR §70.6(a)(6)(v) which requires a source to submit additional information within a reasonable time if the Department requests it. This allows the Department to obtain data necessary to determine if a permit needs to be revoked, modified, and reissued or terminated.

l. The Department should add the following language at the end of Section 22a-174-33(i)(2)(K). See 40 CFR §70.6(a)(10).

> "Such terms and conditions, to the extent that the applicable requirements provide for trading without a case-by-case approval of each emission trade, shall include all of the terms required under Section 22a-174-33(i)(2) and meet all applicable requirements."

The additional language will ensure that all of the terms and conditions are written appropriately.

m. The permit should delineate between requirements which are federally enforceable and requirements which are only enforceable by the state. See 40 CFR §70.6(b)(2).

n. The permit should contain a provision similar to 40 CFR §70.6(c)(2). This section deals with the right of Department personnel to enter and inspect a facility, including any testing or reviewing of records.

o. The Department should cross reference Section 22a-174-33(h) in Section 22a-174-33(i)(2)(L) because the permit's schedule of compliance should be consistent with the compliance plan. See 40 CFR §70.6(c)(3). (41)

Response: In order to meet minimum federal requirements, I recommend as follows:

I recommend the Department incorporate language into this subsection to address the concerns above in a), b), d), e), g), h), i), j), k), l), m), and (n). (See language in Exhibit A, subparagraphs, (j)(1)(D), (A), (P), (K)(ii), (K), (O), (T), (V), (W), (X), (E) and (M), respectively)

I recommend the Department incorporate language as provided in Exhibit A, subdivision (o)(1), Monitoring Reports, to address f).

With respect to this commentor's last suggestion, while

the schedule of compliance and the compliance plan are similar, they are not the same. The schedule of compliance would be approved by the Department and based upon the information submitted in the compliance plan. I recommend the Department make the connection clear when including the schedule language. (See language in Exhibit A, subparagraph (j)(1)(Q))

40 CFR Part 70 indicates the public's federal notice and opportunity rights. I recommend the Department include the public process as provided for in Exhibit A, subsections (l), (m) and (n). I do not recommend referencing suggested language in c), as enhanced monitoring has not been finalized in the federal regulations.

22a-174-33(i)(2)(A) Two commentors suggested the Department should allow for solid waste incinerators to have permits that last up to 12 years. (13, 36) One commentor recommended that waste energy facilities should not have a maximum 5-year term on a permit. (44)
Response: I recommend that the Department provide for the same maximum permit time period for all Title V permits, i.e., five years in order to provide consistency between all permits. (See language in Exhibit A, subparagraph (j)(1)(A))

22a-174-33(i)(2)(B) One commentor advised that this section is broader than requiring compliance with the permit and should be limited, as the language suggested has been limited. (13)
Response: I recommend the Department limit the requirements of this subsection to requirements of and pursuant to the CAA, any other federally enforceable requirements (i.e., the FIP and the SIP), and any additional state permitting requirement pursuant to Section 22a-174-3 of the RCSA necessary to facilitate the issuance of a unified-permit from the Bureau of Air Management. (See generally, Exhibit A, subparagraph (j)(2)(C))

22a-174-33(i)(2)(C) Two speakers indicated this subparagraph goes beyond Title V requirements and one said it is not practical for fugitive emission sources and that mass balance would not even be practical.(1 and 8) Several commentors recommended this subparagraph should be amended so that it does not require emission limits or emission rates for all regulated air pollutants except when there is an applicable requirement which requires such limitation or rate. (7, 8, 13)
Response: I recommend the Department make a change based on this comment. The Department should adopt language as provided in Exhibit A, subdivision (j)(1) to ensure some reasonableness and usefulness of information required such that relevant and applicable requirements are included in the

Title V permit.

22a-174-33(i)(2)(C) One commentor recommended this subparagraph should be amended to allow trading if a federally enforceable cap is included. (7)
Response: I recommend the Department adopt language which does not preclude intra-premise trading if a federally enforceable cap is included to meet minimum federal requirements. (See language in Exhibit A, subparagraphs (j)(1)(G)(i), (j)(1)(I) and (r)(3)(A))

22a-174-33(i)(2)(C) One commentor advised that this subparagraph is not reasonable where RACT, MACT or CTGs impose operational or technological limits rather than emission limits. (45)
Response: I recommend the Department include language provided in Exhibit A, subparagraphs (j)(1)(D), (F), (G), (H)(i), (J), (M) and (Q) to ensure that the purpose of the resulting permit is to ensure compliance with applicable requirements whether they are emission limitations, operational limitations or technical limitations.

22a-174-33(i)(2)(D) One commentor indicated the only limitations and standards that should be reflected in a permit are those which constitute applicable requirements. (13)
Response: I recommend the Department include such language as is provided in Exhibit A, subparagraphs (j)(1)(D), (F), (G), (H)(i), (J), (M) and (Q) to ensure that the purpose of the resulting permit is to ensure compliance with applicable requirements.

22a-174-33(i)(2)(D) One commentor indicated the use of the term "emissions unit" here is different than the intent in the federal definition.(15)
Response: As stated previously in the responses regarding definitions and in the General Response to 40 CFR Part 70.2, I recommend the Department define emissions unit in conformity with the federal definition.

22a-174-33(i)(2)(D) One commentor noted the language in this subparagraph suggests the Department will accept various forms of monitoring as long as they are reliable.(15)
Response: I recommend the Department clarify that various forms of monitoring are acceptable as long as they are reliable and no other, more stringent, requirements are applicable. (See language in Exhibit A, subdivision (a)(11) and subparagraph (j)(1)(K)(ii))

22a-174-33(i)(2)(F) One commentor indicated that the Department needs to substitute the federal nomenclature

"alternative operating scenarios" for "method of operation". (13)
Response: I recommend the Department adopt the phrase alternative operating scenario rather than using the phrase method of operation to avoid confusion. (See language in Exhibit A, subdivision (a)(4) and subparagraph (j)(1)(J)) and in the General Response to 40 CFR Part 70.

22a-174-33(i)(2)(G) One commentor stated the Department needs to explicitly state in the regulation that recordkeeping will be allowable as a form of monitoring.(15)
Response: I recommend the Department adopt language which does not preclude recordkeeping from replacing other forms of monitoring where reliable and where no other more stringent requirements apply. (See language in Exhibit A, subparagraph (j)(1)(K)(ii))

22a-174-33(i)(2)(G) One commentor indicated that emission limits which are applicable requirements do not exist for every regulated air pollutant and the language should therefore be amended. (13)
Response: I recommend the Department respond to this concern and provide that the permit contain emission limits only if required by, or necessary for the enforcement of, state or federal requirements. (See language in Exhibit A, subparagraph (j)(1)(K))

22a-174-33(i)(2)(G) One commentor stated there is no regulatory limit on delaying a permit and that the Department can force a facility to shut down for not having a permit. (15)
Response: I recommend the Department take final action on an application within 18 months of receiving a sufficient application in order to provide the regulated community with some certainty. (See language in Exhibit A, subdivision (j)(1))

22a-174-33(i)(2)(G) One commentor indicated the regulation should be revised to clarify that monitoring is only required for those regulated pollutants which would potentially exceed the Title V applicability levels. (32) One commentor indicated this subparagraph needs to reflect record keeping and noninstrumental methods of determining compliance. (38)
Response: I do not recommend the Department preclude its ability to require monitoring as the commentor suggests, because there may be other applicable requirements which necessitate the inclusion of monitoring requirements in the subject permit. I do recommend the Department allow recordkeeping as a form of monitoring for emission units at Title V sources as provided in Exhibit A, subparagraph

(j)(1)(K)(ii)), in order to provide as much flexibility as is allowed by the applicable requirements.

22a-174-33(i)(2)(G)(ii) One commentor stated this subparagraph is not clear as to what is required. (15)
Response: I recommend the Department clarify that periodic monitoring or recordkeeping sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit, is acceptable to fulfill the monitoring requirement. (See language in Exhibit A, subparagraph (j)(1)(L))

22a-174-33(i)(2)(G)(iii) One commentor indicated that all emission monitoring analysis, procedures, and test methods shall contain, where necessary, specification concerning the use, maintenance, and where appropriate, installation of monitoring equipment or methods. (13)
Response: I recommend the Department modify this subdivision to include language reflecting this commentor's concern. (See language in Exhibit A, subparagraph (j)(1)(L))

22a-174-33(i)(2)(I) Some commentors stated the requirements in this subparagraph go beyond Title V requirements.(1, 8, and 15) Several commentors indicated that no additional comprehensive operations and maintenance ("O & M") plans should be required. (7, 13 and 15) One commentor suggested this section should be clarified so that these requirements only apply to major new sources and modifications and not to existing sources for which these plans were not previously required. (32) One commentor indicated this subparagraph seems to require CEM for smaller sources in accordance with an O & M Plan for each emitting activity. (29)
Response: I recommend the Department delete the requirement for the submission of a comprehensive operation and maintenance plan as a requirement of this subsection. However, this should not preclude the Department from obtaining an existing operation and maintenance plan relating to an alternative operating scenario or applicable requirement where the application is otherwise insufficient.

22a-174-33(i)(2)(J) One commentor indicated this section should be clarified to better convey that these requirements only apply to major new sources and modifications and not to existing sources for which these plans were not previously required.(32)
Response: I recommend the Department delete this provision from the regulation as it is not needed to meet minimum federal requirements. However, this does not preclude such a requirement from being applicable to a Title V source subject to Section 22a-174-3 of the RCSA.

22a-174-33(i)(2)(K) One speaker stated the 1986 Emissions Trading Policy Statement is outdated and should not be cited.(4) One commentor indicated the EPA guidance will undoubtably change and Department's regulation should not refer to EPA rules and guidance. (13) One commentor indicated the language in this subparagraph prevents the Commissioner from granting a Title V permit unless the permit contains all the terms and conditions enabling a trade. This commentor further stated that the EPA documents referred to are inconsistent with one another, and thus references to these should be eliminated. (25) One commentor recommended the Department should add the following language at the end of Section 22a-174-33(i)(2)(K). See 40 CFR §70.6(a)(10).

> "Such terms and conditions, to the extent that the applicable requirements provide for trading without a case-by-case approval of each emission trade, shall include all of the terms required under Section 22a-174-33(i)(2) and meet all applicable requirements."

This additional language will ensure that all of the terms and conditions are written appropriately.(41)

Response: I recommend the Department delete the language pertaining to the EPA's "Emissions Trading Policy Statement", published December 4, 1986, for the reasons stated by these commentors. I do not recommend, however, deleting the reference to EPA's "Economic Incentive Program Rules", published April 7, 1994. Should federal trading rules change, thereby having a substantive effect on the Department's regulation, I recommend the Department use its best efforts, subject to all statutory requirements, to amend this regulation. Also, I do recommend the Department include language similar to that described at the end of this comment to meet minimum federal requirements. (See language in Exhibit A, subparagraph (j)(1)(P), at last sentence)

22a-174-33(i)(2)(L) One commentor recommended the Department should cross reference Section 22a-174-33(h) in this subparagraph because the permit's schedule of compliance should be consistent with the compliance plan. See 40 CFR §70.6(c)(3). (41)

Response: I recommend the Department reference the compliance plan in this subparagraph for continuity. (See language in Exhibit A, subparagraph (j)(1)(Q), the last sentence). However, it should be clear that the compliance plan is not the same as the compliance schedule negotiated with the Department.

22a-174-33(i)(2)(N) One commentor recommended the Department

delete this provision.(13) One commentor recommended the Department alter this language to recognize that permits should not contain all terms and conditions of any permit previously issued. The following language should be added, " . . . as altered by any previously-issued amendments and modifications to such permits." (36)
Response: I do not recommend the Department delete this provision. If it is active, it is a permit currently enforceable by the Department. However, I do recommend the Department add the word "may" before "contain" as can be seen in Exhibit A, subparagraph (j)(1)(S).

22a-174-33(i)(3) One commentor suggested the Department should state that the permits are enforceable by the Department, the citizens and the EPA. (13)
Response: I recommend the Department add similar language as has been suggested to meet minimum federal requirements. (See language in Exhibit A, subparagraph (j)(1)(E)). I recommend including the procedural requirements to allow for enforcement by citizens, the affected states and the EPA. (See language in Exhibit A, subsections (l), (m) and (n) and subdivisions (r)(8) through (r)(14))

22a-174-33(i)(3) One commentor suggested the Department add language
allowing for off-permit changes. (13)
Response: I do not recommend that the Department add language specifically stating off-permit changes are allowed under this section. This subsection pertains to the standards for issuing a permit, not subsequent actions. I would recommend the Department provide for all off-permit changes in the modification subsection to allow for flexibility to the extent intended by 40 CFR Part 70. (See generally, Exhibit A, subdivision (r)(4))

22a-174-33(i)(3) One commentor suggested the Department add a permit shield. (13) In addition, this commentor suggested adding language allowing sources to request that the shield extend to requirements deemed inapplicable. (13)
Response: I recommend the permit shield be added including a provision as seen in Exhibit A, subparagraph (k)(1)(B), identifying what is not applicable, if the Commissioner so chooses, in order to provide certainty with respect to applicable requirements addressed therein as provided in Exhibit A, subsection (k).

22a-174-33(i)(3) One commentor suggested the Department add language limiting enforcement actions to noncompliance with permit provisions. (13)
Response: I do not recommend adding any language which will

limit the enforcement authority of the Commissioner, other than that which is deemed appropriate by the Commissioner in the context of the permit shield as provided in Exhibit A, subsection (k). Limiting enforcement authority beyond what is provided by the permit shield would not be in compliance with minimum federal requirements for the Title V Program.

22a-174-33(i)(3) One commentor suggested the Department add language specifying those terms which are not federally enforceable.
Response: For reasons stated previously, I do recommend the Department identify those terms which are federally enforceable and those which are not federally enforceable in the permit. (See language in Exhibit A, subparagraph (j)(1)(E))

22a-174-33(i)(3) One commentor recommended the Department add language codifying operational flexibility, off-permits, and trading within a facility. Such commentor suggested the Department add language allowing for flexibility to shift emissions from one point to another within a facility, subject to a 7-day notice within a facility. (13)
Response: I recommend the Department provide for operational flexibility, off-permit and intra-premise trading in the modifications subsection to provide the flexibility allowed by 40 CFR Part 70. (See language in Exhibit A, subdivisions (r)(3) and (r)(4))

In addition, I recommend the Department make the following changes to this subsection to increase clarity and, where necessary, incorporate federal program requirements:

1) I recommend the Department change the title of this subsection to "Standards for Issuing and Renewing Title V Permits". Also, this subsection is now letter (j), not (i), due to the addition of a new subsection under letter (h).

2) I recommend the Department add to this subsection a provision which provides, Failure of the Commissioner to act within such period shall not entitle the applicant to issuance, modification or renewal of any Title V permit, to meet minimum federal requirements. (See Exhibit A, subdivision (j)(1))

3) I recommend the Department add a provision that the permittee shall not continue to operate until a timely renewal application is filed, to meet minimum federal requirements. (See language in Exhibit A, subparagraph (j)(1)(B))

4) I recommend the Department add a provision for limiting

emissions to the extent required by an applicable requirement, and providing a floor for such limitations to provide flexibility to the extent allowed by applicable requirements. (See language in Exhibit A, subparagraphs (j)(1)(F) and (j)(1)(F)(i) and (ii))

5) I recommend the Department add a subparagraph which provides that "The permit states that it shall not be deemed to:" and then lists such preclusions to provide flexibility to the extent allowed by applicable requirements. (See language in Exhibit A, subparagraphs (j)(1)(G) and (j)(1)(G)(i), (ii) and (iii))

6) I recommend the Department add to subparagraph (i)(2)(D) a reference to the acid rain requirements of 40 CFR Parts 72 through 78, inclusive to ensure the regulation meets minimum federal requirements. (See language in Exhibit A, subparagraph (j)(1)(H)(ii))

7) I recommend the Department add to the content of subparagraph (i)(2)(E) the concept that alternative emission limits must be quantified, legally enforceable and based upon replicable procedures. Also, the Department should allow intra-premise trades to meet minimum federal requirements. (See language in Exhibit A, subparagraph (j)(1)(I))

8) I recommend the Department add to the content of subparagraph (i)(2)(F) the concept that such alternative operating scenarios to provide the necessary flexibility. (See language in Exhibit A, subparagraph (j)(1)(J))

9) I recommend the Department revise the language in subparagraphs (i)(2)(G) and (G)(i) as can be seen in Exhibit A, subparagraphs (j)(1)(K) and (j)(1)(K)(i) and (ii) to improve the readability of this section.

10) I recommend the Department revise the language in subparagraphs (i)(2)(G)(ii) and (iii) as can be seen in Exhibit A, subparagraph (j)(1)(L) to improve the readability of this section.

11) I recommend the Department require that the permit contains all applicable recordkeeping requirements and all reporting requirements pursuant to subsections (o), (p) and (q) of this section. This will ensure the Department meets minimum federal requirements. (See Exhibit A, subparagraph (j)(1)(N))

12) I recommend the Department add that the permit may be modified, revoked, reopened, reissued, or suspended by the

Commissioner, or the Administrator in accordance with this section, Section 22a-174c of the General Statutes, or Section 22a-3a-5(d) of the Regulations of Connecticut State Agencies. Again, this will ensure the Department meets minimum federal requirements. (See Exhibit A, subparagraph (j)(1)(U))

13) I recommend the Department add the following language in order to meet minimum federal requirements: the permit specifies the conditions under which the permit will be modified prior to the expiration of the permit. (See Exhibit A, subparagraph (j)(1)(Y))

14) I recommend the Department add the following subdivision: 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, to ensure compliance with public notice and opportunity for comment/hearing procedural requirements. (See Exhibit A, subdivision (j)(3))

Permit Shield

I recommend the Department add a new subsection (k) to this section which provides the terms and conditions of a permit shield which is allowed by 40 CFR Part 70. The shield gives the regulated community assurance that they will not be punished for the mistakes of the Department, as long as the permit shield and the provision of the permit, containing the mistake, are in effect. (See generally, Exhibit A, subsection (k)) This will provide certainty for the regulated community with respect to the extent to which the applicable requirements are addressed in the subject permit. The shield language allows modifications provided in Exhibit A, subdivisions (r)(1) and (r)(2) to be covered by a permit shield. The shield language does not allow changes pursuant to language provided in Exhibit A, subdivisions (r)(3) and (r)(4), known as operational flexibility and off-permit changes, to be covered by such a permit shield.

Public Notice

The following language was presented at the October 28, 1994 hearing for comment:

(j) Public Notice.

(j)(1) Any person who submits an application for a Title V operating permit or to modify a Title V operating permit shall:

(A) include with such application a signed statement certifying that the applicant will publish notice of such application on a form supplied by the Commissioner in accordance with this subsection;

(B) publish notice of such application in a newspaper of general circulation in the affected area; and

(C) send the Commissioner a certified copy of such notice as it appeared in the newspaper.

(j)(2) The Commissioner shall not process an application until the applicant has submitted to the Commissioner a copy of the notice required by this subdivision. Such notice shall include:

(A) the name and mailing address of the applicant and the address of the location at which the proposed activity will take place;

(B) the application number, if available;

(C) the type of permit sought, including a reference to the applicable statute or regulation;

(D) a description of the activity for which a permit is sought;

(E) a description of the location of the proposed activity and any natural resources affected thereby;

(F) the name, address and telephone number of any agent or the applicant from whom interested persons may obtain copies of the application; and

(G) a statement that the application is available for inspection at the Department's Bureau of Air Management.

(j)(3) The Commissioner, at least thirty (30) days before approving or denying an application for a Title V operating permit shall publish or shall cause to be published, at the applicant's expense, once in a newspaper having a substantial circulation in the affected area, notice of his tentative determination regarding such application. Such notice will include:

(A) the name and mailing address of the applicant

and the address of the location of the proposed activity;

(B) the application number;

(C) the tentative decision regarding the application;

(D) the type of permit or other authorization sought, including a reference to the applicable statute or regulation;

(E) a description of the location of the proposed activity and any natural resources affected thereby;

(F) the name, address and telephone number of any agent of the applicant from whom interested persons may obtain copies of the application;

(G) 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 application; and

(H) such additional information the Commissioner deems necessary to comply with any provision of title 22a of the General Statutes, or regulations adopted thereunder, or with the federal Clean Air Act, Federal Clean Water Act, or the federal Resource Conservation and Recovery Act.

(j)(4) The applicant shall send a copy of any notice required pursuant to subsection (j)(2) or subsection (j)(3) of this section to the Administrator through Region I of the U.S. Environmental Protection Agency. Such applicant shall also send a copy of any notice required pursuant to subsection (j)(3) of this section to:

(A) the Chief Executive Officer of the municipality where the Title V source is or will be located;

(B) the appropriate Connecticut Regional Planning Agency;

(C) any federally recognized Indian governing body whose lands may be affected by emissions from the Title V source; and

(D) the Director of the air pollution control program in

the states of Massachusetts, New Jersey, New York, and Rhode Island.

(j)(5) The Commissioner may require an applicant to post a sign at the Title V source or to provide any other reasonable form of notice necessary to apprise the public and abutting landowners in accordance with Public Act 94-85 Section 1.

(j)(6) For the purposes of this subsection, the term application means a request for a Title V operating permit, or a request for modification or renewal of such permit.

Comments Regarding subsection (j) Public Notice

22a-174-33(j) One commentor indicated that the Department has not adequately addressed certain procedural requirements with regard to EPA and affected state review of permits. These requirements can be found in 40 CFR §§70.7 and 70.8. This commentor pointed out that 40 CFR Part 70 is not self implementing and is simply designed to address what a state's program should contain. For the state program to be fully effective, a state must bind itself within its regulations to follow certain procedures. These procedures include, among other requirements, that EPA is given all relevant information on a timely basis in order to carry out its mandated oversight duties and that affected states have an opportunity to review and comment on proposed permits. This commentor believes if such procedures are not adequately addressed in the state rule, citizens are effectively denied the opportunity to ensure that such requirements are implemented. According to the commentor, EPA has clearly stated in 40 CFR Part 70 that a state agency must be held accountable by all affected parties, including citizens, in implementing a Title V program. (5,41) One commentor indicated that the Department should include provisions in Section 22a-174-33(i) or (j) of the RCSA that provide that the Department will issue a permit only after the Department has submitted various notices to EPA and EPA did not object to such permit by the end of EPA's 45-day review period. See 40 CFR §§70.7(1)(a)(v) and 70.8(c)(1).(41) **Response:** I recommend the Department provide EPA with a 45 day review period and the public with a 30 day review period, in order to meet minimum federal procedural requirements for the Title V Program. (See language in Exhibit A, subsections (l), (m) and (n), respectively) I recommend the Department provide the EPA and affected states with copies of the tentative determination. (See language in Exhibit A, subdivision (l)(3), the last sentence) I recommend the Department provide EPA, affected states and the public with of the tentative

determination. (See language in Exhibit A, subparagraphs (l)(3)(A) and (E)) I do not recommend that EPA's review period begin subsequent to the public's 30 day review period. The Department, according to federal requirements, has only 18 months to take final action on a complete application. By providing the Administrator and public review begin at the same time, the Department may be able to address their concerns simultaneously rather than in serial, and ultimately take final action in a more expedient manner.

In order to adequately and explicitly address EPA's concerns, arising out of changes made or comments made, I recommend the Department allow for an additional 45-day review period, if necessary, as specified in Exhibit A, subdivision (n)(1), as well as provide a reopening for cause option within the modification subsection as seen in Exhibit A, subdivisions (r)(8) through (r)(13).

22a-174-33(j) One commentor advised that the Department should provide for statements in this subsection regarding the legal and factual bases for the draft permit conditions (including references to the applicable statutory or regulatory provisions). This commentor believes the regulation should require the Department to send them to EPA and any other person who requests them. See 40 CFR §70.7(a)(5). (41)

Response: I recommend the Department include a requirement that the permit indicate the legal basis for the permit conditions which shall provide the factual basis or reference to the factual basis. (See language in Exhibit A, subparagraph (j)(1)(D))

22a-174-33(j) One commentor indicated the Department should clarify in the regulations that when a reference is made to applications for Title V permits and requirements associated with such applications, that "permit application" also includes permit renewals. For example, such clarification would be useful in Sections 22a-174-33(j) and (k).(41)

Response: A form of permit application must be submitted whether it is for a first time applicant, or renewal applicant. I recommend the Department specifically reference permit renewals as seen in Exhibit A, subdivisions (j)(1), (h)(3) and (h)(5) to make clear that renewal applicants must comply with subsections (g), (h) and (i).

22a-174-33(j) One commentor advised the Department should include a provision in Section 22a-174-33(j) which requires the Department or the applicant to provide EPA with a copy of an application for a permit modification. This commentor also suggested the Department include a provision stating the Department will send a copy of each proposed permit and each

final permit to EPA. See 40 CFR §§70.7(a)(v) and 70.8(a)(1).(41)
Response: I recommend the Department include a provision which requires the applicant to provide EPA with a copy of an application for a permit modification and a provision stating that the Department will send a tentative determination and a final application for a permit to the Administrator. (See language in Exhibit A, subdivisions (h)(5), (n)(4) and (1)(3), respectively) To further clarify, I recommend the Department add a new section for permit processing and EPA review. (See generally, Exhibit A, subsection (n))

22a-174-33(j) One commentor indicated the Department should include a provision in Section 22a-174-33(j) which states the Department will, as part of the submittal to EPA of a proposed permit, provide written notice to EPA and affected States of the Department's reasons for not accepting any recommendations submitted by an affected State during the public or affected State review period. See 40 CFR §§70.7(a)(1)(iii) and (v), and 70.8(b)(2). (41)
Response: I recommend the Department include a provision which requires the Department to provide EPA and affected States with a written notice of the Department's reasons for not accepting any recommendations submitted by an affected State during the public or affected State review period to meet federal requirements. (See language in Exhibit A, subdivision (1)(5) and subsection (n), respectively)

22a-174-33(j) One commentor indicated the Department should include a provision in this subsection that provides notice to the public that any person may petition EPA to object to issuance of a proposed permit (where EPA has not previously objected) within 60 days of the close of EPA's 45-day review period. See 40 CFR §70.8(d). (41)
Response: I recommend the Department include a provision in this section which meets minimum federal requirements. (See language in Exhibit A, subdivision (n)(2))

22a-174-33(j) One commentor indicated the Department should add the following language to Section 22a-174-33(j): See 40 CFR §70.7(h)(1).

> "Notice shall be given to persons on a mailing list developed by the Department, including those who request in writing to be on the list." (41)

Response: I do recommend the Department adopt similar language. (See language in Exhibit A, subparagraph (1)(3)(F)) I believe the provisions as seen in Exhibit A, subsections (1), (m) and (n) provide adequate opportunity for public notice and comment.

22a-174-33(j)(2)(D) One commentor noted that a definition of "activity" is lacking with regards to (j)(2)(D). This commentor questions whether the notice for an application must describe every activity of every emissions unit at the facility, or just a description of the facility's most common activity? The same question is posed with regards to notice for a permit modification.(15)
Response: I do not recommend a change based upon this comment. An owner or operator of a Title V source should list the specific activities which caused the source to be subject to this section. (See language in Exhibit A, subdivision (l)(4))

22a-174-33(j)(2)(E) and (j)(3)(E) One commentor stated definitions of "location", "natural resources" and "affected" are lacking in (j)(2)(E)and (j)(3)(E). (15)
Response: I do not recommend a change to this subsection based upon this comment. 'Location of proposed activity' may include an address or legal description of the property. 'Natural resources affected' will have to be determined in a prudent manner by the applicant and may include; land, fish, wildlife, boita, air, water, ground water, and drinking water supplies.

22a-174-33(j)(4) One commentor suggested a provision be added to the regulation requiring the Commissioner notify the applicant when the Commissioner causes the (j)(3) notice to be published. This commentor suggested the Commissioner provide the applicant with a copy of such notice so that the applicant can comply with the mailing requirements of (j)(4).(15)
Response: Since the Department is issuing the tentative determination, I recommend the Department comply with the notification requirements as provided in Exhibit A, subdivision (l)(3) so that the applicant is not required to take such actions.

22a-174-33(j)(4) One commentor suggested the following language to amend the third sentence of this subdivision, "to the Administrator or his designee. . . " (41)
Response: This subsection refers to mailing the tentative determination to the EPA. I recommend the Department mail the tentative determination to the Administrator. (See language in Exhibit A, subdivision (l)(3), last sentence)

22a-174-33(j)(4)(C) One commentor suggested the phrase "whose lands may be affected by emissions from the Title V source" is ambiguous. This commentor would like Department to clarify this phrase. (32)
Response: Albeit this phrase will call for prudent interpretation by the applicant, I do not recommend a change based upon this comment, because such language is necessary to

fulfill federal notification requirements.

22a-174-33(j)(4)(D) One commentor indicated that the reference to New Jersey, Massachusetts, New York, and Rhode Island in 22a-174-33(j)(4) is not sufficient for two reasons. First, it only addresses a requirement that an applicant submit public notices to affected States. This commentor pointed out there are other requirements within 40 CFR §70.8(b) that Connecticut should include in its regulation that relate to affected States. For example, the Department should provide a statement to any affected State which submitted comments that the Department did not accept. Such a statement should set forth the reasons why the affected State's comments were not addressed. In addition, this commentor continued, the Department's rule should provide that a final permit shall not be issued until the time period for EPA's review and affected States' review has lapsed, which is triggered by a notice that Department is not accepting an affected state's comment. (41)
Response: I recommend the Department provide notice of non-acceptance of an affected states comments prior to taking final action, as provided in Exhibit A, subdivision (l)(5) and subparagraph (n)(1)(D). In addition, the rule should provide that the permit not be issued to the Administrator and affected states review time period has elapsed. (See language in Exhibit A, subdivision (n)(1))

22a-174-33(j)(4)(D) One commentor noted the Department's list of affected states may not include all potentially affected states as defined in 40 CFR Part 70. This commentor questions whether New Hampshire and Vermont are within 50 miles of the Connecticut border? If they are, then these states should also be included in a list of affected states. However, the Department has the option to include a 50 mile radius in its definition of affected states which would allow Connecticut to notify non-contiguous states only for those sources that are within 50 mile of the particular state. (41)
Response: I recommend the Department amend this section to include non-contiguous states only when the source is within a 50 mile radius of the particular state to meet minimum federal requirements. (See definition for Affected States, in Exhibit A, subdivision (a)(3))

In addition, I recommend the Department make the following changes to improve clarity and, where necessary, to meet federal program requirements:

1) I recommend this section now be lettered (l), not letter (j) due to the addition of new subsections (h), "Application Processing" and (k), "Permit Shield". The title of this

subsection, however, should remain the same, i.e., "Public Notice".

2) I recommend the Department include a provision for notice with respect to Title V general permits in order to meet minimum federal requirements. (See language in Exhibit A, subdivision (l)(1))

3) In the interest of brevity, I recommend the Department consolidate the requirements of subparagraphs (j)(1)(A) through (C) and (j)(2)(A) through (G) into one subdivision, (l)(2), as it was not necessary for clarity to provide all requirements in the regulation when they are clearly provided for in the referenced Section of the General Statutes. (See language in Exhibit A, subdivision (l)(2))

4) I recommend the requirement in subdivision (j)(4) and subparagraphs (j)(4)(A) through (D) be the responsibility of the Commissioner, not the applicant, since it is the Department's tentative determination. In addition, I recommend the Department provide for the requirements of that subdivision and subparagraphs into subdivision (l)(3) and subparagraphs (l)(3)(A) through (F). (See language in Exhibit A, subdivision (l)(3) and subparagraphs (l)(3)(A) through (F))

5) I recommend the Department add a new subdivision providing, the Commissioner will 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. This is necessary to meet minimum federal requirements. (See Exhibit A, subdivision (l)(6))

6) I recommend the Department delete the provision of (j)(5), because it is not necessary to include existing statutory requirements in this section. However, the Department will have an opportunity to include references, to such routine statutory requirements, in supplemental guidance supplied with the application.

7) I recommend the Department delete the provision of (j)(6) because the term application does not, in and of itself, need to indicate what the application is in reference to, whether it be an application for a Title V permit, modification or renewal.

Public Hearings

The following language was presented at the October 28, 1994 hearing for comment:

(k) Public Hearings.

(k)(1) Any person may file, within thirty (30) days following the public notice of a tentative determination under subdivision (j)(3) of this section, written comments on such determination. Any such comments opposing the issuance of such permit shall set forth the basis thereof in detail and may be accompanied by a request for an public informational meeting, a public hearing, or both.

(k)(2) Following receipt of a request for a public informational meeting, or upon the Commissioner's own initiative, the Commissioner shall, prior to the issuance of the Title V operating permit, hold such meeting. A notice of such public informational meeting shall be published in a newspaper of general circulation in the affected area. Such notice shall include the date, time and location of the public informational meeting. The Commissioner shall maintain a record of all comments made at such public informational meeting. The Commissioner may consider more than one application at any such meeting.

(k)(3) Following receipt of a request for a public hearing or upon the Commissioner's own initiative, the Commissioner may, prior to the issuance of such permit, hold such hearing. A notice of such public hearing shall be published in a newspaper of general circulation in the affected area. Each notice shall include the date, time and location of the public hearing. Following the close of the public hearing, the Commissioner shall make a decision based on all available evidence, including the record of 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 operating permit.

Comments Regarding subsection (k) Public Hearings

22a-174-33(k) One commentor suggested the Department revise subsection (k) to require the request for public hearing or informational hearing be made by at least ten (10) people or on the Commissioner's own initiative after the Bureau of Air Management has determined that the application does not satisfy the applicable regulatory requirements and procedures. (32)

Response: This suggestion does not comply with the requirements of the CAA. The public informational hearing and adjudicatory hearing addressed in this subsection meet the requirements of the CAA in that only one person is necessary to request a hearing. (See language in Exhibit A, subdivisions (m)(1) and (m)(3))

22a-174-33(k) One commentor indicated the Department should clarify in the regulations that when a reference is made to applications for Title V permits and requirements associated with such applications, that "permit application" also includes permit renewals. This commentor stated, for example, such clarification would be useful in Sections 22a-174-33(j) and (k). (41)
Response: I do not recommend the Department include language in this subsection explaining that the term application means a request for a Title V permit, or a request for modification or renewal of such permit. The term application is defined in Section 22a-3a-2 of the RCSA. In addition, language as provided in Exhibit A, subdivisions (n)(1), (j)(1) and (h)(5) should make this point clear.

22a-174-33(k) One commentor argued that the Department's public participation requirements, as provided for in this subsection, fail to provide that the public will be given at least 30 days notice of a hearing date. The Department's rule, as written, only provides 30 days notice of the right to a hearing. The Department should add an appropriate provision. See 40 CFR §70.7(h)(4). (41)
Response: I recommend the Department provide that the public will be given at least 30 days notice of a hearing date to meet the federal requirements regarding such adequate notice. (See language in Exhibit A, subdivisions (m)(2) and (m)(3), at second sentence in each such subdivision)

22a-174-33(k)(1) Two commentors believe a definition of "public informational meeting" is lacking in this subdivision. (44 and 15) One such commentor would also like Department to include a distinction between informational meeting an public hearing. (15)
Response: I do not recommend a change based upon these comments. The language of this subsection addresses both a public adjudicatory hearing and a public informational hearing. A public informational hearing merely requires a record and exhibits as provided in Exhibit A, subsection (m). The process for a public adjudicatory hearing is governed by the Rules of Practice Section 22a-3a-6 of the RCSA.

22a-174-33(k)(1) One commentor stated it is not clear whether the Department's "public informational meeting" would satisfy

the requirements of 40 CFR 70. (44)
Response: I believe the public informational hearing satisfies the requirements of 40 CFR Part 70. I do not recommend the Department change this section. However, I do recommend the Department delete the word "meeting" and add the word "hearing" in this subsection to meet federal requirements.

22a-174-33(k)(2)& (3) One commentor questions whether the public notice required by these sections is to be published at the applicant's expense. (15)
Response: I recommend the Department publish the notice as it is providing notice of the Commissioner's tentative determination. (See language in Exhibit A, subdivisions (m)(2) and (m)(3), at second sentence for each such subdivision)

In addition, I recommend the Department make the following changes to improve clarity and, where necessary, to incorporate federal program requirements:

1) This subsection is now letter (m), not letter (k) due to the addition of new subsection (h), "Application Processing" and (k), "Permit Shield". The title of this subsection, however, remains the same, i.e., "Public Hearings".

2) I recommend the Department make slight language changes, as follows for purposes of clarification:

(k)(1) The words "publication of" shall be added and the word "public" deleted, in the first sentence. The words "the subject" shall be added and the word "such" deleted, in the second sentence. The words "for a public informational or adjudicatory hearing, or for both" shall be added and the words, "for an public informational meeting, a public hearing, or both" deleted, in the second sentence. (See generally, Exhibit A, subdivision (m)(1))

(k)(2) The word "hearing" shall replace the word "meeting" in subdivision (m)(2), in order to meet minimum federal requirements. The word "operating" shall be deleted from the first sentence. The word "such" shall be added and the words "of the public informational" deleted from the third sentence. The sentence, "The Commissioner shall maintain a record of all comments made at such public informational meeting" shall be deleted from this subdivision. The words "Title V permit" shall precede "application" in the last sentence. The words "provided the notice requirements of this subdivision have been satisfied" shall be added to the last sentence, in order to ensure compliance with procedural requirements. (See generally, Exhibit A, subdivision (m)(2))

(k)(3) The words "public adjudicatory hearing" shall replace the words "public hearing" in the first sentence, to distinguish the type of hearing being referred to in this subdivision from the public informational hearing. The words "Title V" shall replace the word "such" in the first sentence. The words "pursuant to Section 22a-3a-6 of the Regulations of Connecticut State Agencies" shall be added to the first sentence. The words "based on all available evidence" shall be deleted from the fourth sentence. The word "sought" should be added and the word "operating" deleted from the last sentence. (See generally, Exhibit A, subdivision (m)(3))

Administrator's Review of Tentative Determinations

I recommend the Department add a new subsection (n), "Administrator's Review of Tentative Determinations" providing the timeframes and procedures for review by EPA. (See generally, Exhibit A, subsection (n)) This section is necessary in order to meet minimum federal requirements with respect to EPA's 45-day review and the bases for objections. (See language in Exhibit A, subdivision (n)(1)) In addition, such subsection shall provide an additional 60-day period for objections, as well as substantive procedural requirements. (See language in Exhibit A, subdivisions (n)(2) and (n)(3), respectively) Language in Exhibit A, subdivision (n)(4) provides that final action taken by the Commissioner will meet federal timeframe requirements.

Permit Modifications

The following language was presented at the October 28, 1994 hearing for comment:

(l) Permit Modifications

(l)(1) The permittee may apply, on forms provided by the Commissioner, to modify a Title V operating permit for the reasons specified in subparagraphs (A) through (D), inclusive. Following public notice and opportunity for public hearing and comment pursuant to subsections (j) and (k) of this section, the Commissioner may modify such permit to incorporate the following changes:

(A) to incorporate any applicable requirement adopted by the Commissioner or the Administrator after the issuance of such permit;

(B) to modify the frequency, form or type of any monitoring, reporting or record keeping requirement of such permit;

(C) to incorporate an applicable MACT standard promulgated by the Administrator eighteen (18) months prior to the expiration date of such permit; or

(D) to incorporate an individual MACT determination approved by the Commissioner pursuant to subsection (e)(2) of this section eighteen months prior to the expiration date of such permit.

(1)(2) Notwithstanding the requirements of subdivision (1)(1) of this section, the Commissioner may, without further proceedings, modify a Title V operating permit for any of the reasons specified in subparagraphs (A) through (F), inclusive. The permittee may implement such changes after submitting a written request to the Commissioner to modify a Title V operating permit for the reasons set forth in this subparagraph:

(A) to correct clerical errors;

(B) to change the name, address, or phone number of any person identified in the Title V operating permit, or provides a similar minor administrative change at the Title V source;

(C) with the consent of the permittee, to require more frequent monitoring or reporting;

(D) to record a change in ownership or operational control of a Title V source where the Commissioner determines that no other change in the Title V operating permit is necessary, provided that a written agreement containing a specific date for transfer of Title V operating permit responsibility, coverage, and liability between the permittee and new owner or operator of such Title V source has been submitted to the Commissioner;

(E) with the consent of the permittee, to incorporate into such permit the requirements of any permit or modification thereof issued to such source pursuant to Section 22a-174-3 of the Regulations of Connecticut State Agencies; or

(F) to incorporate into such permit the requirements of any permit or order issued to such source for use of emission reduction credits in accordance with Public Act 93-235, Public Act 94-170, EPA's "Economic Incentive Program Rules", published April 7, 1994 (Federal Register, Volume 59, No. 67), and the EPA's "Emissions

Trading Statement", published December 4, 1986 (Federal Register, Volume 51, No. 233).

(l)(3) Before making any other change which increases actual or potential emissions at the Title V source of any regulated air pollutant over the emissions allowable under the Title V operating permit, and which is not covered by subdivisions (l)(1) and (l)(2) of this subsection, the permittee shall provide written notice to the Commissioner and the Administrator through Region I of the U. S. Environmental Protection Agency, describing the change to be made, the date on which the change will occur, any changes in emissions, and any Title V operating permit terms and conditions that are affected. The owner or operator of such Title V source shall thereafter maintain a copy of the notice with the Title V operating permit.

Comments Regarding subsection (l) Permit Modifications

22a-174-33(l) One commentor believes this section may benefit from clarification as to which modifications are unilaterally made by the Commissioner, the basic rights of a permittee to obtain a permit modification without approval of Department, and those modifications which are discretionary. (44)
Response: I do not recommend a specific change based upon this comment because the factor that seems to provide clarification is the level of review necessitated by a particular change. I do recommend the Department include in this section those reasons for which a permit would have to be modified (See language in Exhibit A, subparagraphs (r)(1)(A) through (G), (r)(2)(A)(i) through (v), (r)(8)(A) through (D) and subdivision (r)(8)). In addition, I recommend the Department include in this section those reasons for which only a notice would have to be sent to the Commissioner and does not require the Commissioner's approval, enabling operational flexibility and off-permit changes to be made, to the extent allowed by 40 CFR Part 70. (See generally, Exhibit A, subparagraphs (r)(3)(A)(i) through (iv) and subdivision (r)(4))

22a-174-33(l) Two speakers were in favor of this section. (1, 8) Another commentor was in support of the intent of the Department's modification section. (5)
Response: The Department welcomes positive feedback to its proposed regulations.

22a-174-33(l) One commentor advocated including a provision that the source can alter at will, upon adequate notice, as long as there is no increase in actual or potential emissions provided for in a Title V permit. (2) Another commentor demonstrated support for the Department's simplification of

the modification procedures and suggested additional language to ensure all operational flexibility provisions available under the off-permit and 502(b)(10) change mechanisms. (8) Two commentors in support of the modification section advised that in the event the Department has to make changes, the Department should comply with the requirements of 502(b)(10). (13) One commentor noted that the intent to comply with operational flexibility requirements may not be clear.(36)
Response: In response to these commentors, I recommend the Department clarify operational flexibility provisions including 502(b)(10) changes, as well as off-permit changes, by providing more detail in these subdivisions. (See generally, Exhibit A, subdivisions (r)(3) and (r)(4))

22a-174-33(l) One commentor noted that off-permit changes are an important part of flexibility. This commentor suggested language to include the concept that a source could make a change without revising the permit, as long as they submit a contemporaneous written notice of the change to the permitting agency and EPA. (13)
Response: I recommend the Department make any language changes to the modifications subsection necessary to allow for off-permit changes without revising the permits, as long as they submit a contemporaneous written notice of the change to the Department and EPA to provide as much flexibility as allowed by 40 CFR Part 70.4(b)(14). (See language in Exhibit A, subdivision (r)(4))

22a-174-33(l) One commentor stated that trading must be allowed in the state program. This section should clarify that a cap must be included if a source requests it and that such cap must be federally enforceable.(7)
Response: I recommend that language allowing for trading and a cap to facilitate intra-premise trading must be included in the standards for granting a permit subsection. (See language in Exhibit A, subparagraph (j)(1)(I)) In addition, I recommend intra-premise trading be addressed in this modification subsection in order to meet federal flexibility requirements with respect to intra-premise trading caps. (See language in Exhibit A, subparagraph (r)(3)(A)(ii))

22a-174-33(l) One commentor suggested the Department provide for minor, group minor and significant modifications. (24) One commentor recommends that we conform to the 40 CFR Part 70.7(d) which includes minor and significant modifications. (36) Still another commentor suggested the Department should be aware that the State regulation's current structure of two permit modification procedure tracks -- administrative and significant -- may overly burden the regulated community in terms of permit modifications, as virtually all substantive

changes at sources will undergo the significant permit modification procedures, with the exception of administrative or "clerical" changes. This commentor suggested the Department may want to adopt a minor permit modification track to its rule consistent with 40 CFR §70.7(e)(2). This may help streamline the permit modification process for certain changes. (41)

Response: I recommend the Department retain the structure of one full modification track, as provided in Exhibit A, subdivision (r)(1), with an administrative or clerical changes subdivision following as provided in Exhibit A, subdivision (r)(2). The reason for this recommendation is that 40 CFR Part 70 was not clear about what constituted a significant modification. I recommend the Department use subdivision (r)(1) to provide certainty to the regulated community with respect to significant modifications. Another layer of modifications with some public process would cause confusion and not provide a clear cut system for modifications. Therefore, I do not recommend the Department reorganize the modification section to accommodate additional categories of modifications.

One commentor indicated that Section 22a-174-33(l)(3) of Department's regulation is not consistent with 40 CFR Part 70 requirements. For one thing, this commentor stated, because the Department's significant permit modification provision in Section 22a-174-33(l)(1) and administrative permit modification provision in Section 22a-174-33(l)(2) are explicitly enumerated and appear to be intended as exhaustive lists of those categories, the Department runs the risk of allowing Connecticut's "flexibility" provision in Section 22a-174-33(l)(3) to pick up any other change that Department has left out (even if by accident or alternative interpretation) of Sections 22a-174-33(l)(1) and (l)(2). This commentor stated that, while 40 CFR Part 70 does not prevent Connecticut from enumerating significant permit modifications, any omission from the class of changes 40 CFR Part 70 classifies as significant could render the rule unapprovable. This commentor believes by making significant permit modifications the residual category avoids this risk. (41)

Response: I do recommend the Department include, to the extent possible, those changes deemed to be significant modifications by federal requirements. (See generally, Exhibit A, subdivision (r)(1)) I do not recommend the Department jeopardize the organization of the permit modification subsection and possibly its implementation and administration by making significant modifications a residual category, forcing many unidentified small changes to go through a major public process unnecessarily, thereby bogging down the system with procedural requirements. I believe the permit

modification subsection adequately addresses the ability of the Department to be flexible to the fullest extent allowed by 40 CFR Part 70. In the event the Department does omit a federally required significant modification, the Department should use its best efforts, subject to all statutory requirements, to amend the regulation to correct such omission.

22a-174-33(l) One commentor stated time limits for review of applications should also apply to administrative amendments, de minimis changes and minor modifications. (32)
Response: I do recommend the Department adopt timeframes within which the Department decides whether to grant a particular modification within 18 months as provided in Exhibit A, subdivision (r)(1), and within 60 days as provided in Exhibit A, subparagraph (r)(2)(C), in order to meet federal requirements.

22a-174-33(l) Another commentor supported the Department's efforts in this section, but in the event that changes are required, this commentor suggested the Department fall-back to the language provided in June 7th, 1994 draft. (29)
Response: I do not recommend a change based upon this comment because the language provided in Exhibit A, subsection (r) should meet federal requirements for modifications, administrative and clerical changes, operation flexibility, off-permit changes, and reopening for cause. For more detail, see my general response to 40 CFR Part 70.7 and 70.4(b), (d), (e) and (f).

22a-174-33(l) One commentor indicated the Department needs to address the permit modification section in the proposed rule. Such commentor understands the Department's intent with these modification provisions is to provide a simple notice mechanism for changes in emissions that do not modify the permit, to rely on Department's existing New Source Review program as much as possible to address changes at the permitted source, and to offer public comment on all environmentally significant changes to the permit. Such commentor endorses these goals, and believes that with certain changes to its rule, the Department may implement them consistent with the 40 CFR Part 70 regulations. While this commentor pointed out inconsistencies with the 40 CFR Part 70 regulations, this commentor would like the Department to understand that EPA is ready to work with the Department to implement the Department's policy goals consistent with the 40 CFR Part 70 regulations. (41)
Response: With respect to the reference to New Source Review regulations in the modifications subsection, I recommend the Department rely on other sections such as, Section 22a-174-3

of the RCSA, which exist at the time of development of this rule, such as 22a-174-3(k) and (l) as provided in Exhibit A, subparagraph (r)(1)(D), in order to provide certainty for the regulated community. In order to ensure compliance with federal requirements pertaining to modifications of Title V permits, I recommend the Department include language as provided in Exhibit A, subparagraphs (r)(1)(A) and (r)(1)(E) to allow for incorporation of any applicable requirement. In my General Response to 40 CFR Part 70.7(d)(1) through (4), 70.7(e), (e)(3), (e)(4), 70.7(f)(1) through (3), and 70.7(g), I provide additional explanations regarding my recommendations provided in Exhibit A, subsection (r).

22a-174-33(l)(1) One commentor explained that the use of the word "incorporate" in Section 22a-174-33(l)(1) leads to the result that any relaxation, modification, or elimination of applicable requirements, including for example, MACT standards and NOx RACT, would not be required to go through Connecticut's significant modification provision. Clearly, changes to applicable requirements such as a MACT standard or a NOx RACT determination must be made pursuant to the significant permit modification provisions. This commentor also stated that Section 22a-174-33(l)(1)(A) only addresses modifying a permit to "incorporate any applicable requirement adopted by the Commissioner or the Administrator after the issuance of such permit." Said commentor suggested this section be amended to require a permit modification for incorporation of or changes affecting all applicable requirements, including but not limited to those that exist at the time the permit is issued, not simply those that are adopted after the permit is issued. Finally, this commentor stated, the Department seems to have combined into this section the two different notions of: 1) permit modifications triggered by changes at a source; and 2) reopening of a permit for cause to address new applicable requirements.(41)
Response: I do not agree with this commentor that the word "incorporate" is causing the problem addressed by this comment. I recommend the Department broaden the modifications subsection to require modification of the permit to include applicable requirements which exist at the time the permit is issued, but become applicable to a source or are affected by virtue of some change at the source that triggers an additional requirement or other need to modify the permit. (See language in Exhibit A, subparagraphs (r)(1)(A), (E) and (F) and subdivisions (r)(8) through (r)(14)) Such provisions shall ensure a modification no matter if there is a change at a source or need to reopen a permit for cause, in order to meet federal requirements.

22a-174-33(l)(1) One commentor suggested the Department

include a new provision in its regulations to address 40 CFR Part 70's notion of reopening a permit "for cause" consistent with 40 CFR § 70.7(f). This commentor pointed out that such a section would pick up the criteria currently appearing in Section 22a-174-33(l)(1)(A) through (D) that involves new, revised, or eliminated applicable requirements. (41)
Response: I recommend the Department include new subsections to address reopening for cause, from 40 CFR Part 70.7(f), in the modification subsection to meet minimum federal requirements. (See language in Exhibit A, subdivisions (r)(8) through (r)(14))

22a-174-33(l)(1) One commentor suggested the Department should rewrite Section 22a-174-33(l)(1). This commentor noted that his list of significant permit modifications is much more inclusive than the Department's proposal. As discussed in a previous statement by this commentor, the Department's current rule has no minor permit modification procedure to address less significant, but nevertheless substantive changes to the permit. Therefore, this commentor stated the Department's significant permit modification provision will need to address all substantive changes to the permit. This suggested language is as follows:

> "The Commissioner shall modify a Title V permit, following public notice and opportunity for public hearing and comment pursuant to subsections (j) and (k) of this section, to include in such permit terms and conditions necessary to assure compliance with all applicable requirements that apply to the following changes:
>
> > 1) any change that involves changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
> >
> > 2) all Title I modifications (subject to Comment no. 64 below), including modifications under New Source Review and New Source Performance Standards under Section 111 of the CAA, and modifications subject to standards for hazardous air pollutants under Section 112 of the CAA, including requirements under Sections 112(g) and (j);
> >
> > 3) permit modifications resulting from case-by-case determinations of an emission limitation or other standard;
> >
> > 4) permit modifications resulting from a

source specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

5) permit modifications that seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(A) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and (B) An alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the CAA; or

6) permit modifications that seek to establish or change permit terms and conditions necessary to ensure compliance with any applicable requirement.(41)

Response: I recommend the Department make changes to incorporate the various types of modifications which are deemed appropriate or necessary by the Administrator. To avoid over inclusiveness, I do not recommend that the Department include the gatekeepers recommended such as 4) or 5)A) unless the types of changes for which a modification would be necessary according to 40 CFR Part 70 can be better defined by the Administrator. Any substantive concerns the Department has concerning the issues addressed in 2), 4) and 5)A) should be substantially handled by including language as can be seen in Exhibit A, subparagraph (r)(1)(D) and provisions provided in Exhibit A, subparagraph (r)(1)(A) and (r)(1)(F) ensuring applicable requirements will be addressed. As provided in the comments pertaining to the definition of applicable requirements, applicable requirements include those requirements of the federal regulations; 40 CFR Part 60, 61, 63, 68, 70, and 72-78. Any concerns in comment 2) not covered by such language changes should be taken care of by adding language as can be seen in Exhibit A, subparagraph (r)(1)(C) for applicable MACTs. Concerns noted by comment 3) can additionally be addressed by adding language as can be seen in Exhibit A, subparagraph (r)(1)(F). I do recommend the Department include language similar to that provided in 1) and 6) in the comment above. (See language in Exhibit A, subparagraphs (r)(1)(B) and (F), respectively) Suggested paragraph 5) is so broad that it eliminates some off-permit

changes to operational flexibility. Therefore, I recommend modifying it as provided in Exhibit A, subparagraph (r)(1)(E) discussed above in this response.

22a-174-33(l)(1) One commentor suggested the Department should revise this section to allow for an expedited review processes for minor changes. (32)
Response: I recommend the Department maintain the basic framework created in the September 27, 1994 draft for the modification section. Multiple levels of modifications will create confusion for industry and the permit engineers. The current framework defines the universe of changes that require public process; those modifications which do not require public process, merely approval; and lastly, those changes for which only notice need be provided. For more detail, please consult my General Response to 40 CFR Part 70.7(d), (e), (f), and (g).

22a-174-33(l)(1) One commentor suggested the Department allow a permittee the right to apply for a permit modification to use emission reduction credits not anticipated as part of the permit application. (44)
Response: I recommend the Department enable, the permittee to engage in the use or trading of emission reduction credits without a modification as provided in Exhibit A, subparagraphs (r)(3)(A)(ii) and (iv) to provide flexibility for credits and trading as allowed by 40 CFR Part 70, whether or not such use of credits is anticipated at the time of permit application. (See language in Exhibit A, subparagraph (r)(3)(A)(ii) and (iv))

22a-174-33(l)(1)(C) One commentor indicated this subparagraph requires a permit modification to incorporate an applicable MACT standard which was promulgated 18 months prior to the permit expiration date. This commentor stated the way the Department worded this section it appears to only apply to a MACT standard promulgated exactly 18 months prior to expiration of the permit. Perhaps Connecticut intends to reopen the permit where a MACT standard is promulgated at least 18 months prior to expiration. To be consistent with 40 CFR Part 70, this commentor suggested the State could reword this section so that Department must reopen a permit to incorporate an applicable MACT standard only if there is more than 3 years of life remaining on the permit. (41)
Response: To meet minimum federal requirements, I recommend the Department include in the modification subsection language which requires a permit to be modified to incorporate an applicable MACT standard where more than three (3) years of life remain on the permit. (See language in Exhibit A, subparagraph (r)(1)(C))

22a-174-33(l)(2) One commentor stated that, while this subsection appears to provide mechanisms for the permittee to seek modifications, this subsection also appears to provide for unilateral changes by the Commissioner, whether or not desired by the permittee. This commentor also points out this subsection references the 1986 Emissions Trading Statement but does not reference 40 CFR 70, which may be critical in determining "operational flexibility" through use of emission reduction credits. (44)
Response: I do not recommend the Department modify the language of this subdivision based upon the comment regarding the Commissioner's authority to modify Title V permit because such modifications shall be subject to the public process as all modifications are, to provide the public with ample opportunity to comment, pursuant to language as provided in Exhibit A, subdivision (r)(1). I recommend the Department delete the reference to the 1986 Emissions Trading Statement, as it is outdated. I recommend the Department allow for trading and operational flexibility in this subsection. (See language in Exhibit A, subparagraph (r)(3)(A)(ii) and (iv), specifically relating to trading and subparagraphs (r)(3)(A)(i) through (iv), generally, for operational flexibility, as allowed by 40 CFR Part 70.4(b) and Section 502(b)(10) of the CAA.)

22a-174-33(l)(2) One commentor advised this subdivision should state that administrative amendments for acid rain sources subject to Title IV and V will be governed by the acid rain regulations. See 40 CFR § 70.7(c)(2). (41)
Response: In order to meet minimum federal requirements, I recommend the Department amend this subsection to incorporate this requirement. (See language in Exhibit A, subdivision (r)(6) and subparagraph (r)(8)(B))

22a-174-33(l)(2) One commentor noted the Department had not included a permit shield in this section. This commentor requested the Department include a permit shield when the Department takes final action in granting a request for an administrative permit amendment. Such commentor also would like the Department to give the regulated community a sense of when they can expect a response from the Department. (24)
Response: In order to provide certainty to the regulated community, with respect to applicable requirements incorporated into Title V permits, I recommend the Department include a permit shield subsection to allow for modifications pursuant to Exhibit A, subdivisions (r)(1) and (r)(2), to be shielded if the Commissioner chooses to provide such shield. (See generally, Exhibit A, subdivision (k)(5)) Timeframes for modifications are provided in Exhibit A, subdivision (r)(1) and subparagraph (r)(2)(C).

22a-174-33(l)(2) One commentor will take issue with this language if emissions trades will have to be dealt with through additional procedures. (25)
Response: I recommend the Department make changes to the modifications subsection for emissions trading and intra-premise trading in order to be as flexible as allowed by federal requirements and in the case of trades pursuant to Exhibit A, subparagraph (r)(3)(A)(iv), they have met all federal procedural requirements. (See language in Exhibit A, subparagraph (r)(3)(A)(ii) and (iv)) However, if the applicant or the Commissioner want to incorporate language to allow trading for which such emission credits have not gone through the public process required by EPA, such credits and/or trades can be incorporated through the provisions in Exhibit A, subparagraphs (r)(1)(A), (r)(1)(E) or (r)(1)(F), in order to meet minimum federal requirements.

22a-174-33(l)(2) One commentor suggested, to effectuate a fall-back which might be required by EPA, the Department use subsection (e) and (f) from the June 7, 1994 draft and substitute these into subdivision (l)(2). (29)
Response: As stated in more detail above, I do not recommend the Department change the basic structure of the modification subsection because, as provided in Exhibit A, subsection (r), the regulated community is assured certainty and flexibility while citizens, affected states and the Administrator are assured the procedural requirements for public process are provided, where necessary. (See language in Exhibit A, subdivision (r)(1)).

22a-174-33(l)(2)(B) One commentor stated this subparagraph does not make sense. (15)
Response: I recommend the Department amend this subdivision to make it clear that a change regarding administrative identification corrections can be made with relative ease. (See language in Exhibit A, subparagraph (r)(2)(A)(ii))

22a-174-33(l)(2)(C) One commentor advocated inclusion of a provision stating the Department will act on any such request for an administrative amendment within 60 days of receipt of such request, and the Department will submit a copy of the revised permit to EPA. See 40 CFR §§ 70.7(c)(3)(i) and (ii). (41)
Response: I recommend the Department comply with this suggestion such that the Department will act on an administrative amendment within sixty (60) days and submit a copy of the revised permit to the Administrator. (See language in Exhibit A, subparagraph (r)(2)(C))

22a-174-33(l)(2)(E) One speaker noted the Department was not

following procedures required under 70.6, 70.7 and 70.8. (5) Another commentor stated Connecticut must process the permit changes listed in (l)(2)(E) through the significant modification procedures established in (l)(1). (5) One commentor questioned whether this subparagraph means a minor permit modification can be made under Section 22a-174-3 of the RCSA and incorporate into the Title V permit without further proceedings? (36) Another commentor indicated Section 22a-174-33(l)(2)(E) of Department's administrative amendment provisions allows for incorporation into a Title V permit the requirements of any permit issued pursuant to Section 22a-174-3 (preconstruction or new source review) of Connecticut's regulations. All Title I modifications must be processed as significant permit modifications. This commentor suggested Connecticut must process the permit changes listed in Section 22a-174-33(l)(2)(E) through the significant modification procedures established in Section 22a-174-33(l)(1). (41)
Response: While subdivision 22a-174-33(l)(2) allows for processing certain modifications with minimal procedure, I recommend the Department move the language so that Title I modifications as provided in Section 22a-174-3(k) and (l) of the RCSA are required to be processed as significant permit modifications under this subsection to meet minimum federal requirements. With respect to all other NSR changes, I recommend these remain in the administrative modification section in Exhibit A, subdivision (r)(2). (See language in Exhibit A, subparagraphs (r)(1)(D) and (r)(2)(A)(v), respectively) If a Title I modification is not specifically picked up by (r)(1)(D), any modification at a Title V source, including construction, requiring a change to the permit because of a need to incorporate an applicable requirement, would be covered by the provisions in Exhibit A, subparagraphs (r)(1)(A), (r)(1)(E) and (r)(1)(F). For further comment regarding 40 CFR Part 70.6, 70.7, and 70.8, please consult my General Response pertaining to such sections.

22a-174-33(2) One commentor stated the Department may want to add a minor permit modification procedural track to its rule to incorporate the results of minor new source review into a Title V permit, without notice to the public. EPA will give such minor permit modification procedures for minor new source review changes at least interim approval. (41)
Response: I do not recommend the Department adopt a minor permit modification track as these new source review changes do not, in and of themselves, necessarily constitute applicable requirements or necessitate application of one, and if they do, they are addressed by language as provided in Exhibit A, subparagraph (r)(1)(F). However, I do recommend the Department retain an amendments subdivision and significant modification provision as provided in Exhibit A,

subdivisions (r)(1) and (r)(2).

22a-174-33(l)(2)(F) One commentor does not like this subparagraph. (4) Another commentor suggested Section 22a-174-33(l)(2)(F) goes beyond the scope of EPA's administrative amendment criteria, and should therefore be removed. This commentor is pleased Connecticut has chosen to include in its program the concept of emissions trading consistent with the federal requirements, but such changes at a source should be processed through the 40 CFR Part 70 significant permit modification procedures. This commentor suggested Section 22a-174-33(l)(2)(F) should be moved to Connecticut's significant permit modification section in Section 22a-174-33(l)(1). (41)

Response: I recommend the Department include language in the operational flexibility section as provided for in Exhibit A, subparagraphs (r)(2)(A)(ii) and (iv) to ensure that the Commissioner is notified of such trades. The steps necessary to establish a federally recognized trade will occur prior to such notification pursuant to federal and state procedural requirements. To require trades under Exhibit A, subparagraph (r)(2)(A)(iv) to go through another public notice and comment process would become overly burdensome. Additionally, the trades pursuant to Exhibit A, subparagraph (r)(2)(A)(ii) are under a cap previously established, in the permit. This does not preclude the need to go through a modification pursuant to Exhibit A, subparagraphs (r)(1)(A), (r)(1)(E) or (r)(1)(F), if necessary, to ensure compliance with an applicable requirement if a trade or credit did not go through the public process required by EPA.

22a-174-33(l)(3) One commentor stated the need to verify consistency with operational flexibility and off permit provisions. (5) One commentor pointed out the lack of off-permit provisions. (2) One commentor noted, as written, this subdivision is inconsistent with the operational flexibility and off-permit language. (5) One commentor indicated the Department's draft permit modification procedures in subsection (l) are, in general, both innovative and desirable because they provide a set of procedural safeguards commensurate with the environmental significance of the proposed three categories of permit modifications. These comments are premised on the understanding that the authorization for making changes pursuant to paragraph (l)(3) does not provide for public process pursuant to subsections (j) or (k). However, if major changes are made in this section they should include the Section 502(b)(10) changes and emissions trading without a permit revision if a federally enforceable cap is included in the permit. Language was suggested for this section. (13) One commentor stated this was

a nice try at operational flexibility but did not think EPA would accept it. (15) One commentor stated this section appears to allow an expedited process for de minimis changes but it should be clarified. (32)

Response: I recommend the Department clearly include the concepts of off-permit as allowed by 40 CFR Part 70.4(b)(14), operational flexibility of the CAA, and intra-premise trading, under operational flexibility provisions as allowed by 40 CFR Part 70.4(b)(12) and 502(b)(10), without a permit revision. (See generally, Exhibit A, subparagraph (r)(3)(A) and subdivision (r)(4)) I recommend the source merely has to notify the Commissioner which shall provide for a nonexistent process rather than an expedited process, as is the case for changes as provided in Exhibit A, subdivision (r)(2). For more details regarding trading-related modifications, please see my responses to (l)(2) and (l)(2)(E), above.

22a-174-33(l)(3) One commentor advised this subdivision needs to specify whether the Department's approval is required before changes can be made. (27) One commentor advised that the Department must address "operational flexibility" as set forth in 40 CFR §70.4(b)(12). Even if 22a-174-33(l)(3) is amended to be consistent with EPA's operational flexibility provision, the notice requirement for any changes made must have a time frame. EPA's regulation requires at least a 7 day notice (except in emergency situations). See 40 CFR §70.4(b)(12). (41) Another commentor noted this paragraph does not describe the requirements, if any, for application content, agency review, agency approval of the change, public notice, effective date of the modification or permit shields. (36)

Response: In order to meet minimum federal requirements, I recommend the Department require written notice of such change, at the time of the change, for off-permit changes (See language in Exhibit A, subdivision (r)(4)) and 7 days prior to an operational flexibility change. (See language in Exhibit A, subparagraph (r)(3)(B)) I recommend the Department require the permittee to submit a written notification, rather than an application, as provided in Exhibit A, subdivision (r)(5), to meet minimum federal requirements. It is clear there is no requirement for Department approval before a change can be made under these subsections. There is no requirement of public notice. The effective date is the day of submittal because this does not require a modification to the permit. Limitations of the permit shield, for off-permit and operational flexibility changes, should be addressed in a permit shield subsection as provided in Exhibit A, subdivision (k)(5).

22a-174-33(l)(3) One commentor indicated this subdivision

appears to be the Department's attempt to allow for operational flexibility pursuant to 40 CFR §70.4(b)(12). This commentor pointed out, however, 40 CFR Part 70's operational flexibility provisions do not allow for changes at a source which increase actual or potential emissions above the "emissions allowable under the permit" (as defined in 40 CFR §70.2), to be affected by the simple notice mechanism in Section 22a-174-33(l)(3). (41)
Response: I recommend the Department clarify that operational flexibility allowances are not intended to allow an increase of emissions above emissions allowable under the permit. (See language in Exhibit A, subparagraph (r)(3))

22a-174-33(l)(3) One commentor stated if the Department intends to use Section 22a-174-33(l)(3) to convey 40 CFR 40 CFR Part 70's notion of "off-permit" changes, the language should be amended to reflect the requirements of 40 CFR §70.4(b)(14). Off-permit changes can only be made if they are changes that are "not addressed or prohibited by the permit." The language used by the Department in Section 22a-174-33(l)(3) indicates that changes would be made that exceed "emissions allowable under the permit," and that permit terms and condition may be affected. Thus, this commentor stated, such changes would not meet the off-permit conditions of 40 CFR §70.4(b)(14). This commentor stated, the Department must address the concept of "off-permit" set forth in 40 CFR §70.4(b)(14) by specifying the detailed requirements of 40 CFR §70.4(b)(14)(i) through (iii) as follows:

> "Off-permit changes shall meet all applicable requirements and shall not violate any existing permit term or condition, and sources must provide contemporaneous written notice to Department and EPA of such changes. Such notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change."

This commentor stated a permit shield may not apply to any such changes if Connecticut decides to include a permit shield in this rule. (41)
Response: I recommend the Department clarify the off-permit concept in this subsection. If a particular change is prohibited by the permit, it is expressly "addressed" in the permit. Therefore, it is sufficient to include the word addressed, as it encompasses those changes prohibited by the permit. I recommend the Department eliminate the language which mistakenly provided for emissions to exceed permit-allowable levels of such emissions. I also recommend the Department clarify that the information provided in the notice

must concern intended change. (See language in Exhibit A, subdivision (r)(4)) I do not recommend the Department provide coverage of off-permit changes by a permit shield, in order to ensure compliance with federal requirements. (See language in Exhibit A, subdivision (k)(5))

I recommend the Department make these additional changes to clarify the language and, where necessary, to incorporate federal program requirements:

1) This subsection is now letter (r), not letter (l) due to the addition of 3 new subsections moving this subsection to follow the recordkeeping and reporting subsections. However, the title remains the same, i.e., "Permit Modifications".

2) I recommend the Department revise subdivision (l)(1) so as to clarify the Department's intent as to who may request a permit modification; for what reasons; the amount of time in which the Commission has to take final action on such permit modification; and what each party, i.e., the permittee and Commissioner, must do once either one has requested such modification. (See language in Exhibit A, subdivision (r)(1))

3) I recommend the Department add a new subparagraph to the first subdivision, to meet federal requirements, which provides for incorporation of 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. (See Exhibit A, subparagraph (r)(1)(E))

4) I recommend the Department add a new subparagraph to the first subdivision to ensure compliance with existing state requirements set forth in Section 22a-174c of the General Statutes or Section 22a-3a-5(d) of the RCSA. with respect to major modifications. (See Exhibit A, subparagraph (r)(1)(G))

5) I recommend the Department provide that modifications meet the requirements of public notice and opportunity for public hearing and comment pursuant to subsections (l) and (m) of this section, and in accordance with Section 40 CFR Part 70.7(a)(1), (4), (5) and (6). (See Exhibit A, subdivision (r)(1), at the end)

6) I recommend the sentence in the beginning of the second subdivision should be revised to provide that a permittee may submit a written request to the Commissioner for a permit modification. (See Exhibit A, subdivision (r)(2)(A))

7) I recommend that subparagraph (1)(2)(C) be revised by deleting "with the consent of the permittee" to ensure compliance with federal requirements. (See language in Exhibit A, subparagraph (r)(2)(A)(iii))

8) I recommend the Department add a new subparagraph to subdivision (1)(2) which provides that 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. (See Exhibit A, subparagraph (r)(2)(B)) This addition will help to clarify that the implementation date of the change is up to the applicant once the Commissioner has been notified.

9) I recommend the Department revise the language in the subdivision (1)(3), specifying operational flexibility options and delineating which changes may be made without being modifications. (See language in Exhibit A, subdivision (r)(3) and subparagraphs (r)(3)(A)(i) through (iv))

10) I recommend the Department add a new subdivision to this subsection which describes the content of the written notification required by subdivisions (r)(3) and (r)(4) and the procedures associated with such written notification, to ensure clarification of these subdivisions. (See language in Exhibit A, subdivision (r)(5))

11) I recommend the Department add a new subdivision to this subsection which provides for a copy of a request for a permit modification submitted to the Commissioner pursuant to this subsection and to the Administrator at the same time. This addition is necessary to meet the minimum federal requirement of providing the Administrator with adequate notice. (See Exhibit A, subdivision (r)(7))

12) I recommend the Department add a new subdivision to this subsection which delineates the circumstances under which the Commissioner shall modify a Title V permit to ensure the Department meets the reopening for cause requirements in 40 CFR Part 70. (See Exhibit A, subdivision (r)(8) and subparagraphs (r)(8)(A) through (D))

13) I recommend the Department add new subdivisions to this subsection which set up the procedural requirements and timeframes the Commissioner and Administrator shall follow with respect to subdivision (r)(8) (reopening for cause) modifications. (See generally, Exhibit A, subdivisions (r)(9) through (r)(14))

Monitoring Reports

The following language was presented at the October 28, 1994 hearing for comment:

(m) Monitoring Reports

(m)(1) The owner or operator of any Title V source required to perform monitoring pursuant to the Title V operating permit shall submit written monitoring reports as specified in the Title V operating permit. Such monitoring reports shall include the following:

(A) the date, place, and time of sampling or measurements;

(B) the date(s) analyses were performed;

(C) the company or entity that performed the analyses;

(D) the analytical techniques or methods used for such analyses;

(E) the results of such analyses;

(F) the operating conditions existing at the time of sampling or measurement;.

(G) any violations from Title V operating permit requirements that have been monitored by the monitoring systems required under the Title V operating permit; and

(H) any violations of the monitoring, record keeping and reporting requirements under such permit.

(m)(2) The owner or operator of a Title V source shall retain records for all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Unless otherwise specified by the Title V operating permit, such owner or operator shall maintain and make such records available for inspection at the Title V source for a period of two years from the date of the monitoring sample, measurement, report, or application and or submit such records to the Commissioner upon request. Support information shall include all calibration and maintenance records and all original strip-chart recordings or computer printouts for continuous monitoring instrumentation, and copies of all reports required by the Title V operating permit.

(m)(3) The owner or operator of the Title V source shall, contemporaneous with making a change from one method of operation to another pursuant to a Title V operating permit, maintain a record at the Title V source of the current method of operation.

Comments Regarding subsection (m) Monitoring Reports

22a-174-33(m) One commentor stated this subsection is more inclusive than EPA with regard to reporting requirements.(1) One commentor said there are not enough monitoring options.(15)
Response: I recommend the Department make it clear in this subsection that recordkeeping is an option that may in some cases fulfill monitoring requirements. Therefore, I recommend the Department include in Title V permits, the monitoring required by an applicable requirement and such monitoring as necessary to ensure compliance with an applicable requirement, which in some cases will be recordkeeping. (See language in Exhibit A, subparagraph (o)(2)(A))

22a-174-33(m) One commentor suggested we entitle this section "Recordkeeping and Monitoring Reports," because (m)(3) deals only with recordkeeping and not monitoring. (13)
Response: I do not recommend the Department make a change based upon this comment because recordkeeping is a type of monitoring and recordkeeping may fulfill monitoring requirements as provided in Exhibit A, subparagraph (o)(2)(B).

22a-174-33(m) One commentor suggested the monitoring requirements in subsection (m) contravene the intent of the federal options for monitoring (i.e. not only sampling/analysis as required in (m)) and is inconsistent with the use of the term "monitoring" elsewhere in the regulation. (15) Another commentor believes (m) should be revised to include noninstrumental methods of determining compliance. This commentor suggested enhanced monitoring may include hours of operation, temperature of exhaust streams and other factors which are not necessarily monitoring of emissions. (38)
Response: I recommend the Department make it clear that recordkeeping may be considered as a form of monitoring if allowed by the applicable requirements. (See language in Exhibit A, subparagraph (o)(2)(B)) There is nothing precluding noninstrumental methods of determining compliance as provided in Exhibit A, subdivision (a)(11). I agree with one commentor with respect to the fact that monitoring may be of parameters other than emissions.

22a-174-33(m) One commentor noted the Department should require all records of all required monitoring data and

support information be made available for inspection for at least five years. 40 CFR §70.6(c)(2)(ii) requires all records be made available during an inspection. (41)
Response: I recommend the Department make language changes to meet the on-site record retention requirements of 40 CFR Part 70 in addition to having such records available for inspection. (See language in Exhibit A, subdivision (o)(2))

22a-174-33(m) One commentor noted that the Department should provide in Section 22a-174-33(m) for reporting of monitoring results at least every six months. There is no timeframe for submission of such reports in Connecticut's regulation. Such reports shall include all instances of deviations. See 40 CFR §70.6(a)(3)(iii). Prompt reporting of deviations is also required. The Department should define "prompt" for purposes of this provision. An acceptable definition would require oral notice within 24 hours and follow-up written notice within one month. Since Connecticut's regulation at 22a-174-33(n) limits instances requiring notification to 1) violations resulting from emergencies, and 2) those violations that pose an imminent and substantial danger to the public or the environment, this commentor believes the Department should amend the provision because it impacts what must reported under 22a-174-33(m). This section should require reporting of all deviations, not just those that result from the two options Connecticut has specified. See 40 CFR §70.6(a)(3)(iii)(B).(41)
Response: I recommend the Department comply with the requirement to report monitoring results at least every six months. (See language in Exhibit A, subdivision (o)(1)) As "prompt" is not defined by 40 CFR Part 70, I recommend prompt reporting mean within 90 days as can be seen in Exhibit A, subparagraph (j)(1)(O)) so that information on deviations, as described, is received in a manner that is manageable for the Department and the regulated community. By providing that such reporting will occur within 90 days, the Department and citizens are ensured the Department will be notified of deviations in more frequent intervals than every six months. Reporting of a deviation should be included in the standards for issuing a permit subsection, as provided in Exhibit A, subparagraph (j)(1)(O), and addressed in this subsection for the purposes of having a deviation reported as part of the monitoring reports submitted. (See Exhibit A, subparagraph (o)(1)(A))

22a-174-33(m)(1) One commentor pointed out the requirement of (m)(1) to submit reports with the information in (m)(1)(A)-(H) is inconsistent with the federal regulation which specifies the information in paragraphs (A)-(F) only need be recorded and only where applicable. (see §70.6(a)(3)(ii))(13) One

commentor suggested subdivision (m)(1) allows for sampling and/or measuring the operating parameters. This commentor stated there are no requirements to report which measuring parameters are monitored, or the results of any parametric monitoring. (32)
Response: I do recommend the Department make a change based on these comments for the reasons presented. I recommend the Department split this subdivision in order to accommodate the federal requirement that certain information be submitted semi-annually or more frequently if necessary and that other information, more detailed monitoring information, be maintained at the facility, rather than submitted in the report, regardless of the type of monitoring. (See generally, Exhibit A, subdivisions (o)(1) and (o)(2))

22a-174-33(m)(1)(G) and (H) One commentor suggested splitting subdivision (m)(1) into two sections in order to assign recordkeeping requirements language to (m)(1)(A)-(F) and reporting requirements language to (m)(1)(G) and (H). (13)
Response: I do recommend the Department split this subdivision in order to accommodate the federal requirements more accurately as I described directly above. (See generally, Exhibit A, subdivisions (o)(1) and (o)(2))

22a-174-33(m)(1)(G) and (H) One commentor indicated that it is unclear whether Sections 22a-174-33(m)(1)(G) and (H) will address monitoring system downtime. The Department should require a source to document monitoring system downtime in a monitoring report. This commentor suggested adding the following language as a section to Section 22a-174-33(m)(1): See 40 CFR §70.6(c).

> ". . ., any time the monitoring system failed to obtain reliable data."(41)

Response: I recommend the Department amend this subsection to include language to address monitoring down-time as federally required. (See language in Exhibit A, subparagraph (o)(1)(B))

22a-174-33(m)(2) One commentor suggested deleting the word "continuous", stating it suggests that monitoring instrumentation must generate continuous records. (13)
Response: I do not recommend the Department make a change based upon this comment because such supporting information shall be maintained in the event there is continuous monitoring information required by a term or condition of the subject permit or an applicable requirement.

22a-174-33(m)(3) One commentor stated the Department should substitute the language "method of operation" with the language "alternate operating scenarios." (13)

Response: I recommend this language be changed to alternative operating scenario, in order to provide a clearer idea of what type of change requires that a record be kept. (See language in Exhibit A, subdivision (o)(3) and as defined in subdivision (a)(4))

In addition, I recommend the Department make the following changes in order to improve clarity and, where necessary, to incorporate federal program requirements:

1) This subsection is now letter (o), not letter (m), but it's title remains the same, i.e., "Monitoring Reports".

2) I recommend the Department revise the language in subdivision (m)(1) to provide that a permittee required to perform monitoring pursuant to the subject permit shall submit to the Commissioner written monitoring reports on the schedule specified in such permit but in no event less frequently than once each six months. Such a monitoring report shall provide the following. (See Exhibit A, subdivision (o)(1))

3) I recommend the Department delete subparagraphs (m)(1)(G) and (H) and add provisions relating to deviations as can be seen in Exhibit A, subparagraphs (o)(1)(A) and (B) in order to meet minimum federal requirements.

4) I recommend the language of (m)(2) be revised as can be seen in Exhibit A, subdivision (o)(2) I also recommend the last sentence of subdivision (m)(2) be revised placed into a new subparagraph to that subdivision. (See language in Exhibit A, subparagraph (o)(2)(H))

5) I recommend the Department revise the language of subparagraphs (m)(1)(B), (C) and (F) and that such revised language be placed in new subparagraphs to subdivision (o)(2) in order to meet minimum federal requirements. (See language in Exhibit A, subparagraphs (o)(2)(C), (D) and (G), respectively)

6) I recommend the Department add a new subdivision to this subsection, in order to meet minimum federal requirements, which provides that any monitoring report submitted to the Commissioner pursuant to this subsection shall be certified in accordance with subdivision (b)(4) of this section. (See Exhibit A, subdivision (o)(4))

Notifications

The following language was presented at the October 28, 1994 hearing for comment:

(n)(1) The owner or operator of a Title V source shall notify the Commissioner in writing of any violation of an applicable requirement, or any violation of any term or condition of the Title V operating permit, identifying the probable cause of the violations and all corrective action or preventive measures taken and the dates of actions as follows:

> (A) any violation of an applicable requirement, or of any term or condition of the Title V operating permit resulting from an emergency shall be reported within two working days of the date on which the owner or operator first becomes aware of such violation; and
>
> (B) any violation of an applicable requirement, or of any term or condition of the Title V operating permit that poses an imminent and substantial danger to public health, safety, or the environment shall be reported immediately and within twenty-four (24) hours of commencement of such violation.

(n)(2) Any such report of a violation of an applicable requirement, or of any term or condition of the Title V cperating permit shall be certified pursuant to subdivision (b)(4) of this section.

Comments Regarding subsection (n) Notifications

22a-174-33(n) One commentor stated the Department should limit this subsection to the federal approach. This commentor is not clear on what has to be reported and does not want to be required to report trivial mistakes. (1) Several commentors believe the notification requirement in subsection (n) is much more burdensome than that of the federal rule. These commentors suggest the entire notification requirement be replaced with notification provisions consistent with the federal rule. (7, 17, 18, 20, 21, and 36) One commentor suggested language to effectuate this change. (29)
Response: I recommend the Department make changes to this subsection to require notification for any violation of an applicable requirement, an exceedance resulting from an exceedance of a technology-based limitation to meet federal requirements. In addition, I recommend the Department make changes to require notification for any violation posing an imminent and substantial danger to public health, safety or

the environment, in order to ensure compliance with existing state statutory requirements. (See language in Exhibit A, subparagraphs (p)(1)(A) and (B))

22a-174-33(n) One commentor believes that, when read literally, the regulation requires a source to notify the Department within 24 hours or two days for any violation of an applicable requirement. This commentor suggests the Department revise subsection (n) to clarify that notification is required for emergencies or an imminent and substantial danger to the public. (26)
Response: I recommend the Department correct this problem by making it clear that notification is necessary in instances of an exceedance of a technology based limitation as well as when there is imminent and substantial danger to public health, safety, or the environment. (See language in Exhibit A, subparagraphs (p)(1)(B) and (A), respectively) However, I recommend the Department require notice regardless of whether such exceedance resulted from an emergency or not, although such emergency may constitute an affirmative defense. (See language in Exhibit A, subdivisions (p)(2), (p)(3) and (p)(4))

22a-174-33(n) One commentor pointed out the Department requires sources to notify the Commissioner of any violation, but sets forth deadlines for only two types of violations. This commentor suggested the Department add a subsection (c) giving the deadline of "at least every six months" for any other type of violation (not set out in (n)(1)(A) or (B). In addition, this commentor suggested the Department impose the notification requirement only for violations of terms and conditions of the Title V permit, not violations of applicable requirements. (13)
Response: I recommend notification of other violations beyond those provided in Exhibit A, subparagraphs (p)(1)(A) and (p)(1)(B), as provided in Exhibit A, subparagraph (p)(1)(C), be addressed as required in Exhibit A, subsections (o) or (q) and as required by the subject permit. (See language in Exhibit A, subparagraphs (j)(1)(O), (o)(1)(A) and (B) and (q)(2)(C) and (D),respectively)

22a-174-33(n)(1) One commentor stated the Department should not require written reports of violations that are otherwise required pursuant to subsection (m), Monitoring Reports. This commentor suggested requiring verbal notification of any other (i.e., non-section (m)) incident, with a written report to follow within ten days. (27)
Response: The information I recommend be contained in a notification report as in Exhibit A, subsection (p), is not identical to the language I recommend for notification in Exhibit A, subsections (o) or (q). I recommend the scope of

the notification report be narrowed, and the standards for issuing a permit subsection be altered, to define prompt notification of a deviation as being within 90 days in order to ensure that reporting of such deviations is manageable. (See language in Exhibit A, subparagraph (j)(1)(O))

22a-174-33(n)(1) One commentor believes the first paragraph in (n)(1) should be deleted. This commentor then suggests subsections (A) and (B) should be renumbered as (n)(1) and (n)(2), respectively. Also, according to this commentor, the Department should include the federal definition of "emergency" (see §70.6(g))(36)
Response: I have recommended reorganizing the notification provision as provided above in subparagraphs (p)(1)(A) through (C). In addition, I recommend language for emergency situations described as, events beyond the reasonable control of the permittee, to be recognized by the Department as long as certain procedural requirements are met. I recommend the Department define what is an event beyond the reasonable control of the permittee as provided in Exhibit A, subdivision (p)(4), rather than the term emergency, which may convey too broad of an excuse. I recommend the Department provide what needs to be proven for a permittee to utilize an affirmative defense, as can be seen in Exhibit A, subdivision (p)(3). These provisions will provide certainty for the Department, the regulated community, and other citizens of the state as to what is expected with respect to the notification subsection.

22a-174-33(n)(1)(A) One commentor stated the language in this paragraph suggests that even events resulting from an emergency situation which are nonthreatening independent from the emergency will nonetheless be subject to the two-day reporting requirement. (38)
Response: I recommend this language require notification of any violation, as provided in Exhibit A, subdivision (p)(1), any health or environmental risk reported within 24 hours, as provided in Exhibit A, subparagraph (p)(1)(A), or any exceedance, as provided in Exhibit A, subparagraph (p)(1)(B), of a technology-based limitation reported within 2 days. Other events resulting from an event beyond the reasonable control of the permittee need not be reported pursuant to this section, as provided in Exhibit A, subparagraph (p)(1)(A).

22a-174-33(n)(1)(B) One commentor stated it is uncertain as to whether two notifications are required taking into account the language in this paragraph: "...shall be reported immediately and within twenty-four (24) hours..." (32)
Response: I do not recommend the Department require two notifications. I recommend the Department add language to this paragraph clarifying that notice must be given

immediately "but" no later than twenty-four (24) hours, for clarification purposes. (See language in Exhibit A, subparagraph (p)(1)(A))

22a-174-33(n)(1)(B) and (n)(2) One commentor believes the intent of this paragraph is frustrated by the signatory responsibility requirements. (2) Two commentors stated a 24-hour timeframe for submission of the report is unreasonable in light of the signatory responsibility requirements of subsection (b). (2 and 38)
Response: I do not recommend a change based upon this concern. It is especially important that someone responsible for the Title V source is aware of the activities at such source and can report to the Department on relevant issues. In order to enhance the ability of the permittee to meet these timeframes, I recommend the Department allow sources to assign one or more duly authorized representatives pursuant to language as provided in Exhibit A, subsection (b).

In addition, I recommend the Department make the following change to improve clarity and, where necessary, to incorporate federal program requirements:

1) This section is now letter (p), not letter (n), due to the addition of new subsections, and the reordering of others. However, the title of this subsection remains the same, i.e., "Notifications".

2) I recommend the Department revise subdivision (n)(1) with the following language changes: the words "owner or operator" should be replaced with the word "permittee" in order to capture all parties who are permitted; The words "at the subject source" should be added after "applicable requirement"; The words "probable cause" should be replaced with the words "cause or likely cause"; the words "with respect thereto" should be added after "measures taken"; and the words "dates of actions" should be replaced with "dates of such actions and measures,". (See language in Exhibit A, subdivision (p)(1))

3) I recommend the Department delete subparagraphs (n)(1)(A) and (B) and replace them with the language as can be seen in Exhibit A, subparagraphs (p)(1)(A) and (B) to meet minimum federal requirements.

4) I recommend the Department add a new subdivision to this subsection defining what an exceedance of a technology-based emission limitation is, as provided for in Exhibit A, subdivision (p)(2) - which clarifies the language in Exhibit A, subparagraph (p)(1)(B).

5) I recommend the Department add a new subdivision to this subsection, describing what is and what is not an event beyond the reasonable control of the permittee, to accommodate 40 CFR Part 70's emergency provisions. (See language in Exhibit A, subdivision (p)(4))

6) I recommend the Department add new subdivisions to this subsection providing the means by which a permittee can prove that events beyond the reasonable control of the permittee, should be allowed as an affirmative defense to accommodate, to some extent, 40 CFR Part 70's allowance for an affirmative defense, and the terms and conditions thereof. (See language in Exhibit A, subdivisions (p)(3) and (p)(4))

7) I recommend the Department revise the language in subdivision (n)(2) as can be seen in Exhibit A, subdivision (p)(5) to ensure the use of a certification.

Progress Reports and Compliance Certifications

The following language was presented at the October 28, 1994 hearing for comment:

(o) Progress Reports and Compliance Certifications

(o)(1) The owner or operator of a Title V source shall submit a written progress report to the Commissioner semi-annually or more frequently if specified in the applicable requirement or in the Title V operating permit. Such report shall be consistent with an applicable schedule of compliance pursuant to subparagraph (L) of subdivision (i)(2) of this section and shall include a certification signed in accordance with subdivision (b)(4) of this section and shall contain the following:

> (A) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and
>
> (B) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted and the future schedule for such compliance.

(o)(2) The owner or operator of a Title V source shall submit a written compliance certification to the Commissioner annually, or more frequently if specified in the applicable

requirement or in the Title V operating permit. Such certification shall identify the terms and conditions contained in the Title V operating permit for the entire premise, including emission limitations, and shall contain the following:

(A) a means for monitoring the compliance of the source with emissions limitations, standards, and work practices;

(B) the identification of each term or condition of the permit that is the basis of the certification;

(C) the Title V source's, owner and operator's compliance status';

(D) whether compliance was continuous or intermittent;

(E) the method(s) used for determining the compliance status of the Title V source, currently and throughout the reporting period in accordance with this section; and

(F) such other facts as the Title V operating permit may require to determine the compliance status of the Title V source.

(o)(3) Any report or certification submitted pursuant to this subsection shall be certified pursuant to subdivision (b)(4) of this section.

(o)(4) The owner or operator shall submit any report or certification pursuant to this subsection to the Administrator through Region I of the U. S. Environmental Protection Agency as well as to the Commissioner;

Comments Regarding subsection (o)
Progress Reports and Compliance Certifications

22a-174-33(o) One commentor suggested the Department could use the pre-inspection questionnaire (PIQ) as a reporting mechanism to take advantage of a system already in place. (39)
Response: I recommend, to the extent practicable, the Department combine current reporting requirements, which include the PIQ, with the Title V reporting requirements as provided in Exhibit A, subsections (o) and (q) in order streamline reporting requirements. Such melding of reporting requirements should be addressed in the program description, submitted to the Administrator.

22a-174-33(o)(2) One commentor suggested the first compliance

plan shall be due on the anniversary of the issuance of the permit. (2)
Response: I do not recommend a change to the language based upon this comment. The permit engineer needs the flexibility to determine the appropriate date for submittal of the compliance certification based upon not only Department policy and statutory requirements, but also the circumstances unique to a particular Title V source.

22a-174-33(o)(2) One commentor stated this paragraph requires sources to submit a compliance certification annually or more frequently if specified in the Title V permit or in the applicable requirement. This commentor believes the source should not be subjected to an enforcement action for unknowingly failing to submit a compliance certification that was not provided for in its Title V permit. (13)
Response: I recommend the Department make a change to require that the submission period for the compliance certification be either annually, as provided in Exhibit A, subdivision (q)(2) or in the permit to provide certainty to the regulated community. (See language in Exhibit A, subdivision (q)(2))

22a-174-33(o)(2) One commentor stated the provision in (o)(2) for monitoring compliance with standards and work practices appears to contravene the requirement that all monitoring be done by sampling and analysis. (15)
Response: I recommend the Department make a change allowing monitoring to include "...or any particular procedures necessary to determine whether the applicable requirements are being met." This will enable for monitoring, to determine compliance with applicable requirements, without being unduly burdensome. (See language in Exhibit A, subdivision (a)(11))

22a-174-33(o)(2) One commentor suggested the Department allow a source to submit a certification stating no changes have been made since the last compliance certification, and to report only applicable status changes. (32)
Response: I do not recommend the Department make a change based upon this comment because it is especially important that those responsible for the compliance certification do a conscientious review of procedures at least on a yearly basis and attest to such review. Compliance with this requirement will ensure that a conscientious review of procedures is undertaken.

22a-174-33(o)(2) One commentor suggested the Department add the following language as a section to Section 22a-174-33(o)(2):

"A statement indicating the source's compliance status

with any applicable monitoring requirement in section (m)."

This commentor noted that this would require a source to state whether it was able to operate its monitoring system in accordance with Section 22a-174-33(m). A source cannot supply emission data if it does not maintain its monitoring equipment.

In addition, this commentor suggested the Department should add the following language to Section 22a-174-33(o)(2):

"Any additional requirements which may be specified pursuant to Sections 114(a)(3) and 504(b) of the CAA." (41)

Response: I recommend the Department require the compliance certification include the permittee's compliance status with respect to the permit, as provided in Exhibit A, subparagraph (q)(2)(C), which would include monitoring terms, as well as whether the monitoring was functioning properly. (See language in Exhibit A, subparagraph (q)(2)(G)) I recommend the Department include language as provided in Exhibit A, subparagraph (q)(2)(F) to ensure compliance with requirements specified pursuant to 40 CFR Part 70 is determined and contained in this compliance certification. Requirements pursuant to Section 114(a)(3) of the CAA are addressed as provided in Exhibit A, subparagraphs (q)(2)(A) through (G), in order to meet minimum federal requirements. Requirements pursuant to Section 504(b) of the CAA are addressed as provided in Exhibit A, subparagraphs (j)(1)(K)(ii) and (q)(2)(A) through (G), in order to meet minimum federal requirements. (See Exhibit A, subdivision (a)(6))

22a-174-33(o)(2)(A) One commentor believes the word "source" in this paragraph is confusing, questioning whether it means a point of emissions or the whole premise. (15)
Response: I recommend the Department precede the word source with the word "subject" to make this paragraph clearer that such subject source is the particular Title V source and not just the emissions unit. (See language in Exhibit A, subparagraph (q)(2))

I recommend the following changes to improve clarity and, where necessary, to incorporate federal program requirements:

1) This subsection is now letter (q), not letter (o) due to the addition of new subsections and the reordering of others. However, the title remains the same, i.e., "Progress Reports and Compliance Certifications".

2) I recommend the Department delete subdivision (o)(3) and incorporate the content of subdivision into subdivisions (q)(1) and (q)(2) to meet minimum federal requirements. (See Exhibit A, subdivisions (q)(1) and (q)(2))

3) I recommend the Department delete the language in subdivisions (o)(1) and (o)(2) and replace it with the language as can be seen in Exhibit A, subdivisions (q)(1) and (q)(2), respectively to meet minimum federal requirements.

4) I recommend the Department delete the language in subparagraphs (o)(1)(A) and (B) and replace it with the language as can be seen in Exhibit A, subparagraphs (q)(1)(A) and (B), respectively to meet minimum federal requirements.

5) I recommend the Department revise the language in subparagraphs (o)(2)(A) through (F) as can be seen in Exhibit A, subparagraphs (q)(2)(A) through (F), respectively to meet minimum federal requirements.

6) I recommend the Department revise the language of subdivision (o)(4) as can be seen in Exhibit A, subdivision (q)(3) to ensure certification of documents is submitted to the Department as provided for by federal requirements.

Transfers

The following language was presented at the October 28, 1994 hearing for comment:

(p) Transfers.

(p)(1) No person shall act under the authority of a Title V operating permit issued to another person unless such permit has been transferred in accordance with this section. The Commissioner may approve a transfer in accordance with this section if he finds that the proposed transferee is willing and able to comply with the terms and conditions of the 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.

(p)(2) The permittee and the proposed transferee shall submit to the Commissioner a request for transfer of such permit 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 require the proposed

transferee to submit with any such request:

(A) any information required by law to be submitted with an application for such a 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 section, including any information required by law.

(p)(3) Upon approving a request for transfer, the Commissioner shall modify the Title V operating permit accordingly, in accordance with subsection (i) of this section. After the Commissioner transfers a permit in accordance with this section, the transferee shall be responsible for complying with all applicable regulations and with all the terms and conditions of the transferred permit.

Comments Regarding subsection (p) Transfers

22a-174-33(p)(3) One commentor believes the phrase, "with all applicable regulations and" should be deleted from this paragraph. This commentor states this phrase imposes a "catch-all" requirement for which the transferee should not be responsible. (13)
Response: I do not recommend the Department make a change based upon this comment. It is especially important that the transferee understand the level of responsibility for environmental compliance that is required to operate the subject facility. This type of language will put such transferee on notice and future violations may thereby be avoided.

In addition, I recommend the following changes to improve clarity and, where necessary, to incorporate federal requirements:

1) This subsection is now letter (s), not letter (p) due to the addition of new subsections and the reordering of others. However, the title remains the same, i.e., "Transfers".

2) I recommend the Department revise the language of subdivision (p)(1) as can be seen in Exhibit A, subdivision (s)(1) in order to provide clear requirements for transfers.

3) I recommend the Department revise the language of subdivision (p)(2) and subparagraphs (p)(2)(A) and (B) as can be seen in Exhibit A, subdivision (s)(2) and subparagraphs (s)(2)(A) and (B), respectively in order to provide clear

requirements for transfers.

4) I recommend the Department revise the language of subdivision (p)(3) as can be seen in Exhibit A, subdivision (s)(3) to provide certainty for the regulated community.

Revocations

The following language was presented at the October 28, 1994 hearing for comment:

(q) Revocations.

(q)(1) The Commissioner may revoke a Title V operating permit on his own initiative or on request of the permittee or any other person for the reasons specified in this subsection. Any such request shall be in writing and contain facts and reasons supporting the request. A permittee requesting revocation of a Title V operating permit shall state the requested date of revocation and shall, prior to revocation, provide the Commissioner with satisfactory evidence that the emissions have been permanently eliminated.

(q)(2) The Commissioner may revoke a Title V operating permit during its term in accordance with section 4-182(c) of the Connecticut General Statutes as amended, and 22a-3a-6 of the Regulations of Connecticut State Agencies, the Department's Rules of Practice, for any reason specified as follows:

(A) the permittee has violated a statute, regulation, permit or order administered or issued by the Commissioner, or has committed any other violation of law relevant to the permitted activity;

(B) the permittee or a person on his behalf failed to disclose all relevant and material facts in the application for the Title V operating permit or during any Department proceeding associated with the application;

(C) the permittee or a person on his behalf misrepresented a relevant and material fact at any time, including, without limitation, in the application for the Title V operating permit or in a report or laboratory analysis submitted to the Department;

(D) the permittee failed to comply with a reasonable request by the Commissioner for any information related

to the Title V operating permit, activity, or Title V source which is the subject of the Title V operating permit, or to the permittee's compliance with the Title V operating permit, or any statute, regulation, or order administered or issued by the Commissioner;

(E) the activity authorized by the Title V operating permit is causing or is reasonably likely to cause air pollution or to endanger human health, safety, or welfare or the environment; or

(F) a change in pertinent law or technology.

Comments Regarding subsection (q) Revocations

22a-174-33(q) One commentor is concerned that its efforts to reduce emissions below threshold levels post-1990 baseline emissions will not be recognized. This commentor stated the revocation provision does not allow a facility the opportunity to relieve itself of Title V requirements for extinct processes or emissions (unless such extinction is facility-wide thus relinquishing its entire Title V permit). (15)
Response: This section does not prevent post-1990 reductions in emissions from being recognized. This subsection does not preclude an owner or operator of a Title V source from requesting a modification. I do not recommend a change based on this comment.

22a-174-33(q) One commentor recommended the Department should state in Section 22a-174-33(l) or (q) of its rule a requirement implementing 40 CFR §70.7(g), which relates to EPA's ability to reopen a permit for cause. (41)
Response: I recommend the Department include the federally required reopening for cause subsection as provided in Exhibit A, subsection (r), modifications, subdivisions (r)(8) through (r)(14). (See language in Exhibit A, subdivision (r)(8) and subparagraphs (r)(8)(A) through (D))

22a-174-33(q) One commentor stated the Department has not addressed 40 CFR Part 70's "reopening for cause" concept, set forth in 40 CFR §70.7(f). This commentor questions whether it is the Department's intent that Section 22a-174-33(q) provide the necessary requirements for "reopening for cause"? This provision on its face only applies to revocations, and does not include an instance in which Department would reopen a permit to modify it for "cause." For example, as with Section 22a-174-33(l)(1), Section 22a-174-33(q) does not provide that permits may be reopened to correct material mistakes or inaccurate statements (See 40 CFR §70.7(f)(1)(iii)). In addition, this commentor pointed out, when the Department

reopens a permit for cause, and then reissues such permit after the problem has been corrected, the same procedural requirements that apply to initial permit issuance must apply to the reissuance of the permit after reopening for cause. Such commentor further pointed out that for those instances, however, in which Department terminates or revokes a permit and does not reissue such permit, such procedural requirements are not required to be part of Connecticut's program. (41)
Response: I recommend the Department include reopening for cause justifications as provided in Exhibit A, subparagraphs (r)(8)(A) through (D) and that the notice of intent to reopen the subject permit be supplied to the subject source thirty (30) days in advance of the modification, as provided in Exhibit A, subdivision (r)(9).

22a-174-33(q)(2) One commentor believes this subdivision is entirely too broad. (38)
Response: The language in this subdivision is an already existing part of the Department's authority to revoke permits as provided in the Rules of Practice, Section 22a-3a-5(d) of the RCSA. I recommend the Department alter the language to refer to the existing authority rather than spell out the requirements in this section, in the interest of brevity.

22a-174-33(q)(2) One commentor suggested, to be consistent with §70.6(a)(6) and §70.7(f), the Department add the words "or reopen" to the first sentence of this paragraph. (13)
Response: I recommend the Department develop a reopening for cause subsection without utilizing the term reopening, because the procedures which will be utilized to perform such reopening are actually modification procedures. (See language in Exhibit A, subdivisions (r)(8) through (r)(14).

22a-174-33(q)(2)(A) One commentor believes the Department should not revoke a permit where the source has made a good faith effort to remain in compliance. This commentor suggests adding language such as "willfully or repeatedly" to this paragraph. This commentor made the same remarks with regard to subparagraph (q)(2)(B). (36) One commentor recommended changes to Section 22a-174-33(q)(2) of the RCSA to eliminate "or any statute, regulation, or order administered or issued by the Commissioner" from paragraph (D). (13)
Response: I do not recommend the Department lessen the Commissioner's authority with respect to revocations as the Department's existing authority regarding revocation pursuant to Section 22a-3a-5(d) of the RCSA. In the interest of brevity, I recommend the Department delete the language subdivision (q)(2), in its entirety, and add the citation of Section 22a-3a-5(d) of the RCSA as can be seen in Exhibit A, subdivision (t)(1).

22a-174-33(q)(2)(E) and (F) Several commentors believe the words "...cause air pollution or..." should be deleted from this paragraph. (36, 13 and 38) Two commentors believe this section should be deleted. (36 and 38) Another commentor suggests the words "or technology" should be deleted from this paragraph. (13)
Response: In the interest of brevity, I recommend the Department make a change referring directly to the Rules of Practice as provided in Section 22a-3a-5(d) of the RCSA. However, eliminating this language does not diminish the Commissioner's authority because such authority continues to exist in the Rules of Practice.

In addition, I recommend the Department make the following changes to improve clarity and, where necessary, to incorporate federal program requirements:

1) This subsection is now letter (t), not letter (q) due to the addition of new subsections and the reordering of others. However, the title remains the same, i.e., "Revocations".

2) For the purposes of complying with the Title V Program elements, I recommend the Department add a new subdivision in which the Administrator's authority to revoke and reissue a Title V permit, is acknowledged. (See Exhibit A, subdivision (t)(2))

GENERAL COMMENTS

In general, the following comments all raised the question of: how does Connecticut respond to the various sections of Title 40 Code of Federal Regulations ("CFR") Part 70, in producing the regulation? For details specific to this issue, please consult the section at the end of these general comments, titled, "General Response"

One commentor wrote that, as a general matter, the Department must ensure that all of the Title 40 CFR Part 70 provisions requiring the permitting authority to perform certain tasks are addressed in the state's program as regulations. (5)
Response: I do not recommend the Department implement all the provisions, requiring the Commissioner to perform certain tasks, in the regulation itself. The federal regulations in part do impose certain obligations on the state as opposed to the regulated community. Therefore, it is not necessary to include such provisions in these regulations. However, I do recommend the Commissioner implement the MACT and acid rain requirements as well as to implement time frame and procedural

requirements because these are necessary for administration of the program and directly impact the regulated community. Exhibit A, subdivisions and subsections (b), (d), (e), (f), (g)(2), (g)(3), (h), (j), (k), (l), (m)(2), (m)(3), (n), (r), (s), and (t) contain the language relative to the Commissioner's responsibilities concerning: signatory responsibilities; limitations on potential emissions; MACT and acid rain requirements; time frames; applications; application processing; permit standards; public notice; administrator's review of tentative determinations; permit modifications; transfers; and revocations.

For those requirements not incorporated into the suggested language in Exhibit A, I recommend the Department handle them in the program description. For more detail I will respond to each section of 40 CFR Part 70 below in the General Response.

One commentor indicated the Title V Program is not intended as a vehicle for states to impose new substantive requirements into their air pollution control regulations. (7) One commentor indicated the Department's proposed regulation contains several paragraphs which impose a separate requirement on sources to comply with applicable regulations over and above the requirement to comply with the Title V permit. (13)

Response: I recommend the Department use the Title V regulation to consolidate the requirements of the various regulations promulgated under the CAA in one permit, as they pertain to an individual source. Therefore, I do recommend new substantive requirements be included to the extent they are required by 40 CFR Part 70 so that the Department will have a federally enforceable Title V program. In addition, I recommend existing state permitting requirements and federal requirements as provided in the State Implementation and Federal Implementation Plans, where applicable to a particular source, should be included in such source's permit because including such requirements will allow permits to be comprehensive and result in a more concise review by the Department and better customer service for the applicants.

Two commentors indicated in their testimony that, as of June 7, 1994, many months of effort had resulted in a draft proposal which largely met the concerns of the vast majority of State Implementation Plan Regulation Advisory Committee (SIPRAC) members as well as the federal requirements as defined by the United States Environmental Protection Agency ("EPA"). These commentors stated that the September 27th draft which went to hearing on October 28, 1994 was unrecognizable compared with the previous draft of June 7 and earlier drafts thereto. Many, who for years had been

intimately associated with the SIPRAC effort, were now struggling and scrambling to understand a document that would serve as the basis for a final proposed regulation for public hearing and comment less than three weeks later. (7 and 29) One commentor urged the Department to withdraw the current proposed rulemaking and to substitute the federal rules verbatim. (16) Two commentors stated they are opposed to adoption of the regulation as presented in the September, 1994 draft. Such commentors recommend the Department re-notice the public hearing and comment period and begin by submitting the June 7, 1994 draft of the 40 CFR Part 70 regulation as a basis for public comment.(44 and 45)

Response: I recognize the difficulty in being involved in the development of regulations. Although SIPRAC may provide a forum for discussion of various technical decisions the Department must make, it is ultimately the Department's charge to determine the best way to regulate and enforce environmental requirements. The federal rules were designed to tell the states how to design a Title V program, rather than to actually be the Title V program regulation itself. Therefore, I do not recommend adopting the federal regulations verbatim. For details specific to how I recommend handling 40 CFR Part 70, please consult the General Response.

One commentor stated the Title V Program was intended to provide a mechanism for recording the air pollution prevention and control requirements that apply to a particular source. In addition, such commentor pointed out, it was intended to provide the public with a meaningful opportunity to participate in the permitting process and access to information regarding the source's requirements. Congress did not intend for the program to be a vehicle to create or revise, on an ad hoc basis, the substantive requirements of the state's air pollution control regulations. (8)

Response: I agree that this regulation is intended to provide a mechanism for imposing requirements that apply to a particular source and to provide the public with a meaningful opportunity to participate in the permitting process. In addition, the public has access to requirements imposed upon a particular source, in accordance with the Freedom of Information Act (FOIA). I do not recommend the Department use this regulation as an opportunity to, on an ad hoc basis, create or revise the substantive requirements of the state's air pollution control regulations. Rather, I recommend the Department use this as an opportunity to consolidate requirements into one concise document. For details specific to how I recommend handling 40 CFR Part 70, please consult the General Response.

One commentor stated any effort by the State of Connecticut to

establish a more restrictive permitting program than exists in other states potentially jeopardizes the ability of Connecticut businesses and industry to operate in a competitive market, or may discourage new businesses from locating in Connecticut. (44)
Response: The state must have the ability to extrapolate from the language provided in 40 CFR Part 70 in order to implement the above mentioned requirements and administer the program in Connecticut. For details specific to my recommendations regarding where, how and why the Department should be more stringent than 40 CFR Part 70, please consult the General Response.

One commentor indicated that they understand that it is difficult for the Department to cite the CAA in its regulation because Connecticut cannot reference or allude to regulations that have not yet been promulgated. Therefore, the Department must rely on referring to the existing sections of the CFR. This reliance on the CFR will result in Department having to amend Section 22a-174-33 every time EPA promulgates a new rule pursuant to an applicable section of the CAA. This commentor is concerned the Department will have to amend Section 22a-174-33 on a frequent basis, to include newly promulgated requirements that affect Connecticut's Title V program. This commentor believes Connecticut will have to include a commitment in its program submittal that the State is aware of this issue and intends to reopen its Title V regulations to incorporate any newly promulgated applicable requirements in a timely fashion. Such changes to Connecticut's regulations must occur quickly enough to enable the Department to issue Title V permits, which include <u>all existing</u> applicable requirements, on a timely basis. Moreover, some provisions of the CAA are directly enforceable without implementing regulations. (41)
Response: I agree that the Department cannot reference or allude to regulations that have not yet been promulgated. Therefore, the Department must rely on referring to the existing sections of the CFR. This reliance on the CFR will result in Department having to amend Section 22a-174-33 every time EPA promulgates a new rule pursuant to an applicable section of the CAA. (<u>See</u> Exhibit A, subdivision (a)(6)) With respect to those provisions which are directly enforceable, I recommend the language in Exhibit A, subsection (e), MACT and Acid Rain Provisions, be included in the regulation, in order to ensure incorporation of these new programs for the purpose of including any applicable requirements in the Title V permits. I recommend referencing the CAA as provided in Exhibit A subparagraph (a)(15)(D) and subdivision (e)(1).

One speaker noted that May 15, 1994 is the submittal deadline

for the program and stated that provisions of 40 CFR Part 70.6 are missing such as references to authority for each term or condition, accountability to citizens and regulated community and the public remedy. Requirements of 40 CFR Parts 70.7 and 70.8 should be incorporated into subsections (i) and (j) of the RCSA to allow EPA review and procedures. (5)
Response: See General Response specifically regarding 40 CFR Parts 70.6 through 70.8.

One commentor stated that lack of a permit shield may result in the forced cessation of operation; a "taking" without compensation by the State of Connecticut. (15)
Response: I do recommend the Department add provisions as specified in Exhibit A, subsection (k). This language would protect the owners and operators from certain enforcement actions in a limited context by having the permit contain language that compliance with the permit is compliance with the subject applicable requirements, if the Commissioner deems it appropriate to use such language in the subject permit. (See Exhibit A, subsection (k))

One commentor criticized the Department for not incorporating the federal protections for source owners who apply for a permit in good faith and operate in compliance with their permit conditions. Without such protections, this commentor stated, sources may be subject to immediate punitive enforcement action simply because the Department erred by issuing a permit with inadequate conditions. The permits can be reopened to address legitimate shortcomings, this commentor stated, but there should be no punitive action taken against a source that is operating in compliance with its permit. (27)
Response: This commentor begins by describing the concept of an application shield but ends by discussing the concept of a permit shield. The application shield is required by 40 CFR Part 70 and I therefore recommend the Department add language as provided in Exhibit A, subsection (h). While I am recommending the concept of the application shield be included in the Department's regulation, I am not recommending the use of the term "application shield" be used. This term is not necessary to convey the concept that if a source has a complete application in-house, the Department will not take enforcement action for failure to have a Title V permit as provided in Exhibit A, subdivision (h)(4).

With respect to a permit shield, this concept is optional under 40 CFR Part 70. I do recommend the Department adopt the permit shield concept as provided for in Exhibit A, subsection (k). In addition, I recommend the Department address permit shortcomings and provide flexibility within the context of the modification subsection as provided for in Exhibit A, subsection (r).

Two commentors made four main points described as follows:

First, the regulations either do not include, or are inconsistent with, several federal program elements necessary for EPA's approval of the Department's Title V program.

Second, the regulations impose significant new requirements which are contrary to the requirements of Title V of the CAA.

Third, the regulations need to clearly exclude minor sources and insignificant activities in order to allow the Department to focus its resources on significant sources of emissions, and thereby avoid impeding the completion of the permitting process for sources required to be covered under Title V.

Lastly, to provide sources with a degree of certainty regarding their obligations under the Title V program, the regulations should be revised to ensure that enforcement actions will not be brought based upon incorrect permitting decisions made at the time the Title V permit is issued. (13 and 42)

Response: First, I recommend as specified the General Response, the Department include the federal program elements in specific subsections of the regulations where they impose requirements of general applicability to the regulated community and, to the extent they otherwise relate to characteristics of the program, the Department will include them in the program description.

Second, I recommend the Department impose requirements, additional to those contemplated by the federal Title V Program, which exist in the New Source Review regulation, and other federal requirements under the Federal Implementation Plan and the State Implementation Plan. In an attempt to implement the CAA requirements, I recommend the Department adopt Title V requirements in substance, and not necessarily verbatim. I do recommend the Department, to the extent allowed by the CGS and where appropriate, accommodate the intent of 40 CFR Part 70 as specified in the General Response.

Third, I recommend the Department not require applications from sources which have been exempted by a federal standard or requirement or where a federal standard or requirement has not been promulgated, where such standard or requirement is the only reason applicability of this regulations would be triggered. The Department does not have the authority to otherwise exclude emissions units when determining applicability of this regulation. I do not recommend the Department use the term insignificant activities. It is not necessary to use such terminology and may mislead an applicant to believe that certain activities or items are insignificant despite being regulated by an applicable requirement. I do recommend the Department come up

with categories of activities which can be grouped for the purposes of submitting an application and which can be useful in limiting further recordkeeping and reporting requirements in the context of permitting which is not precluded by 40 CFR Part 70. (See language in Exhibit A, subparagraph (j)(1)(K) combined with language in subdivision (g)(3)) I also recommend the Department have threshold levels of pollutants, as in Exhibit A, subparagraph (j)(1)(F) for which the owner or operator of such source would not have to report such emissions. For more detail, please consult the General Response regarding 40 CFR Part 70.3(d)

Lastly, I recommend the Department preclude enforcement actions against a source based upon a mistake in the permit, but only as provided for in Exhibit A, subsection (k). This will enable the Department to provide sources with a shield. For more detail, please consult my General Response to 40 CFR Part 70.6(f).

One commentor argued, with respect to the utilization of on-site ambient temperature asphalt emulsion stabilization recycling of contaminated soils, the Department has failed to create a streamlined permitting process for temporary sources, such as theirs, as it has been permitted to do by the EPA. (34) In similar testimony, another commentor indicated Connecticut, alone among New England states, has restricted access to the class of technologies often referred to as "on-site soil treatment," due to a regulatory gap in Connecticut's air permitting program. This commentor pointed out that such technologies not only offer economic advantages, they also encourage responsible parties to perform remediation sooner rather than later. This commentor further stated the use of temporary source permits and general permits is important to being able to perform this on-site soil treatment.(19) One commentor noted the September, 1994 draft deviates from the federal part 70 rule with respect to temporary permits. (44)
Response: The language provided for temporary sources in 40 CFR Part 70 is not stringent enough for the Department to adopt because the Department does not currently have procedural requirements providing public review and comment regarding temporary sources. Since 40 CFR Part 70 provides the minimum, and not the maximum elements of a permitting program, the state can be more stringent. Therefore, I recommend the Department adopt language as provided for in Exhibit A, subdivision (r)(3), which allows for the use of relocated units to the extent allowed by Section 22a-174-1(52) of the RCSA. The Title V program cannot override other, more stringent, regulations to which such sources are subject.

One commentor stated that operating permits issued under Title V of the CAA should provide a straightforward, federally

enforceable mechanism for completing emission trades and should therefore be able to replace the individual SIP revisions that are now necessary.(25)
Response: The Department has not, as of this date, adopted a regulation to implement emissions trading among premises. However, I recommend the Department allow for intra-premise trading, and for the creation and use of credits for emissions trading among premises in accordance with federal requirements, as provided in Exhibit A, subparagraphs (g)(1)(F), (j)(1)(I) and (j)(1)(P), to enhance flexibility where allowed by applicable requirements.

One commentor requested the Department include a provision allowing for general permits. Under the terms and conditions of a general permit, individual sources within a covered category are allowed to apply for coverage and receive approval to operate under a general permit. This commentor stated that this program has worked successfully for years under the CAA. (24) One commentor noted that the September draft deviates from the federal part 70 rule with respect to general permits. (44)
Response: The Department has existing authority to issue general permits under the CGS. I recommend the Department adopt specific language as provided in Exhibit A, subparagraph (d)(3)(B) and subdivision (l)(1), to allow for the issuance of general permits, thereby improving customer service by the Department and the expediency with which decisions can be made by the Commissioner.

One commentor requests the Department defer applicability of these rules for non-major sources and extend a five year deferral if EPA later determines that permitting some of these non-major sources is not required or necessary in light of the regulation of major sources. (24)
Response: I recommend the Department add language which will allow for deferrals of Title V applicability when EPA had not yet regulated a source, as provided in Exhibit A, subdivisions (f)(2) and (f)(3), or allow for an exemption when the regulation EPA promulgates specifically exempts such category of sources as provided in Exhibit A, subparagraph (c)(2)(E).

One speaker said the lack of procedures in the proposed regulation amounts to a taking. This speaker had a specific example of a baghouse for cadmium that will need a Title V permit because it does not otherwise receive a federally enforceable permit.(15)
Response: I do not agree that requiring a source to obtain a Title V permit, which would be federally enforceable, is tantamount to a taking, as such permitting requirement does not destroy, or render valueless, such source. There are

mechanisms available to obtain federally enforceable recognition of control equipment or emission limitations such as using consent orders or including such equipment or limitations in a federally enforceable new source review construction permit. However, such federally enforceable documentation may or may not preclude a source from needing a Title V permit if such document provides the source a federally enforceable limitation on emissions. I recommend the Department adopt language in this regulation, as provided in Exhibit A, subsection (d), to allow sources to obtain synthetic minor permits.

One commentor recommended insignificant activities and items should be insignificant irrespective of the functional reason of the emission (profit/nonprofit) (45)

Response: I recommend the Department allow activities or items to not be included on the application unless otherwise required to determine applicability of this section, determine compliance with an applicable requirement or determine what the applicable requirements are, as provided in Exhibit A, subdivisions (g)(3) and (g)(4). I recommend the activities or items, as provided in Exhibit A, subparagraph (g)(3)(B), not be the principal function of the business, and that lab hoods, as provided in Exhibit A, subparagraph (g)(3)(A), be limited only with respect to experimental study or teaching of any science or testing or analysis. This will still enable the application to meet minimum federal requirements because the activities or items, and the emissions therefrom, shall be listed on the application, in the event it is necessary to determine the applicability of this section, to determine whether a requirement is applicable, or to determine compliance with an applicable requirement, as provided in Exhibit A, subdivision (g)(4).

One commentor suggested a guidance manual should be prepared. Such manual should explain how existing permits and registrations will be handled. In addition, this commentor suggested a hotline or bulletin board should be implemented to check the status of a permit. Another guidance document should be created for compliance plans, as well as forms and a checklist. This commentor suggested the Department should withdraw this draft of the regulation and repropose without the modifications section. (2)

Response: I recommend the Department prepare a guidance document upon federal approval of Connecticut's program. I do not recommend the Department repropose and submit without the modifications subsection as the modifications subsection is important in providing flexibility in this regulation as provided in Exhibit A, subsection (r).

One commentor suggested the Department conduct compliance

workshops for sources, especially small sources. (24)
Response: This hearing concerned only the Title V regulation and not all other indirectly related program elements. The Department's Small Business Ombudsman has been, and continues to be, a resource for all businesses in the State of Connecticut and may be providing workshops regarding this Program.

One commentor expressed concern with the Department's ability to properly staff and administer the Title V Program. (45)
Response: This issue should be addressed within the Department's Adequate Personnel and Funding documentation which will be submitted to the EPA as part of the Title V Program package. The program is funded by fees paid pursuant to Section 22a-174-26 of the RCSA.

GENERAL RESPONSE

In addition to my responses to specific comments made throughout this report, I am providing the following General Response section with recommendations on how the Department should respond to many of the comments throughout this report.

40 CFR Part 70.1 Program Overview, in general, describes the context in which the Department shall develop a Title V Operating Permit Program Regulation, namely in the context of 42 U.S.C. 7401 et seq., the Clean Air Act ("Act") as amended in 1990. I recommend the Development of Department regulations in the context of the Act and the federal regulations promulgated thereunder, so that such Department regulations are the vehicle for a program which assures compliance with applicable requirements through permitting. In addition, the Department and the regulated community will glean the added benefit that permits issued under such regulations will be federally enforceable.

40 CFR 70.2 Definitions, define the terms utilized throughout 40 CFR Part 70. I do recommend the Department incorporate a definition of "act", "affected states", "applicable requirement", "emissions unit", "Administrator" and "regulated air pollutant", because these definitions are not provided in the Department's general definition section 22a-174-1 of the RCSA. I recommend the Department craft language as given in Exhibit A subdivisions (a)(1), (2), (3), (5), and (12) for the reasons provided in the responses concerning definitions. I do not recommend the Department incorporate definitions for "affected sources", "affected unit" and "designated representative" as they only apply to sources subject to 40 CFR Parts 72 through 78, inclusive and those subject to such

provisions will be able to use such definitions as provided for in the referenced material, 40 CFR Part 72 through 78, inclusive. I do not recommend the Department include a definition of "Emission allowable under the permit" as it is a substantive phrase which only needs to be dealt with, in concept, in one place, in the context of operational flexibility as it is provided in Exhibit A subdivision (r)(3). I do not recommend the Department include a definition of "EPA" as I do not recommend the Department utilize this term in the regulation. The term Administrator will adequately serve the need to reference the federal decision maker with respect to this program. I do not recommend the Department include the term "final permit" as the Uniform Administrative Procedure Act and the General Statutes use the term "final action", "final agency action" or "agency action". I recommend the Department use the term "final action" to refer to the Commissioner's decision either to issue or not issue a permit. In addition, the term "Title V permit", "permit" and "subject permit" should be used throughout the regulation. A permit can only be a final permit, otherwise it does not constitute a license (permit) to operate issued by the Commissioner.

I do not recommend the Department define the term "fugitive emissions" in this section, as it is defined in Section 22a-174-1 of the RCSA and such definition is equivalent to the definition provided in 40 CFR Part 70.2.

I do not recommend the Department define the term "general permit" in this section, as it described in Section 22a-174(l) of the General Statutes. To the extent the general statutes do not include all of the requirements of 40 CFR Part 70.6(d) I recommend the Department include language to meet such requirements as stated in Exhibit A subsections (d), (l) and (m).

I do not recommend the Department define the term "major source" in this section. Major source implies that only sources with emissions over a certain threshold must obtain a Title V permit, and that is not the case with respect to this section. In fact, the 40 CFR Part 70 requires other sources, in addition to major sources, to obtain Title V permits as described in 40 CFR Part 70.3. Therefore, I recommend the Department define the term Title V source instead of major source as defined in Exhibit A subdivision (a)(15) of this section. I also recommend the Department utilize the content of the definition of major source in developing the definition of Title V source.

I do not recommend the Department define "Part 70 permit" as provided in 40 CFR Part 70.2. The terminology "Title V permit" will be more recognizable to the regulated community and does not infer that other Parts of Title 40 CFR would not

be covered, as the terminology "Part 70 permit" may mistakenly do.

Therefore, it follows, I do not recommend the Department use the definitions "Part 70 program" or "Part 70 source". Although the terminology "Part 70 program" may have been necessary for the federal regulations to explain the context in which the regulations needed to be written by the states, I do not think these definitions play a useful role on the state level. Also, the content of the terminology "Part 70 source" has been covered by the Department's definition of Title V source, as seen in Exhibit A, subdivision (a)(15).

I do not recommend the Department incorporate the definitions of permit modification or permit revision as this concept is multi-faceted and covers concepts such as "significant modification", "permit amendments", "operational flexibility", "502(b)(10) changes", "off-permit changes" and "reopening for cause", as described in Exhibit A subsection (r). Although these terms are not necessarily used within subsection (r) of recommended language, the concepts provided for in 40 CFR Part 70 were used in developing the language in Exhibit A subsection (r).

I do not recommend the Department incorporate the definition of "permit program costs", as this definition appears to be more of a directive which relates to funds needed to implement the program. The fees to support this program are collected pursuant to section 22a-174-26 of the RCSA, which section was not the subject of this hearing.

I do not recommend the Department adopt a definition of "potential to emit" in that such a term is defined very similarly and no less stringently in Section 22a-174-1 of the RCSA.

I do not recommend the Department incorporate a definition of "proposed permit." To remain consistent with other Department regulations the term tentative determination will serve the purpose of describing a draft and proposed permit. Use of the term tentative determination will only meet 40 CFR Part 70 procedural requirements if the language provided in Exhibit A subsections (l), (m), and (n) is utilized to adequately describe the order of events in which such tentative determination is processed.

I do not recommend defining or using the term "regulated air pollutant for presumptive fee calculation" as the fee regulations, section 22a-174-26 of the RCSA, were not the subject of this hearing.

I do not recommend the Department incorporate the term "responsible official" into the definition section because it contains substantive requirements and is therefore not merely a definition. However, I do recommend the Department incorporate the concept of responsible official into the subsection regarding signatory responsibility as shown in

Exhibit A subsection (b).

I do not recommend the Department incorporate the term "section 502(b)(1) changes" into the definition section because it contains substantive requirements and is therefore not merely a definition. However, I recommend the Department include this concept as shown in Exhibit A subdivision (r)(3) in order to provide flexibility to the regulated community to extent allowed by the applicable requirements.

I do not recommend the Department incorporate the term "stationary source" into the definition section because a definition for such term, which is as stringent as the definition provided in 40 CFR Part 70.2, is provided in Section 22a-174-1 of the RCSA.

I do not recommend the Department incorporate a definition for the term "whole program". Although a definition for "whole program" may have been necessary for the federal regulations to explain the context in which the regulations needed to be developed and implemented by the states, I do not think these definitions play a useful role on the state level.

40 CFR Part 70.3 Applicability, in general, describes which sources must obtain Title V Operating permits and which sources are exempt from such requirement.

I recommend the Department adopt a definition of Title V source (see language in Exhibit A, subdivision (a)(15)), and describe applicability (see language in Exhibit A, subsection (c)), in order to meet the intent of provisions provided in 40 CFR Part 70.3 (a) and (b). Language shown in Exhibit A subdivision (f)(2) also responds to 40 CFR Part 70.3(b)(1) and allows deferrals for sources.

With respect to **40 CFR Part 70.3(c) emission units and Part 70 sources**, I recommend the Department adopt the language provided in Exhibit A, subsection (j). To provide uniform treatment of Title V sources and to provide certainty for the permit engineers and industry, I recommend language which allows the Department to include all applicable requirements for all relevant emission units at a Title V source.

To only include the applicable requirement for the units that cause the source to be subject to the 40 CFR Part 70 program, may cause sources to need several permits and multiple interactions with the Department. To the extent there are federally enforceable FIP/SIPs, federal regulations and state permitting requirements, I recommend such requirements be incorporated into one document to keep sources and field engineers from having to recreate the regulatory paper trail for each meeting or exchange.

I recognize that some commentors, in their general comments, considered this decision as one that goes beyond the intent of 40 CFR Part 70. However, there is no reason to

require limitations in the permit for units or emissions for which there are no applicable requirements, unless such limitations are requested by the source.

With respect to **40 CFR Part 70.3(d), fugitive emissions**, I recommend the Department use language as provided in Exhibit A, subdivision (a)(15) and subsection (g). In the federal interpretation of 40 CFR Part 70 as provided in the preamble it states that "..... a major source must submit a permit application including all emissions of all regulated air pollutants from all emission units located at the plant, except that only a generalized list needs to be included for insignificant events or emission levels" FR Vol. 57 No. 140 Tuesday, July 21, 1992. Therefore, if an applicant has already determined this regulation applies to their source it is logical, and allowed by 40 CFR Part 70, to only require the inclusion of emissions to the extent necessary to determine applicable requirements and compliance with such applicable requirements. However, the Department shall not be precluded by these regulations from taking an enforcement action against a Title V source who is without a Title V permit in the event the owner or operator failed to calculate emissions including fugitives to determine that the regulation applies to such source.

With respect to **40 CFR Part 70.4(a) state program submittal and transition**, the Department has already submitted a proposed regulation to the EPA for review. I recommend the Department submit the final program package formally to EPA, including these proposed final regulations as given in Exhibit A, after approval, if granted, by the Legislative Regulation Review Committee.

With respect to **40 CFR Part 70.4(b) elements of the initial program submission**, I recommend the Department submit the following: a program description, the regulations, the Attorney General's legal opinion, relevant permitting program documentation not contained in the regulation, a description of the state's compliance tracking and enforcement program, a showing of adequate authority and procedures to determine application sufficiency as shown in Exhibit A subsections (g), (h) and (i) and section 22a-3a-5 of the RCSA, and to take final action on applications with specified time frames as shown in Exhibit A subdivisions (h)(1) and (j)(1), a fee demonstration, a statement of adequate personnel and funding, a plan to submit enforcement statistics on an annual basis, a renewal shield as shown in Exhibit A subdivision (h)(4), operational flexibility provisions as shown in Exhibit A subdivision (r)(3), a plan to expeditiously review modification applications, off-permit provisions as shown in Exhibit A subdivision (r)(4), provisions concerning permit content and procedural requirements as shown in Exhibit A subsections (j), (k), (l), (m), and (n). I recommend

submission of the above-described documents and information because these documents and information are the core requirements in order to secure federal approval of a Title V program to be implemented by the Department. These documents are not, however, required as state regulatory requirements in and of themselves, and should not be embodied within this regulation.

With respect to **40 CFR Part 70.4(c) partial programs**, I do not recommend the Department take any particular action because the State of Connecticut does not have local or regional agencies, within a limited geographic area of Connecticut, to whom this program will be delegated. Therefore, this partial approval provision, as provided in 40 CFR Part 70.4(c) does not apply to Connecticut.

With respect to **40 CFR Part 70.4(d) interim approval**, I recommend the Department, through the documents and information listed in 40 CFR Part 70.4(b), comply with the requirements of 40 CFR Part 70.4(d) to ensure that full approval is granted, or at least that interim approval can be granted. Specifically, I recommend the Department verify inclusion of documents which demonstrate: adequate fees, applicable requirements as shown in Exhibit A, subdivision (a)(5), fixed term as shown in Exhibit A, subparagraph (j)(1)(A), public participation as shown in Exhibit A, subsections (l) and (m), EPA and affected State review as shown in Exhibit A, subsections (l), (m), and (n), permit issuance, enforcement, operational flexibility as shown in Exhibit A, subdivision (r)(3), streamlined procedures, permit applications and forms, alternative operating scenarios as shown in Exhibit A, subdivision (a)(4), and subparagraphs (g)(1)(E) and (j)(1)(J). It is important that the Department achieve, at a minimum, interim approval of this regulation and related programs to ensure that EPA is not required to implement a federal permitting program for industry in the State of Connecticut.

With respect to **40 CFR Part 70.4(e) EPA review of permit program submittals**, I do not recommend the Department take any action. This section is purely informational and does not require the Department to take a particular action.

With respect to sections **40 CFR Part 70.4(f) state response to EPA review of program, 40 CFR Part 70.4(g) effective date, 40 CFR Part 70.4(h) individual permit transition, 40 CFR Part 70.4(i) program revisions, 40 CFR Part 70.4(k) administration and enforcement**, I do not recommend the Department make any changes to this regulation based upon this section. Although, these sections establish the ground rules in the event that the Administrator takes various actions, such rules do not dictate to the Department what language shall be included in the regulation. Rather, such rules simply offer guidance in the way of what federal

actions will or may be taken.

With respect to **40 CFR Part 70.4(j) sharing information**, I recommend that in the Department's program description the Department plan to share information with EPA utilizing the latest computer technology accessible to both agencies on a regular and reliable basis. In addition, I suggest the Department include the language provided in Exhibit A, subdivisions and subsections (d)(3), (d)(6), (h)(5), (l), (n)(3), (q)(3), and (r), in the regulation, to ensure information is transmitted to the Administrator. With respect to confidentiality, within the program description, I recommend the Department plan to comply with 40 CFR Part 70.4(j) to the extent allowed by federal and state freedom of information requirements.

With respect to **40 CFR Part 70.5(a)(1), timely application**, I recommend the Department use language as in Exhibit A, subsection (f). I do not recommend additional language, as Section 4-182 of the General Statutes provides adequate authority concerning the continuance of the existing permit in the event of a timely filing renewal application by the permittee.

With respect to **40 CFR Part 70.5(a)(1)(i) regarding initial Title V application**, I recommend the Department include in the regulation the language provided in Exhibit A subdivision (f)(1). This language allows the Department through the use of an implementation date as defined in Exhibit A subdivision (a)(9) to require an application for a permit no later than 9 months after approval of the program by the Administrator or June 1, 1997, whichever is earlier. This will provide the regulated community with some certainty while allowing applicants to have as much time as possible prior to having to apply so that applicants may avoid the possibility of having to submit updated applications for which initial applications might have been premature.

With respect to **40 CFR Part 70.5(a)(1)(ii) regarding preconstruction review**, I recommend the Department include in the regulation the language provided in Exhibit A subdivisions (f)(2) and (f)(4) in order to ensure sources comply with preconstruction review requirements.

With respect to **40 CFR Part 70.5(a)(1)(iii) regarding renewal** I recommend the Department include in the regulation the language provided in Exhibit A subdivisions (f)(5) in order to provide the regulated community with certainty with respect to application procedures after an initial permit has been issued.

With respect to **40 CFR Part 70.5(a)(1)(iv) regarding phase II acid rain permits** I recommend the Department include in the regulation the language provided in Exhibit A subdivision (f)(6) in order to clarify that 40 CFR Parts 72 through 78, inclusive, require special application periods.

With respect to 40 CFR Part 70.5(a)(2), complete application, I recommend the Department include the language provided in Exhibit A subsection (h). I recommend the Department use the term sufficient rather than complete as the term complete is not clearly defined in 40 CFR Part 70. Sufficient as used in the Department's Rules of Practice, section 22a-3a-5(a)(3)(A) and (a)(1) of the RCSA, properly conveys the intent of the term complete as it is used in 40 CFR Part 70. Such section provides that a sufficient application, "In addition to any other information required by an application form or applicable statute or regulation, an application shall indicate: (A) the name, address and telephone number of the applicant and of his attorney or other representative, if any, (B) the license or licenses sought, (C) the statutes and regulations applicable to the application, (D) the applicant's proposal and the facilities, activities, and sites which are the subject of or are affected by the application, (E) any other information which the Commissioner may require for the purposes of reviewing the application in accordance with applicable statutory and regulatory criteria as provided in Exhibit A, subsection (g), (F) any additional information which the applicant considers relevant, and (G) an executive summary. . . " This will give the applicant and the permit engineer a checklist of necessary items in order to determine application sufficiency or completeness. In addition, I recommend the Department include in the regulation the language provided in Exhibit A subdivision (h)(1) which provides that the Department shall determine whether or not an application is sufficient within 60 days of receipt of such application.

With respect to 40 CFR Part 70.5(a)(3) confidential information, I do not recommend the Department require the submission of confidential information directly to the Administrator, and, as a result, bypass the Department. The Department will need the opportunity to review all relevant information. The Department, however, is not precluded from determining information submitted as confidential is not exempt from freedom of information requests as provided in state and federal statutes. In any event, the language as provided in Exhibit A subdivision (h)(5) which requires the applicant to send a copy of his application and attachments to the Administrator, which would include confidential information.

With respect to 40 CFR Part 70.5(b) duty to supplement or correct application, I recommend the Department include the language provided in Exhibit A subdivisions (h)(1) and (h)(2) which allows for applications to be corrected by the applicant. This is reasonable especially in light of the fact that circumstances at facilities may change after an application has been submitted to the Department.

With respect to **40 CFR Part 70.5(c) standard application form and required information**, I recommend the Department submit forms to the Administrator for review and approval as part of the Department's Title V program package. I recommend the forms, require the information described in 40 CFR Part 70.5(c) or comply with the requirements of 40 CFR Part 70.5(c) as interpreted in Exhibit A subsections (g), (h) and (i), and that such language be included in the regulation. The language in the Exhibit does not mimic 40 CFR Part 70.5(c) as that section was the federal regulation delineating how to design the Title V program. The program itself must be tailored to dovetail with existing state requirements and terminology as well as require the application to contain information the engineers can really use to determine applicable requirements for each alternative operating scenario and to determine a compliance schedule to incorporate into the permit. For these reasons the language is not identical to 40 CFR Part 70.5(c). In addition, I recommend the Department include in the regulation the language provided in Exhibit A, subdivisions (g)(3) and (g)(4) as these sections allow an applicant to avoid listing activities or items often referred to as "insignificant" unless needed to determine the applicability of, or to impose, any applicable requirement. I do not recommend developing a list of insignificant activities based upon size or production rate because such activities or items must be listed on the application, so such a list would not reduce the applicant's workload.

With respect to **40 CFR Part 70.5(c)(1) and (2) regarding identifying information and description of the source's processes** I recommend the Department include in the regulation the language provided in Exhibit A, subparagraphs (g)(1)(B) and (g)(2)(A) to enable the permit engineer to glean basic information about the type of source and identify the contacts at the facility.

With respect to **40 CFR Part 70.5(c)(3)(i) regarding emissions related information** I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph (g)(2)(B) and subdivision (g)(4) to allow for a description of emissions of regulated air pollutants for the purposes of determining what requirements are applicable to a source.

With respect to **40 CFR Part 70.5(c)(3)(ii) regarding emission points** I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph (g)(2)(A) to allow for a description of emission points for the purposes of determining what requirements are applicable to a source.

With respect to **40 CFR Part 70.5(c)(3)(iii) regarding emission rates** I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph

(g)(2)(B) to allow for a description of emission rates for the purposes of determining what requirements are applicable to a source.

With respect to **40 CFR Part 70.5(c)(3)(iv) regarding materials and production rates** I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph (g)(1)(E) to the extent necessary to clarify operating schedules, Exhibit A, subparagraph (g)(2)(A) in order to address throughput, hours of operation and capacity of each unit involved, and Exhibit A, subdivision (a)(13) which provides a definition of throughput specifically addressing materials used, which includes fuels and the production rates utilizing such materials.

With respect to **40 CFR Part 70.5(c)(3)(v) regarding identifying control equipment and monitoring devices** I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph (g)(2)(E) to allow for a description of such equipment or monitoring for the purposes of determining what requirements are applicable to a source.

With respect to **40 CFR Part 70.5(c)(3)(vi) regarding limitations on operations and work practice standards** I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph (g)(2)(F) to allow for a description of such limitations and practices for the purposes of determining what requirements are applicable to a source.

With respect to **40 CFR Part 70.5(c)(3)(vii) regarding other information required including information related to stack height limitations developed,** I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph (g)(2)(I) to allow for a description of such other information for the purposes of determining what requirements are applicable to a source.

With respect to **40 CFR Part 70.5(c)(3)(viii) regarding calculations upon which the above listed information is based,** I recommend the Department include in the regulation the language provided in Exhibit A, subparagraphs (g)(2)(C) and (g)(2)(D) to allow for a description of such calculations for the purposes of determining what requirements are applicable to a source.

With respect to **40 CFR Part 70.5(c)(4)(i) regarding citation and description of applicable requirements** I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (g)(2)(G) to allow for a description of any relevant citation and description for the purposes of determining what requirements are applicable to a source.

With respect to **40 CFR Part 70.5(c)(4)(ii) regarding any applicable test method** I recommend the Department include in

the regulation the language provided in Exhibit A, subparagraph (g)(2)(H) to allow for a description of any applicable test method for the purposes of determining what requirements are applicable to a source.

With respect to **40 CFR Part 70.5(c)(5) regarding any information necessary** I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (g)(2)(I) and subdivision (h)(1) to allow for any information necessary for the purposes of determining what requirements are applicable to a source.

With respect to **40 CFR Part 70.5(c)(6) regarding explanation of any proposed exemption from otherwise applicable requirements**, I do not recommend the Department include in the regulation any language which would provide a perceived loophole to avoid an applicable requirement. The applicant shall have the burden of making the initial determination regarding what requirements are applicable and the Department will ultimately make such determination as a part of a final action on the application. The only area where I recommend a similar concept is with respect to Exhibit A subparagraph (g)(1)(F) to allow sources to explain an alternative means of compliance pursuant to Section 22a-174-22 or 22a-174-32 of the RCSA.

With respect to **40 CFR Part 70.5 (c)(7) regarding alternative operating scenarios**, I recommend the Department include in the regulation the language provided in Exhibit A subdivision (a)(4) and subparagraph (g)(1)(E) to allow for a description of alternative operating scenarios for the purposes of determining what requirements are applicable to a source depending on the scenario and to allow for flexibility.

With respect to **40 CFR Part 70.5(c)(8) regarding a compliance plan for all part 70 sources**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (g)(1)(D) and subsection (i) to allow the Department to understand the source's compliance plans are for the facility for the purposes of determining the future plans for the facility.

With respect to **40 CFR Part 70.5(c)(8)(i) regarding compliance status** I recommend the Department include in the regulation the language provided in Exhibit A subdivisions (i)(2) and (i)(4) to allow for a description of the compliance status of the facility to enable the Department to determine whether the source is currently complying with applicable requirements.

With respect to **40 CFR Part 70.5(c)(8)(ii) and (iii) regarding a description of applicable requirements presently applicable and future applicable requirements**, I recommend the Department include in the regulation the language provided in Exhibit A subdivisions (i)(2) through (i)(4) to allow for a

description of such requirements for the purposes of determining what requirements are applicable to a source at various points in time.

With respect to **40 CFR Part 70.5(c)(8)(iv) regarding a schedule for submission of certified progress reports,** I recommend the Department include in the regulation the language provided in Exhibit A subdivision (i)(6) to allow for a submission of such reports every 6 months for the purposes of determining status with respect to milestones and activities planned for the facility.

With respect to **40 CFR Part 70.5(c)(8)(v) regarding acid rain requirements,** I recommend the Department include in the regulation the language provided in Exhibit A subdivision (i)(5) to allow for a description of acid rain compliance plan requirements for the purposes of determining what requirements are specifically applicable to an acid rain source with respect to compliance plans.

With respect to **40 CFR Part 70.5(c)(9)(i) regarding a certification of compliance,** I recommend the Department include in the regulation the language provided in Exhibit A subdivision (i)(1) to allow for certification of compliance that the statement and information in the document are true, accurate and complete.

With respect to **40 CFR Part 70.5(c)(9)(ii) regarding a statement of methods used,** I recommend the Department include in the regulation the language provided in Exhibit A subdivision (i)(1) which refers to subparagraph (q)(2)(A) to illustrate to the Department how compliance is being determined by the source.

With respect to **40 CFR Part 70.5(c)(9)(iii) regarding a schedule for submission of certifications of compliance,** I recommend the Department include in the regulation the language provided in Exhibit A subdivision (i)(7) to allow for a submission of such certification every 6 months for the for the purposes of determining compliance status.

With respect to **40 CFR Part 70.5(c)(9)(iv) regarding a compliance status with any applicable enhanced monitoring and other requirements of the Act,** I recommend the Department include in the regulation the language provided in Exhibit A subdivision (i)(1) which refers to subparagraph (q)(2)(C) to allow for certification of compliance with respect to the requirements of the Title V permit to ensure compliance.

With respect to **40 CFR Part 70.5(c)10 regarding a nationally-standardized forms for acid rain,** I do not recommend the Department include in the regulation any language regarding these forms as the Department's proposed regulation does include that all substantive requirements be on the application. (<u>see</u> generally, Exhibit A, subsection (g)) 40 CFR Part 70.5 allows the permitting authority discretion in developing application forms which best meet program needs and

administrative efficiency. I recommend the Department provide its own cover sheet to the prospective applicant, along with the federal application. The availability of federal forms does not negate the need to transmit state information as well to the applicants. However, I do recommend the Department include in the program description a description of how the Department plans to utilize the nationally-standardized forms for acid rain applications.

With respect to **40 CFR Part 70.5(d) regarding a certification for documents submitted**, I recommend the Department include in the regulation the language provided in Exhibit A subsection (b), subparagraph (g)(1)(G), and subdivisions (h)(2), (i)(1), (o)(4), (p)(5), (q)(1) and (q)(2) in order to ensure that the person responsible for the information in the documentation being submitted is true accurate and complete.

With respect to **40 CFR Part 70.6(a) standard permit requirements**, I recommend the Department issue permits which comply substantively as provided in Exhibit A subsection (j).

With respect to **40 CFR Part 70.6(a)(1) regarding emission limitations and standards**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraphs (j)(1)(F) and (j)(1)(H)(i) in order to provide such limitations and standards when necessary in the subject permit.

With respect to **40 CFR Part 70.6(a)(1)(i) regarding authority for each term or condition and differences**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (j)(1)(D) in order to provide guidance with respect to the source and or authority for such terms or conditions.

With respect to **40 CFR Part 70.6(a)(1)(iii) regarding the determination of an alternative emission limit**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraphs (j)(1)(D) and (j)(1)(I) in order to provide such alternative emission limit when necessary in the subject permit.

With respect to **40 CFR Part 70.6(a)(2) regarding permit duration**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (j)(1)(A) in order to provide that the subject permits will expire no later than 5 years after issuance.

With respect to **40 CFR Part 70.6(a)(3) regarding monitoring and related record keeping and reporting requirements**, I recommend the Department include in the regulation the language provided in Exhibit A, subparagraphs (j)(1)(K) and (j)(1)(Q) in order to provide that the subject permits will contain monitoring, record keeping and reporting requirements.

With respect to **40 CFR Part 70.6(a)(3)(i)(A) regarding monitoring and analysis procedures**, I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph (j)(1)(K)(i) in order to provide that the subject permits will describe the monitoring and analysis procedures necessary for determining compliance with applicable requirements.

With respect to **40 CFR Part 70.6(a)(3)(i)(B) regarding periodic monitoring or record keeping**, I recommend the Department include in the regulation the language provided in Exhibit A, subparagraphs (j)(1)(K)(ii) and (j)(1)(L) in order to provide that such monitoring, which may include record keeping, need only be sufficient to yield reliable data from the relevant time period.

With respect to **40 CFR Part 70.6(a)(3)(i)(C) regarding the use, maintenance and installation of monitoring equipment**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (j)(1)(L) in order to provide that such monitoring which may include record keeping need only be sufficient to yield reliable data from the relevant time period.

With respect to **40 CFR Part 70.6(a)(3)(ii) regarding record keeping**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (j)(1)(N) in order to provide that such record keeping requirements be incorporated into the permit.

With respect to **40 CFR Part 70.6(a)(3)(ii)(A) and (B) regarding records of monitoring information**, I recommend the Department include in the regulation the language provided in Exhibit A, subdivision (o)(2) in order to provide that such record keeping requirements will be incorporated into the subject permit and that such records will be maintained for a least 5 years from the date of the sample, measurement, report or application.

With respect to **40 CFR Part 70.6(a)(3)(iii) regarding reporting**, I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph (j)(1)(N) and (j)(1)(Q) in order to provide that such reporting requirements will be incorporated into the subject permit.

With respect to **40 CFR Part 70.6(a)(3)(iii)(A) and (B) regarding reporting**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (j)(1)(O), subdivision (o)(1) and subparagraph (o)(1)(A) in order to provide that such reporting will be required by the permit every 6 months and that prompt reporting of deviations will occur.

With respect to **40 CFR Part 70.6(a)(4) regarding allowances under Title IV**, I recommend the Department include in the regulation the language provided in Exhibit A,

subparagraph (j)(1)(C) in order to provide that all emissions must meet applicable requirements and requirements under Title IV would be considered applicable requirements.

With respect to **40 CFR Part 70.6(a)(4)(i) regarding increases in emissions**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (j)(1)(G)(ii) in order to provide that the permit does not authorize emissions of an air pollutant so as to exceed levels that might otherwise be prohibited under 40 CFR Part 72. Although not explicit in allowing increases authorized by allowance under the acid rain program, such statement allows for these increases.

With respect to **40 CFR Part 70.6(a)(4)(ii) regarding allowances**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (j)(1)(G)(iii) in order to provide that allowances may not be used as a defense to noncompliance with any other applicable requirement.

With respect to **40 CFR Part 70.6(a)(4)(iii) regarding accounting of allowances**, I recommend the Department include in the regulation the language provided in Exhibit A, subparagraphs (j)(1)(C) and (j)(1)(H)(ii) in order to ensure compliance with applicable requirements.

With respect to **40 CFR Part 70.6(a)(5) regarding a severability clause**, I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph (j)(1)(R) in order to ensure the continued validity of permits requirements in the event of a challenge to any other portions of the permit.

With respect to **40 CFR Part 70.6(a)(6)(i) regarding provisions in the permit stating the permittee must comply**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (j)(1)(C) in order to require such a provision.

With respect to **40 CFR Part 70.6(a)(6)(ii) regarding provisions in the permit stating that need to halt or reduce activity is not a defense**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (j)(1)(T) in order to prevent circumvention of the permit requirements.

With respect to **40 CFR Part 70.6(a)(6)(iii) regarding the fact that the permit may be modified, or revoked**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraphs (j)(1)(U) and (j)(1)(V) in order to allow for flexibility in the event of change.

With respect to **40 CFR Part 70.6(a)(6)(iv) regarding provisions in the permit stating the permit does not convey any property rights**, I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph (j)(1)(W) in order to convey that a permit is merely a

license.

With respect to **40 CFR Part 70.6(a)(6)(v) regarding provisions in the permit stating the permittee shall furnish information**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (j)(1)(X) in order to ensure the exchange of information.

With respect to **40 CFR Part 70.6(a)(7) regarding provisions in the permit stating the permittee must pay fees**, I recommend the Department include in the regulation the language provided in Exhibit A subdivision (j)(2) in order to ensure funding of the program.

With respect to **40 CFR Part 70.6(a)(8) regarding provisions in the permit regarding emissions trading**, I recommend the Department include in the regulation the language provided in Exhibit A, subparagraphs (j)(1)(G), (j)(1)(I) and (j)(1)(P) in order to provide flexibility.

With respect to **40 CFR Part 70.6(a)(9) regarding provisions in the permit regarding reasonably anticipated operating scenarios**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (j)(1)(J) in order to accommodate such scenarios where allowed by applicable requirements.

With respect to **40 CFR Part 70.6(a)(9)(i) regarding change from one scenario to another**, I recommend the Department include in the regulation the language provided in Exhibit A subparagraph (j)(1)(N) and subdivision (o)(3) in order to require recording of such change at the facility.

With respect to **40 CFR Part 70.6(a)(9)(ii) regarding extending the shield to cover each scenario**, I recommend the Department include in the regulation the language provided in Exhibit A subdivision (k)(1) in order to allow the Department to do so if the Commissioner so chooses.

With respect to **40 CFR Part 70.6(a)(9)(iii) regarding ensuring the scenarios meet applicable requirements**, I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph (j)(1)(J) in order to ensure compliance and at the same time allow flexibility.

With respect to **40 CFR Part 70.6(a)(10) regarding provisions in the permit regarding trading of emissions**, I recommend the Department include in the regulation the language provided in Exhibit A, subparagraphs (j)(1)(G), (j)(1)(I) and (j)(1)(P) in order to require such provisions in the event the applicant requests them.

With respect to **40 CFR Part 70.6(a)(10)(ii) regarding extending the shield to cover each emissions trading or use of credits**, I recommend the Department include in the regulation the language provided in Exhibit A, subdivision (k)(1) in order to allow the Department to do so if the Commissioner so chooses.

With respect to **40 CFR Part 70.6(a)(10)(iii) regarding emissions trading**, I recommend the Department include in the regulation the language provided in Exhibit A, subparagraph (j)(1)(C) in order to require that emissions trading and use of credits meets all applicable requirements.

With respect to **40 CFR Part 70.6(b) federally-enforceable requirements**, I recommend the Department include the language, provided in Exhibit A, subparagraph (j)(1)(E), in the regulation. This is important in that one of the fundamental requirements of the Title V permit is that it be federally enforceable.

With respect to **40 CFR Part 70.6(c)(1) compliance requirements**, I recommend the Department require certification, testing, monitoring, reporting and record keeping sufficient to ensure compliance with the permit terms and conditions. The Department should include the language provided in Exhibit A, subparagraphs (j)(1)(K),(L),(N),(O), and (Q), and Exhibit A, subsections (o),(p) and (q), to respond to the requirements of 40 CFR Part 70.6(1) in order to ensure compliance with the permits being issued.

With respect to **40 CFR Part 70.6(c)(2) inspection, entry, and sampling requirements, as well as access to documents**, I recommend the Department to issue a permit so as to require each source to allow such activities as described in Exhibit A, subparagraph (j)(1)(M). This will allow the Department to verify compliance with permit requirements.

With respect to **40 CFR Part 70.6(c)(3)**, I do not recommend the Department require the compliance schedule to be consistent with the compliance plan because the compliance plan submitted may not adequately provide for compliance with all applicable requirements. However, I do recommend that the Department make reference to the compliance plan in the section on granting a permit where the Department should describe the compliance schedule, as provided in Exhibit A, subparagraph (j)(1)(Q). This will make it clear that the schedule may be based upon the plan suggested by the applicant.

With respect to **40 CFR Part 70.6(c)(4) regarding progress reports**, I recommend the Department include in the regulation the language provided for in Exhibit A, subdivision (i)(6), subparagraph (j)(1)(N), and subdivision (q)(2). Such progress reports, every six months, shall give the Department an idea of the compliance steps achieved, or not achieved.

With respect to **40 CFR Part 70.6(c)(5) regarding compliance certifications**, I recommend the Department include in the regulation the language provided for in Exhibit A, subdivision (i)(7), subparagraph (j)(1)(N), and subdivision (q)(1). Such annual compliance certification shall give the Department a means of monitoring compliance with permit terms

and conditions and whether such status was continuous or intermittent.

With respect to **40 CFR Part 70.6(d) regarding general permits**, the Department should provide for the issuance of general permits both Title V and non-Title V permits. The Department has authority and procedures to issue general permits as provided in Title 22a-174(l) of the General Statutes. I recommend additional language be provided in the regulations to ensure compliance with federal procedural requirements. By including the language provided in Exhibit A, subparagraph (d)(3)(B), and subdivisions (d)(8), (l)(1), and (l)(6) specifically addressing general permit procedural limitations and requirements the Department will have the ability to issue permits more efficiently and as a result provide better service to the public. In addition, procedural requirement language provided in Exhibit A, subsections (d), (l) and (m) must be complied with in the event a general permit is to be issued in order to have such general permit be federally enforceable. I do not recommend that the Department have a separate regulation for general permits as the substantive requirements will have to be in accordance with Title V as provided in Exhibit A subsection (j), or federally enforceable limitations on emissions as provided in Exhibit A, subsection (d).

With respect to **40 CFR Part 70.6(e) temporary sources**, I do not recommend the Department allow for the language provided in that section. Rather I recommend the Department allow sources to relocate a unit as provided in Exhibit A subparagraph (r)(3)(A)(iii). The temporary source language provided by 40 CFR Part 70 was too broad and would not take into account the variation in types emissions as does the provision in Exhibit A, subparagraph (r)(3)(A)(iii).

With respect to **40 CFR Part 70.6(f) regarding permit shield**, I recommend the Department adopt a shield as described in Exhibit A, subsection (k). The shield provided explicitly spells out which kinds of modifications may be shielded and which may not be shielded by the language provided in Exhibit A, subsection (k). The shield gives the regulated community assurance that they will not be punished for the mistakes of the Department as long as the provision of the permit, containing the mistake, is in effect.

With respect to **40 CFR Part 70.6(g) regarding emergency provisions**, I do not recommend the Department provide a definition of emergency. Rather I recommend within the context of notifications to the Department, as provided in Exhibit A, subparagraph (p)(1)(b), I recommend the Department provide for a description of events beyond the reasonable control of the permittee and provide for a defense of a violation, in the event of such event, as provided in Exhibit A, subdivisions (p)(2) and (3). Such affirmative defense

shall have limitations as provided in Exhibit A, subdivisions (p)(2) and (3).

With respect **40 CFR Part 70.7 (a) (1) regarding action on application,** I recommend that the language provided in Exhibit A, subdivision (j)(1), subparagraph (j)(1)(B), subdivision (j)(3), and subsection (l), including (l)(5), (j)(1)(C), (l)(3), and (n) . Such language will satisfy EPA requirements and will, therefore, allow the Department to issue federally enforceable permits.

With respect to **40 CFR Part 70.7(a)(2),** I recommend the Department take final action on a permit action within 18 months of receiving a sufficient application as provided in Exhibit A, subdivisions (j)(1) and (n)(4). This will give the regulated community certainty with respect to processing and will require the Department to notify the sources if an application is insufficient or the Department will risk going beyond the 18 month time frame allotted for final action.

With respect to **40 CFR Part 70.7(a)(3),** I do not recommend the Department include language in the regulation which prioritizes review of applications rather I recommend the Department handle this issue in the program description to be provided to EPA as part of the program package. The Department cannot commit to a particular order of prioritization with respect to taking action on applications within the regulations because resources and needs change with specific circumstances. However, I recommend the Department comply with the intent of this provision in the program description.

With respect to **40 CFR Part 70.7(a)(4),** I do recommend the Department provide notice to a source if such sources' application is insufficient as provided in Exhibit A, subdivisions (h)(1) and (h)(2). The language in Exhibit A will provide certainty with respect to the status of an application. This is important since final action on such application may not be taken for up to 18 months after such application was submitted to the Department.

With respect to **40 CFR Part 70.7(a)(5),** I do not recommend the Department include language in the regulation requiring the Department to provide a document, beyond the permit, which sets forth the legal and factual basis for the tentative determination (draft permit). Conditions should be clear in the tentative determination and the extra document may be misconstrued and cause confusion. It is imperative that enforcement actions which must be taken to ensure compliance with Title V permits not be compromised by potentially conflicting documents. The ability of the Department to take enforcement actions unimpeded is necessary for proper implementation of the Title V program as intended by 40 CFR Part 70. Furthermore, requiring in the regulation, the preparation of such an essentially redundant document

would double the workload and impede the Department's ability to take final action within the time frames required. However, I do recommend the Department commit in the program description to endeavor to create such a document only in the event the Commissioner deems it absolutely necessary.

With respect to **40 CFR Part 70.7(a)(6) regarding noninterference with a preconstruction permit**, I recommend the Department not include any language in this regulation which would interfere with the requirement to have a preconstruction permit. It is imperative to maintain the integrity of other federal program while implementing the Title V program to ensure continued compliance with existing requirements.

With respect to **40 CFR Part 70.7(b) the renewal shield language**, I recommend the Department clarify the renewal procedures to the extent not covered otherwise by statute or by application processing requirements. I recommend the Department include the language provided in Exhibit A, subdivisions (f)(5), (h)(3) and (h)(4). In addition, the renewal applicant shall comply with Title 4-182 of the General Statutes. This will give the applicant and the Department a clear of idea of when exactly the old permit expires and the new permit or final action takes effect.

With respect to **40 CFR Part 70.7(c)(1)(i) regarding permit renewal and expiration**, I recommend the Department apply the same procedural requirements to renewal applications as apply to initial permit issuance. I do not recommend the Department craft specific language for renewal processing in that the work application covers both initial applications and reapplications. Both initial applicants and reapplicants must comply with language provided in Exhibit A, subsections (g), (h), and (i). In addition, public notice and opportunity for comment through informational or adjudicatory hearings must be provided as provided in Exhibit A, subsections (l) and (m).

With respect to **40 CFR Part 70.7(c)(1)(ii) regarding termination of the source's right to operate unless a timely and sufficient application has been submitted**, I recommend the Department include the language provided in Exhibit A subdivision (h)(4), in order to explicitly provide that the Department may take enforcement action against such source in the event such source fails to submit a timely and sufficient renewal application. I recommend the Department state in the regulation that the failure to make timely and sufficient application terminates the source's right to operate by providing language from Exhibit A, subparagraph (j)(1)(B) to clarify the Department's existing enforcement authority.

With respect to **40 CFR Part 70.7(c)(2)**, I recommend the Department include such a provision, as provided in Exhibit A subdivision (t)(2), in the regulation. This will make clear the Administrator's authority to terminate or revoke and reissue the permit. It must be noted that the Department

through the implementation of this regulation cannot regulate the Administrator and that this type of language is simply to clarify an existing federal provision.

With respect to **40 CFR Part 70.7(d)(1) Administrative permit amendments,** I recommend the Department provide language as is in Exhibit A subparagraph (r)(2)(A) to allow for the types of permit modifications which do not require public notice and opportunity for comment. Generally, these changes should not have a major impact on the public's concerns nor result in an increase in emissions and for those reasons the Department should not be required to spend an inordinate amount of resources processing such amendments.

With respect to 40 CFR Part 70.7(d)(2), I recommend the Department include the language provided in Exhibit A, subdivision (r)(6) in the regulation in order to ensure compliance with the acid rain program requirements as required by 40 CFR Part 70.

With respect to 40 CFR Part 70.7(d)(3), I recommend the Department include the language provided in Exhibit A, subdivision (r)(2) in order to ensure consistent and timely modification procedures are followed for these amendments.

With respect to 40 CFR Part 70.7(d)(4), I recommend the permit shield language provide the Commissioner with the option of providing the shield in the regulation, as described in Exhibit A, subdivision (k)(4), which will in turn provide the regulated community with some certainty.

With respect to **40 CFR Part 70.7(e) regarding permit modification provisions,** I recommend the Department include the language provided in Exhibit A subdivision (r)(6). Otherwise 40 CFR Part 70.7(e) regarding minor permit modification is explanatory in nature and may be used as an informational aid in drafting this regulation. I recommend the Department include language provided in Exhibit A, subdivision (r)(1) such that the language is turned around and is describes what requires a significant modification rather than saying whatever is not minor is a significant modification. The approach taken in 40 CFR Part 70 is troublesome in that the regulated community and the Department would be forever producing guidance interpreting what is not consider minor in nature. Rather, the onus shall be on the Department to determine what requires a significant modification prior to implementation of this regulation. In addition, 40 CFR Part 70.7(e)(2) was troublesome in that it conflicts with operational flexibility and off-permit provisions provided by 40 CFR Part 70. Flexibility is a fundamental part of the Title V program and without it the program may be unworkable.

With respect to 40 CFR Part 70.7(e)(3) I do not recommend the Department discuss group processing of applications other than to allow for a public informational hearing to be held

regarding more than one application as provided in Exhibit A, subdivision (m)(2). It is not necessary to discuss group processing in the regulation. Certainly there is nothing precluding the Department from processing applications together as long as all procedural requirements are met for each application and tentative determination.

With respect to **40 CFR Part 70.7(e)(4) regarding significant modification procedures** I recommend the Department provide a well developed significant modification section as provided in Exhibit A, subdivision (r)(1). Such significant modifications shall be only be undertaken in conjunction with procedural requirements as provided in Exhibit A, subdivision (r)(1) which refers to Exhibit A subsections (l) and (m) and 40 CFR Part 70.7(a)(1), (4), (5) and (6). The reason the modifications must be processed in such a manner is to ensure adequate public and Administrator review.

With respect to **40 CFR Part 70.7(f) regarding reopening for cause**, I do not recommend the Department include such a term because reopening for cause is a type of modification and modifications shall be provided for in the modification subsection as provided in Exhibit A subsection (r), or as revocation in accordance with the Department's Rules of Practice, Section 22a-3a-5(d) of the RCSA.

With respect to **40 CFR Part 70.7(f)(1)**, I recommend the permit state that such permit may be modified as provided in Exhibit A, subparagraph (j)(1)(U), and the permit may be modified as provided in Exhibit A, subsections (r)(8) through (r)(14). This allows the Department to provide reopening for cause concepts as required by Title V.

With respect to **40 CFR Part 70.7(f)(2)**, I recommend the Department include the language provided in Exhibit A, subdivision (r)(14), in order to limit the scope of the reopening to the issue at hand.

With respect to **40 CFR Part 70.7(f)(3)**, I recommend the Department include the language provided in Exhibit A, subdivision (r)(9) so as to allow sources adequate notice of pending modifications based on 40 CFR Part 70 reopening for cause provisions.

With respect to **40 CFR Part 70.7(g) regarding reopenings for cause by EPA**, I recommend the Department include language in the modifications section as provided in Exhibit A, subdivisions (r)(8) through (r)(14). Such language is substantially similar to the reopening for cause language in 40 CFR Part 70.7(g) but does not refer to the term reopening for cause. The Department does not currently use the term reopening for cause and therefore this would be adding and defining another term which can easily be handled in the modification subsection.

With respect to **40 CFR Part 70.7(h) public participation**, I recommend the Department provide public notice as described

in Exhibit A, subsection (l). Where statutory provisions Sections 22a-174(l)(2), 22a-6g, 22a-6h fail to comply with the intent of 40 CFR Part 70.7(h) I recommend additional language as provided in Exhibit A, subsection (l). Public notice shall be given for initial permit issuance, significant modifications, renewals and opportunity for public comment and hearing shall be provided as described in Exhibit A, subsections (l) and (m) and as referenced in subparagraph (g)(1)(d), subdivisions (h)(4), (j)(3), (n)(1), (n)(2), (r)(1), subparagraph (r)(13)(B), and subdivision (r)(14).

Specifically, with respect to **40 CFR Part 70.7(h)(4)**, the Department shall provide 30 days for comment and shall give notice of any public hearing at least 30 days in advance of the hearing as provided in Exhibit A, subsection (m).

With respect to **40 CFR Part 70.7(h)(5)**, the Department shall keep a record as provided for informational hearings in Exhibit A, subdivision (m)(2) and at adjudicatory hearings as provided in Exhibit A, subdivision (m)(3) which references the Department's Rules of Practice, Section 22a-3a-6. Such public notice and opportunity to comment or attend a public informational hearing or a public adjudicatory hearing is critical to federal enforceability of these permits and approval of the Title V program by the Administrator.

With respect to **40 CFR Part 70.8(a)(1) transmission of information to the Administrator**, I recommend the Department include the language, provided in Exhibit A, subdivision (d)(3), (d)(6), (h)(5), (l), (n)(3), (q)(3) and subsection (r), in the regulation. I recommend the Department, through the program description, commit to sharing information with EPA utilizing the latest computer technology accessible to both agencies on a regular and reliable basis.

With respect to **40 CFR Part 70.8(a)(2)**, I do not recommend such provisions be included in the regulations. Rather such provisions provide guidance and should be addressed in the program description.

With respect to **40 CFR Part 70.8(b) regarding review by affected states**, I recommend the Department include the language provided in Exhibit A, subparagraphs (d)(3)(D)(v), (l)(3)(E), subdivision (l)(5), and subparagraphs (n)(1)(C) and (n)(1)(D). Such affected state review is an important part of the public notice and opportunity comment provisions which enable this regulation to be made federally enforceable.

With respect to **40 CFR Part 70.8(c)(1) and (2) regarding EPA objection**, I recommend the Department adopt the language provided in Exhibit A, subdivision (n)(1) in order to allow the Administrator opportunity to prevent improper permits from being issued. Note that mention of the Administrator is only to clarify the procedural requirements for the regulated community. The Department cannot actually regulate the Administrator through the use of these regulations.

With respect to **40 CFR Part 70.8(c)(3)**, I recommend the Department include the language provided in Exhibit A, subparagraphs (n)(1)(C), (D), and (E) such that if the Department fails to follow administrative procedures this constitutes a substantive reason to object to issuance of a permit. This is necessary because public notice and opportunity to comment necessary to enable permits issued under such program to be deemed federally enforceable.

With respect to **40 CFR Part 70.8(c)(4)**, I recommend the Department allow the Administrator to take final action on the permit application in the event the Department fails to do so within 90 days of an objection as provided in Exhibit A, subdivision (n)(3). This will allow the regulated community to have certainty at least from the stand point of procedural events which will take place with replace to an application objected to for which the Department cannot or will not take any action.

With respect to **40 CFR Part 70.8(d)**, I recommend the Department accommodate the public's objections by way of language provided in Exhibit A, subparagraphs(n)(2)(A), (B) and (C). This is necessary because public opportunity to comment necessary to enable permits issued under such program to be deemed federally enforceable.

With respect to **40 CFR Part 70.8(e)**, I do not recommend that language be drafted to explicitly prohibit default issuance as it cannot be assumed to exist unless provided for in the regulation or authorizing statutes. There is no need for such prohibition and these regulations and the authorizing statutory provisions do not provide for default issuance.

With respect to **40 CFR Part 70.9 regarding fee determination and certification**, I recommend the Department make reference to fees to be paid as shown in Exhibit A subdivision (j)(2) in order to ensure that payment of fees is a condition prior to obtaining a permit. This is necessary because payment of annual fees will fund this program. However, the fee regulations, Section 22a-174-26 of the RCSA were not the subject of this hearing and such regulations are already in place. I do recommend the Department demonstrate the fee schedule's adequacy and that the presumption minimum is being collected as well as providing a detailed accounting if the Administrator after reviewing the complete package requires such accounting.

With respect to **40 CFR Part 70.10 regarding federal oversight and sanctions**, I recommend the Department submit a program which will receive full approval, or at the least, interim approval, in order to avoid the need for the Administrator to promulgate, administer, and enforce a whole or partial program for the State of Connecticut. This section provides the Department with guidance regarding what will be

forthcoming in the event the Department fails to: submit an approvable program; adequately administer and enforce an approved program; or have the legal authority necessary to meet the requirements of 40 CFR Part 70. This section, in and of itself, does not impose a requirement on the regulated public.

With respect to **40 CFR Part 70.11 regarding requirements for enforcement authority,** I recommend that the Department in the program description demonstrate where in the General Statutory authority exists to meet these enforcement requirements. I do not recommend a change to the regulation based upon this section. The provisions the General Statutes allowing for enforcement actions to be taken will ensure the integrity of this regulation is not diminished and that the program can be adequately administered and enforced as required by 40 CFR Part 70.

FINAL RECOMMENDATION

Based upon the considerations in this Hearing Report, I recommend that the proposed final regulations, as contained in Exhibit A, be adopted by the Commissioner of Environmental Protection and submitted for approval by the Attorney General and the Legislative Regulations Review Committee.

10/5/95
Date

Patrick Bowe
Hearing Officer

EXHIBIT A

I recommend the Department add a new section 22a-174-33 to the Regulations of Connecticut State Agencies as follows:

(NEW)

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) "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) "Applicable requirements" means:

(A) 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 term or condition of a permit to construct issued pursuant to section 22a-174-3 of the Regulations of Connecticut State Agencies;

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

(D) any standard or other requirement pursuant to 40 CFR Part 60, 61, 63, 68, or 70.

(6) "Code of Federal Regulations" or "CFR" means the Code of Federal Regulations revised as of September 16, 1994, unless otherwise specified.

(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.

(8) "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 hydrogen sulfide.

(9) "Implementation date of this section" means 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) "Regulated air pollutant" means any of the following:

(A) nitrogen oxides or any volatile organic compound;

(B) any pollutant which is a criteria air pollutant;

(C) any pollutant from a stationary source which is subject to any standard of performance for new stationary sources pursuant to 40 CFR Part 60;

(D) 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 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 Federal Register Vol. 58 No. 231, December 3, 1993;

(F) any pollutant from a stationary source which is subject to any standard or other requirement pursuant to 40 CFR 61; or

(G) any pollutant listed in 40 CFR Part 68.

(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) "Title V permit" means any permit issued, renewed, or modified by the Commissioner pursuant to this section.

(15) "Title V source" means any premise which includes any of the following:

(A) any stationary source subject to 40 CFR Part 60 or 61;

(B) any stationary source subject to 40 CFR Part 68;

(C) any stationary source subject to 40 CFR Parts 72 through 78, inclusive;

(D) any stationary source subject to Section 129(e) of the Act;

(E) any one or more stationary sources, which are located on one or more contiguous or adjacent properties under common control of the same person or persons and which 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 one or more stationary sources, which are located on one or more contiguous or adjacent properties under common 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 emit, or have the potential to emit, including fugitive emissions from those categories of sources listed in 40 CFR Part 70.2 (i) through (xxvii), inclusive:

(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 area; or

(iii) twenty-five (25) tons or more per year of volatile organic compounds or nitrogen oxides in a severe ozone nonattainment area.

(b) Signatory Responsibilities.

(1) An application for a Title V permit, any form, report, compliance certificate or other document required by a Title V permit, and any other information submitted by an applicant or a permittee pursuant to this section shall be signed by the following individual:

(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 and either;

(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) if 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 every Title V source.

(2) Notwithstanding subdivision (1) of this subsection, this section shall not apply to any premise which is defined as a Title V source solely because a stationary source on such premise is subject to one or more of the following:

(A) 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 release requirements pursuant to 40 CFR Part 68;

(D) 40 CFR Part 61 Subpart I; or

(E) 40 CFR Part 60, 61, 63, 68 or 72, if such source is exempt by the terms of such part or is exempted by the Administrator from the requirement of obtaining a Title

V permit.

(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) Notwithstanding the definition of a Title V source, for the purpose of determining whether this section applies to a premise at which research and development operations are located, the owner or operator of such premise may calculate the emissions from such premise by subtracting the emissions from such research and development operations from the total emissions from such premise. Such premise and research and development operations shall be separately evaluated for purposes of determining whether a Title V permit is required. 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.

(d) Limitations on Potential to Emit

(1) In lieu of requiring an owner or operator of a premise solely described in subparagraphs (E) and (F) of subdivision (a)(15) of this section to obtain a Title V permit, the Commissioner may, by permit or by order, limit potential emissions from such premise to less than the following amounts:

(A) one hundred (100) tons per year of any regulated air pollutant;

(B) fifty (50) tons per year of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area;

(C) 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 (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 permit or order shall require the owner or operator of a subject premise to:

(A) limit potential emissions at such premise to less than the amounts specified in the subparagraphs (A) through (D), inclusive, of subdivision (d)(1) of this subsection;

(B) conduct monitoring, recordkeeping, or a combination of monitoring and recordkeeping sufficient to ensure compliance with this subsection;

(C) for each emission unit at such premise, maintain records indicating, for every month, throughput, hours of operation, and capacity;

(D) maintain any record required by such permit or order at the premise for five (5) years after the creation of such record and make such record available, upon request, to the Commissioner;

(E) submit compliance certifications to the Commissioner pursuant to subdivision (q)(2) of this section;

(F) 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 emissions to be allowed are quantified;

(3) The Commissioner shall not issue a permit or order pursuant to this subsection, and any such permit or order shall not be federally enforceable, unless the Commissioner:

(A) requires the owner or operator of a subject premise to comply with each provision of subdivision (2) of this subsection;

(B) 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;

(C) 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 days before approving or denying a draft 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 draft order regarding the subject premise. Such notice shall contain the following:

(i) the name and mailing address of the owner or operator of the subject

premise 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 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 permit, sends a copy of the notice required by section 22a-6h of the General Statutes to:

(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) of this subsection, a notice of such public hearing shall be published in a newspaper of general circulation in the affected area at least thirty days prior to such hearing.

(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 subject to this section shall pay the 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, 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.

(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 MACT 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. The Commissioner shall determine such MACT standard in the same manner as 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 would exceed those allowed by an applicable standard under 40 CFR Part 63.

(2) Within three (3) years of the Commissioner's determination of such MACT standard or upon notice from the Commissioner, 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 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 such provision conflicts with or is not made a term or condition of an applicable permit issued pursuant to this section, such provisions shall nonetheless apply to such source.

(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) 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, 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.

(4) The owner or operator of a 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 shall apply for a Title V permit upon notice from the Commissioner that such Title V permit is required or within twelve (12) months of applying for such permit to construct, whichever is earlier.

(5) The owner or operator of a Title V source who wishes to apply for renewal of a Title V permit shall apply therefor no later than six (6) months prior to the date of expiration of such 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.

(g) Applications.

(1) (A) An application for a Title V permit shall be made on forms provided by the Department. The application shall comply with subparagraphs (B) through (G) of this subdivision and with subdivisions (2), (3) and (4) of this subsection.

(B) 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, and names and telephone numbers of plant site manager and other individuals designated by the applicant to answer questions pertaining to such application.

(C) The application shall contain 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) The application shall contain a compliance plan pursuant to subsection (i) of this section, and a statement certifying notification pursuant to subsection (l) of this section.

(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 information required by this subsection.

(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 each such alternative means of compliance. In addition, a copy of such order, permit or certification shall be submitted with the application.

(G) The application shall contain a certification pursuant to subdivision (b)(4) of this section.

(2) An application for a Title V permit, 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, shall provide the following information about the subject source:

(A) for each alternative operating scenario proposed, a description of the processes utilized, the standard industrial classification code. identify each emission unit involved, as well as its throughput, hours of operation and capacity of each such emission unit, for any calendar year prior to the application or such other time period

as the Commissioner deems appropriate;

(B) 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 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 methodology used by the applicant to quantify, 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 emitted or proposed to be emitted by the subject source;

(D) the calculations used by the applicant to determine whether such source is a Title V source to which this section applies;

(E) a description of all air pollution control equipment in use at the subject source and a description of all monitoring equipment in use at the subject source to quantify such emissions or to determine compliance;

(F) for each regulated air pollutant emitted or proposed to be emitted by the subject source, a description of any applicable operational limitations or work practice standards in effect at such source which affect emissions at the time the application is submitted or work practice standards to be implemented which will affect emissions proposed to be emitted at a specified later date;

(G) identification of all applicable requirements for each emission unit, including any applicable MACT source category as published in the Federal Register, Vol. 57, No. 137, July 16, 1992, and including those which are subject to compliance dates occurring after the effective date of this section;

(H) any applicable test method to be used by the applicant for determining compliance with each applicable requirement listed pursuant to subparagraph (G) of this subdivision; and

(I) any other information required by each applicable requirement listed 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 applicant need not provide the information 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.

(B) Any of the following items or activities which are not the principal function of such 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;

(vii) routine housekeeping activities such as painting buildings, roofing, and paving parking lots;

(viii) all clerical and janitorial activities;

(ix) maintenance activities such as vehicle repair, brazing, soldering and welding equipment, carpentry shops, electrical charging stations, grinding and polishing operations maintenance shop vents, 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 shall include the emissions from each activity or item, set forth in paragraph (B) of subdivision (3) of this subsection, if necessary to determine whether a source is a Title V source to which this section is applicable. 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.

(h) Application Processing

(1) Unless the Commissioner notifies the applicant that an application is not sufficient, in accordance with subsection (g) of this section and 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. If, subsequent to such 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 or upon becoming aware of any incorrect or insufficient submittal, with an explanation for such deficiency and a certification pursuant to subdivision (b)(4) of this section .

(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) The owner or operator of a Title V source shall submit a copy of his 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 to the Commissioner.

(i) Compliance Plans.

(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 environmental laws and regulations including, 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, and environmental laws and regulations. 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:

(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.

(2) 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 application a statement that the owner and operator of such source will continue to comply with such requirements.

(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) The Commissioner shall take final action with respect to a sufficient application within eighteen (18) months of receiving a such application, and shall submit a copy of such final action to the Administrator. Failure of the Commissioner to act within such period shall not entitle the applicant to issuance, modification or renewal of any Title V permit. The Commissioner shall not issue a Title V permit 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 with all relevant and applicable requirements and such permit provides as follows:

(A) The permit expires on a date no later than five (5) years after the date the Commissioner issues such permit.

(B) The permit contains 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.

(C) The permit contains 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 any noncompliance with such permit constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation, or modification; or for denial of a permit renewal application.

(D) The permit identifies the legal authority for each 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 which terms or conditions thereof are federally enforceable and which terms or conditions thereof are enforceable only by the Commissioner, and the permit states that the federally enforceable provisions 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) such limits shall be no less than 1,000 pounds per year or any quantity prescribed by 40 CFR Part 63, for each emission unit, for any hazardous air pollutant.

(G) The permit states that it shall not be deemed to:

(i) preclude the creation or use of emission reduction credits or the trading of such credits 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 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 limitations, requirements, and standards that apply to the subject source, including without limitation:

(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 all allowable alternative emission limits or means of compliance. Such alternative emission limits shall be quantified, legally enforceable and the method for achieving such limits shall based upon replicable procedures. The permit may contain an emissions limitation facilitating intra-premise trades allowed by subparagraph (A) of subdivision (r)(3) of this section and any other applicable requirements.

(J) The permit contains all terms and conditions applicable to any legally permissible alternative operating scenario. The permit must provide each such alternative operating scenario shall meet all applicable requirements.

(K) The permit requires the permittee to monitor regulated air pollutants emitted by the subject source to determine compliance with applicable emission limitations and standard. 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 (F) of subdivision (1) of this subsection. Such monitoring shall consist of one or more of the following:

(i) all emissions monitoring and analysis procedures or test methods required under the 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 the relevant time period that is representative of the emissions or parameters required by the permit to be monitored. Recordkeeping may be sufficient to meet the requirements of this subsection.

(L) The permit contains all permit requirements for emissions monitoring analysis

procedures and test methods 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 that the Commissioner may, for the purpose of determining compliance with the permit and other applicable requirements, enter the subject source at reasonable times to inspect any facilities, equipment, practices, or operations regulated or required under the permit; to sample or 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 in accordance with the permit.

(N) The permit contains all applicable recordkeeping requirements and all reporting requirements pursuant to subsections (o), (p) and (q) of this section.

(O) The permit contains a requirement that the permittee shall report in writing to the Commissioner any 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.

(P) The permit contains any terms and conditions necessary to enable the permittee to create, use, and trade emissions reduction credits in accordance with Sections 22a-174f and 22a-174i of the General Statutes and with the provisions of the EPA's "Economic Incentive Program Rules", published April 7, 1994 (Federal Register, Volume 59, Number 67). 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 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 severability clause to ensure the continued validity of provisions remaining in such permit after other provisions have been legally invalidated.

(S) The permit may contain any term or condition of any other permit to construct or operate issued to the permittee pursuant to Section 22a-174 of the General Statutes.

(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.

(U) The permit states that it may be modified, revoked, reopened, reissued, or suspended by the Commissioner, or the Administrator in accordance with this section, Section 22a-174c of the General Statutes, or Section 22a-3a-5(d) of the Regulations of Connecticut State Agencies.

(V) The permit states 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.

(W) The permit states that the permit does not convey any property rights or any exclusive privileges.

(X) The permit requires the permittee to submit additional information, at the Commissioner's request, within a reasonable time, including any information that the Commissioner may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit.

(Y) The permit specifies the conditions under which the permit will be modified prior to the expiration of the 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 required by Section 22a-174-26 of the Regulations of Connecticut State Agencies.

(3) 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.

(k) Permit Shield

(1) The Commissioner may include a condition in a new or modified Title V permit stating that compliance with the conditions of such permit shall be deemed compliance with any applicable requirement, provided that:

(A) such applicable requirement is stated in such permit and the legal authority for such requirement is specifically identified in the permit; or

(B) 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 applicable requirement shall be presumed not to provide such a condition as provided for by subdivision (1) of this subsection.

(3) Notwithstanding subdivision (1) of this subsection, no such provision of a Title V permit shall alter or affect the following:

(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) The permit shield in subdivision (1) of this subsection shall not apply to modification of the Title V permit pursuant to subdivision (3) or (4) of subsection (r) of this section.

(l) Public Notice.

(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 will 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.

(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.

(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 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.

(2) Pursuant to the Act, if the Administrator does not object in writing under subdivision (1) of this subsection, any person may petition the Administrator within sixty (60) days after the expiration of the Administrator's time for making 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:

(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.

(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) Monitoring Reports

(1) A permittee required to perform monitoring pursuant to the subject permit shall submit to the Commissioner written monitoring reports on the schedule specified in such permit but in no event less frequently than once each six months. Such a monitoring report shall provide the following:

(A) the date and description of each deviation caused by upset or control equipment deficiencies, each deviation from a permit requirement, and each violation 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 last monitoring report; and

(B) the date and description of each occurrence of a failure of the monitoring system to provide reliable data.

(2) Unless otherwise required by the subject permit, the permittee shall maintain records of all required monitoring data and supporting information, and 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 submit such records to the Commissioner upon request. Supporting information shall include:

(A) the type of monitoring, which may include recordkeeping, by which such data was obtained;

(B) the date, place, and time of sampling or measurements;

(C) the date(s) analyses of such samples or measurements were performed;

(D) the entity that performed the analyses;

(E) the analytical techniques or methods used for such analyses;

(F) the results of such analyses;

(G) the operating conditions at the subject source at the time of such sampling or measurement; and

(H) 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 with making a change from one alternative operating scenario to another pursuant to a Title V permit, maintain a record at the site of subject source of the current alternative operating scenario.

(4) Any monitoring report submitted to the Commissioner pursuant to this subsection shall be certified in accordance with subdivision (b)(4) of this section.

(p) Notifications

(1) A permittee shall notify the Commissioner in writing of any violation at the subject source of an applicable requirement, including any term or condition of the subject permit, and shall identify the cause or likely cause of such 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;

(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

(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) As an affirmative defense to an administrative or civil action by the state with respect to a violation. 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 have 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

(iii) 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) Any written notification submitted pursuant to subdivision (1) of this subsection shall be certified in accordance with subdivision (b)(4) of this section.

(q) Progress Reports and Compliance Certifications

(1) A permittee shall, on the schedule specified in the subject permit or every six months. whichever is more frequent, submit to the Commissioner progress reports which are certified in accordance with subdivision (b)(4) of this section and which report the permittee's progress in achieving compliance under the compliance schedule in such permit. Such progress report shall:

(A) identify those obligations under the compliance schedule which the permittee has met, and the dates by which they were met; and

(B) identify those obligations under the compliance schedule 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 and identify the date by which the permittee expects to meet such obligations.

(2) A permittee shall, on the schedule specified in the subject permit or every twelve months, whichever is more frequent, submit to the Commissioner, written compliance certifications which are certified in accordance with subdivision (b)(4) of this section 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:

(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 recordkeeping, was functioning in accordance with the subject permit and this section.

(3) Any progress report pursuant to subdivision (1) of this subsection, or certification submitted pursuant to subdivision (2) of this subsection to the Commissioner shall be simultaneously submitted to the Administrator.

(r) Permit Modifications

(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 Section 22a-3a-5(d) 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) to correct a clerical error;

(ii) to 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) to require more frequent monitoring or reporting;

(iv) to 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) to 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.

(3) (A) A permittee may engage in any of the following actions, without a permit modification and without requesting a permit modification;

(i) change his practices concerning monitoring, testing, recordkeeping, 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) to 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) to 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 action provided in subparagraphs (A)(i) through (v), of this subdivision, provided such action does not:

(i) constitute a modification under 40 CFR Part 60 or 61; and

(ii) exceed emissions allowable under the subject permit.

(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 section 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 section, 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 become 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.

(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, 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. 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: To adopt regulations implementing the provisions of Title V of the Clean Air Act Amendments of 1990 concerning operating permits including provisions to enforce necessary requirements of the Clean Air Act Amendments of 1990.

ATTACHMENT 1

LIST OF COMMENTORS

TITLE V PERMIT REGULATIONS: R.C.S.A. Sec. 22A-174-33
(Public Hearing - Hartford - Friday, October 28, 1994)

Commentors:

1. William Huhn
Pfizer Corp
East Point Road
Groton CT 06437

2. Carl Pavetto (for Tilcon CT, Inc)
Devorsetz Stinziano Gilbert Heintz & Smith, PC
Bridgewater Place
500 Plum Street Suite 600
Syracuse NY 13203

3. * Mark Sullivan
BIC Corp
500 BIC Drive
Milford CT 06460

4. Sarah Wade
Clean Air Action Corp
36 South Charles #1910
Baltimore MD 21201

5. * Donald Dahl
US EPA Region I
JFK Federal Building
Boston MA 02203-2211

6. Lon Solomita
CYTEC South Cherry St
PO Box 425
Wallingford CT 06492

7. * Jan Spegelle
CBIA
370 Asylum Street
Hartford CT 06103

8. * Paul Ford
United Technologies Corp
(no address listed)

9. Chuck Carlin
Northeast Utilities
(no address listed)

10. Mark Bohman
Bristol Resource Recovery Facility Operating Committee
75 Twining Street
Bristol CT 06010

11. Steven H White
Divisional VP, North Region
Regional Government Affairs
Browning-Ferris Industries
250 E. Broad St Suite 1101
Columbus Ohio 43215

12. Redding Thompson
Olin
120 Long Ridge Road
PO Box 1355
Stamford CT 06904-1355

* Written Comments and Testimony

13. William H Lewis
Counsel to the Clean Air
Implementation Project
Morgan, Lewis & Bockius
1800 M Street NW
Washington DC 20036

14. Cynthia A Cyr
Environmental Engineer
Colt's Mfg. Company, Inc
PO Box 1868
Hartford CT 06144-1868

15. * Barbara H McWhirter
Environmental Counsel
Handy & Harman
PO Box 120
Waterbury CT 06720

16. David R. Pattee
Corporate Environmental Manager
R.T. Vanderbilt Company, Inc
30 Winfield Street
PO Box 5150
Norwalk CT 06856-5150

17. Jack Sanga
Frito-Lay, Inc
1886 Upper Maple Street
Dayville CT 06241

18. J. Michael Joyce
Director Regulatory Affairs
The Dexter Corporation
1 Elm Street
Windsor Locks CT 06096

19. Matthew E Hackman, P.E., CHMM
Sr. Project Manager
GZA GeoEnvironmental, Inc
27 Naek Road
Vernon CT 06066

20. Lyle Scharenberg
Director of Mfg Engineering
Voltarc Technologies, Inc
186 Linwood Avenue
Fairfield CT 06430

21. William C Kirby, P.E.
Resident Manager
Federal Paper Board Company, Inc
Inland Road
PO Box 238
Versailles CT 06383

22. Richard Huck
VP Finance and Chief Financial Officer
The Stanley Works
1000 Stanley Drive
New Britain CT 06053

23. William A Minter
VP Environmental Health and Safety
UTC Sikorsky Aircraft Division
6900 Main Street
Stratford CT 06601-1381

24. Maureen A Healey
Director Federal Environmental and
Transportation Issues
The Society of the Plastics Industry, Inc
1275 K Street, NW, Suite 4000
Washington DC 20005-4006

* Written Comments and Testimony

25. Ben Henncke
President
Clean Air Action Corporation
36 Charles Street Suite 1910
Baltimore MD 21201

26. Anonymous
(Dated October 28, 1994)

27. Barry Ilberman
Vice President
Northeast Utilities
PO Box 270
Hartford CT 06141

28. Arline M Seager
Morgan Lewis & Bockius
1800 M Street NW
Washington DC 20036
(Nov 9, 1994)
(See William Lewis #13.)

29. Mark Sussman
Murtha Cullina Richter & Pinney
Cityplace I
185 Asylum Street
Hartford CT 06103-3469

30. Mark Citroni
United Technologies
(See William Lewis #13.)

31. William Huhn
Pfizer, Inc
Eastern Point Road
Groton CT 06340
(See William Lewis #13.)

32. Terrance Doyle, REM
Principal Environmental Specialist
Algonquin Las Transmission Company
1284 Soldiers Field Road
Boston MA 02135

33. Jim Hart
Environmental Manager
SNET
227 Church Street 3rd Floor
New Haven CT 06510

34. Russell P Sattler
President
United Retek
100 Medway Road
Milford MA 01757

35. Steven Murphy and
John Schaefer
OPM
(November 14, 1994)

36. Derek Grasso
Environmental Engineer
American Ref-fuel
132 Military Highway
Preston CT 06365

37. David Salce and
David Senft
Environmental Health and Safety
United States Surgical Corp
150 Glover Avenue
Norwalk CT 06856

38. Art Slesinger
Boehringer Ingelheim
900 Ridgebury Road
PO Box 368
Ridgefield CT 06877

39. Carl S. Pavetto, Esq
Devorsetz Stinzianzo Gilbert
Heintz & Smith, PC
Bridgewater Place
500 Plum Street Suite 600
Syracuse NY 13204-1428

40. Wayne W Cobleigh, CHMM; and
D. Kent Berry
Groundwater Technology Inc
Kennedy Business Park, II 431 (F)
Hayden Station Road
Windsor CT 06095

41. EPA
Lynne Hamjian; and
Donald Dahl
Region I
Air Pesticides & Toxics Mgmt Division
JFK Federal Building, APA
Boston MA 02203-0001

42. Albert N Henricksen
VP Administration
United Illuminating
PO Box 1564
New Haven CT 06506-0901

43. Earl W Phillips Jr.; and
Brian C.S. Freeman
Robinson & Cole
One Commercial Plaza
280 Trumbull Street
Hartford CT 06103-3597

44. Mark H Bobman
Assitant Director
Bristol Resource Recovery Facility
Operating Committee
75 Twining Street
Bristol CT 06010

45. Bruce R. Thompson, P.E. DEE
Principal Engineer
Thompson Engineering Consultants
1 Orchard Brook Drive
Wethersfield CT 06109

ATTACHMENT 2

The Regulations of Connecticut State Agencies are amended by adding a new section 22a-174-33 as follows:

(NEW)

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

(a) Definitions. For the purposes of this section, the following definitions shall be used:

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

(2) "Applicable requirements" means:

(A) Chapter 446c of the Connecticut General Statutes or any regulation adopted thereunder;

(B) any standard or other requirement adopted in the state implementation plan;

(C) any term or condition of any permits issued pursuant to section 22a-174-3 or section 22a-174-33 of the Regulations of Connecticut State Agencies;

(D) any standard or other requirement of the acid rain program under 40 CFR Parts 72 through 78, inclusive;

(E) any hazardous air pollutant standard or other requirement under 40 CFR Parts 60, 61, 63 and 68; and

(F) any monitoring and analysis requirements pursuant to subparagraph (G) of subdivision (i)(2) of this section.

(3) "Emissions unit" means any stationary source or part thereof that emits or has the potential to emit any regulated air pollutant.

(4) "Hazardous air pollutant" means, notwithstanding the definition in Section 22a-174-1 of the Regulations of Connecticut State Agencies, any air pollutant listed in 40 CFR Part 63, subpart C or listed pursuant to 40 CFR Part 68.

(5) "Maximum achievable control technology" or "MACT" means an emission limitation or reduction in emissions of hazardous air pollutants, determined in accordance with subsection (e) of this section.

(6) "Regulated air pollutant" means the following:

(A) nitrogen oxides or any volatile organic compound;

(B) any pollutant which is a criteria air pollutant;

(C) any pollutant from a stationary source which is subject to any standards of performance for new stationary sources pursuant to 40 CFR Part 60;

(D) any substance subject to stratospheric ozone protection requirements pursuant to 40 CFR Part 82, Subpart A, Appendices A and B; or

(E) any pollutant subject to a national emission standards for hazardous air pollutants.

(7) "Title V operating permit" means any permit or group of permits issued, renewed, or modified pursuant to this section.

(8) "Title V source" means any premise and all emissions units contained therein subject to the requirements of this section.

(b) Signatory Responsibilities.

(b)(1) Any application for a Title V operating permit submitted to the Commissioner shall be signed by a responsible official as follows:

(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 manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(B) For the 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 (1) the chief executive officer, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(b)(2) Any report or other document required by a Title V operating permit and any other information submitted to the Commissioner shall be signed by a person described in subdivision

(b)(1) of this section or by a duly authorized representative of such person. A duly authorized representative may be either a named individual or any individual occupying a named position. Such named person or person occupying a named position is a duly authorized representative only if:

(A) the authorization is made in writing by a person described in subdivision (b)(1) of this section;

(B) the authorization specifies either an individual or a position having responsibility for the overall operation of the premise or activity, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and

(C) the written authorization is submitted to the Commissioner.

(b)(3) If an authorization under this section is no longer accurate because a different individual or position has assumed the applicable responsibility, a new authorization satisfying the requirements of this section shall be submitted to the Commissioner prior to or together with any reports or other information to be signed by an authorized representative.

(b)(4) Any person signing any application for a Title V operating permit or any other report or document required by a Title V operating permit shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

(c) Applicability.

(c)(1) The following are Title V sources. This section shall apply to the owner or operator of any premise which includes any of the following:

(A) any stationary source, subject to a New Source

Performance Standard pursuant to 40 CFR Part 60;

(B) any stationary source, subject to a national emission standard for hazardous air pollutants, pursuant to 40 CFR Part 61 and Part 63;

(C) any stationary source, subject to Acid Rain Provisions or sulfur oxides emission reduction requirements or limitations under 40 CFR Part 72;

(D) any stationary source subject to Solid Waste Combustion requirements under Section 129(e) of the Act; and

(E) any stationary source, or any group of stationary sources, located on one or more contiguous or adjacent properties, that are under common control of the same person, or persons under common control, and such source or sources belong to the same two-digit Standard Industrial Classification code, as published by the Office of Management and Budget in the Standard Industrial Classification Manual of 1987, and such source or sources emit or have the potential to emit, including fugitive emissions to the extent quantifiable:

(i) in the aggregate, ten (10) tons or more per year of any hazardous air pollutant, or twenty-five (25) tons or more per year of any combination of such hazardous air pollutants;

(ii) one hundred (100) tons or more per year of any air pollutant;

(iii fifty (50) tons or more per year of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area; or

(iv) twenty-five (25) tons or more per year of volatile organic compounds or nitrogen oxides in a severe ozone nonattainment area.

(c)(2) Notwithstanding subsection (c)(1) of this section, this section will not apply to any emissions unit which is only regulated by the following:

(A) Standards of Performance for New Residential Wood Heaters pursuant to 40 CFR part 60, subpart AAA;

(B) National Emission Standard for Hazardous Air Pollutants for Asbestos, Standard for Demolition and Renovation pursuant to 40 CFR part 61, subpart M, Section 61.145; or

(C) Accidental Release Program pursuant to 40 CFR Part 68.

(d) Limitations on Potential to Emit

(d)(1) In lieu of requiring an owner or operator of a Title V source to obtain a Title V operating permit, the Commissioner may, by permit or order, limit potential emissions from such premise to less than the following:

(A) in the aggregate, ten (10) tons per year of any hazardous air pollutant, or twenty-five (25) tons per year of any combination of such hazardous air pollutants;

(B) one hundred (100) tons per year of any regulated air pollutant;

(C) fifty (50) tons per year of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area; and

(D) twenty-five (25) tons per year of volatile organic compounds or nitrogen oxides in a severe ozone nonattainment area.

(d)(2) Notwithstanding subdivision (d)(1) of this section, the Commissioner shall not issue such order or permit in lieu of a Title V operating permit unless the owner or operator of such premise demonstrates that the actual emissions of such pollutants from such premise in any calendar year after December 31, 1989 have not exceeded the levels in subparagraphs (A) through (D), inclusive, of subdivision (d)(1) of this section.

(d)(3) To demonstrate actual emissions have not exceeded such levels, the owner or operator shall submit to the Commissioner written documentation of the actual emissions from such premise for every calendar year, or portion thereof, from January 1, 1990 through the calendar year in which such information is submitted. Such written documentation shall include a certification pursuant to subdivision (b)(4) of this section.

(d)(4) Any permit or order issued pursuant to this subsection shall include requirements that the owner or operator: conduct monitoring; submit compliance certifications to the Commissioner; record no less than semi-annually purchase records, production rate, ratios of materials used and total quantity of materials used; and maintain records at the premise for five (5) years and made available, upon request, to the Commissioner or his agent.

(d)(5) Notwithstanding a permit or order issued pursuant to subdivisions (d)(1) through (d)(3), inclusive, of this subsection,

the owner or operator shall pay the Department all fees required by Section 22a-174-26 of the Regulations of Connecticut State Agencies.

(e) General Requirements.

(e)(1) The owner or operator of any Title V source shall operate such source in accordance with all applicable emissions standards, standards of performance and any other requirements which the Administrator has delegated the Commissioner and which delegation the Commissioner has accepted, including:

(A) 40 CFR Part 60, Standards of Performance for New Stationary Sources;

(B) 40 CFR Part 61, National Emissions Standards for Hazardous Air Pollutants;

(C) 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories;

(D) 40 CFR Part 68, Chemical Accident Prevention Provisions; and

(E) 40 CFR Parts 72 through 78 inclusive, Acid Rain Provisions.

(e)(2) The Commissioner may determine MACT for an individual Title V source on a case-by-case basis. The Commissioner shall determine such MACT in accordance with the requirements of Section 112(d)(3)of the Act, and may consider the cost of achieving such emission reductions, and any health and environment impacts and energy requirements. In no event shall such MACT determination result in emissions of any hazardous air pollutant which would exceed the emissions allowed by an applicable standard under 40 CFR Part 60, Part 61, and Part 63. The owner or operator at such source shall operate such source in accordance with such MACT standard.

(f) Timeframes For Submitting Applications.

(f)(1) The owner or operator of a Title V source shall submit an application for a Title V operating permit to the Department by the date specified within the notice or within ninety (90) days of receipt of notice from the Department that such application to the Department is required, whichever is later. If the owner or operator of an existing Title V source does not receive such notice on or before January 1, 1996, such owner or operator shall apply for such permit no later than April 1, 1996.

(f)(2) Any person who must obtain permit to construct pursuant to subparagraphs (B) or (D) of Section 22a-174-3 of the Regulations of Connecticut State Agencies shall apply for a Title V operating permit at the same time such owner or operator applies for such permit to construct.

(f)(3) Notwithstanding subdivision (f)(1) of this section, the owner or operator of any Title V source which is subject to this section solely pursuant to subparagraph (B) of subdivision (c)(1) of this section shall submit a Title V operating permit application to the Department by the deadline in an applicable MACT standard promulgated by the Administrator. If no such MACT standard has been promulgated, such owner or operator shall apply for such permit by the deadline for such source category published in the Federal Register, Vol. 58 No.231, December 3, 1993.

(f)(4) Notwithstanding subdivision (f)(3) of this section, the owner or operator of any Title V source which has a Title V operating permit which will expire within eighteen (18) months of an applicable deadline for such source category published in Federal Register, Vol. 58 No. 231, December 3, 1993, is not required to renew such permit until such permit expires.

(f)(5) A copy of any such application submitted to the Commissioner pursuant to this subsection shall be submitted to the Administrator through Region I of the U. S. Environmental Protection Agency.

(g) Applications.

(g)(1) The owner or operator of each Title V source shall apply for a Title V operating permit on forms provided by the Department. Such application shall not be deemed sufficient unless and until the information required under subparagraphs (A) through (E) of this subdivision and subdivisions (g)(2) and (g)(4) of this section is submitted to the Department.

(A) The application shall identify the company's legal name and address, or Title V source name and address if different from the legal company name, owner's name and agent for service, and names and telephone numbers of persons designated to answer questions pertaining to the Title V operating permit application.

(B) The application shall contain an executive summary clearly and concisely summarizing the information contained in the application as required under Section 22a-3a-5 of the Regulations of Connecticut State Agencies, the Department's Rules of Practice.

(C) The application shall contain a compliance plan pursuant to subsection (h) of this section, including information

required pursuant to Public Act 94-205 Section 1. (b) and a statement certifying notification pursuant to subparagraph (j)(1)(A) of this section.

(D) The owner or operator of the Title V source may apply for more than one method of operation for such source. For each method of operation the owner or operator of the Title V source shall submit the information required in accordance with this subsection.

(E) If the applicant complies through an alternative means of compliance pursuant to section 22a-174-22 or 22a-174-32 of the Regulations of Connecticut State Agencies by order or permit or a certification as allowed by the Regulations of Connecticut State Agencies, the application shall identify and describe any and each alternative means of compliance. In addition, a copy of such order, permit or certification shall be submitted with the Title V operating permit application.

(g)(2) The owner or operator of the Title V source shall identify and describe on the Title V operating permit application the following information for each emissions unit at the Title V source:

(A) a description of all of the Title V source's processes, identified by four-digit Standard Industrial Classification code, including any method of operation identified by the applicant for each emissions unit at the Title V source;

(B) any emissions unit whose potential emissions when truncated, is greater than or equal the threshold for such pollutant in tons per year as follows in Table 33-1:

Table 33-1

Pollutant	Tons Per Year
Total suspended particulate	2
Sulfur oxides	2
Nitrogen oxides	1
Volatile organic compounds	1
Carbon monoxide	1
Particulate matter less than 10 microns ("PM10")	1

(C) for all emissions units described in accordance with subparagraph (B) of this subdivision, the type and quantities of all potential and actual emissions, including fugitive emissions, for each pollutant for each calendar year, of regulated air pollutants;

(D) for all emissions units of hazardous air pollutants, the type and quantities of all potential and actual emissions, including fugitive emissions, for each pollutant for each calendar year, of regulated air pollutants;

(E) notwithstanding subparagraph (B) of this subdivision, if the emissions unit has a permit issued pursuant to Section 22a-174-3 of the Regulations of Connecticut State Agencies the applicant shall list such emissions unit;

(F) the application shall identify and describe the methodology used to quantify the emissions in subparagraphs (C) and (D) of this subdivision, the emission rates of regulated air pollutants in tons per year and the calculations used to determine applicability pursuant to subsection (c) of this section;

(G) the types of fuels, including the heat content of fuel, and the amount of each fuel to be used;

(H) all materials used, the amount of each material expected to be used, production rate and the hours of operation;

(I) all air pollution control equipment and compliance monitoring equipment to quantify emissions or to determine compliance;

(J) any operational limitations or work practice standards which affect emissions, for all regulated pollutants;

(K) any applicable MACT source category as published in the Federal Register, Vol. 58, No. 231 Friday, December 3, 1993, and applicable requirements for each emissions unit, including those applicable requirements which have future effective compliance dates;

(L) any applicable test method for determining compliance with each applicable requirement listed pursuant to subparagraph (K) of this subdivision; and

(M) Any other information required by such applicable requirement listed pursuant to subparagraph (K) of this subdivision, including information related to good engineering practices for stack height.

(g)(3) Notwithstanding subdivisions (g)(1) and (g)(2) of this section, the owner or operator of the Title V source shall not be

required to list the following items or activities specified in subparagraphs (A) and (B) of this subdivision.

(A) Any of the following item or activities are not the principle function of such Title V source:

(i) office equipment including but not limited to copiers, facsimile and communication equipment and computer equipment;

(ii) grills, ovens, stoves, refrigerators and other restaurant style cooking and food preparation equipment;

(iii lavatory vents, hand dryers, noncommercial clothes dryer, not including dry cleaning machinery;

(iv) Garbage compactors and waste barrels;

(v) Aerosol spray cans; and

(B) Laboratory hoods used solely for the purpose of experimental study or teaching of any science, or testing and analysis of drugs, chemicals, chemical compounds, or other substances, or similar activities, provided that the containers used for reactions, transfers, and other handling of substances under the laboratory hood are designed to be easily and safely manipulated by one person. If a stationary source manufactures or produces products for profit in any quantity using such laboratory hood, it shall be listed pursuant to subdivision (g)(2) of this section.

(g)(4) Notwithstanding subdivision (g)(3) of this section, the owner or operator shall include in the application all emissions from activities or items unlisted pursuant to subdivision (g)(3) of this section.

(g)(5) If while processing an application that has been determined or deemed sufficient, the Commissioner determines that additional information is necessary to evaluate or take final action on that application, the applicant shall submit such information in writing within forty-five (45) days of notification by the Commissioner that such information is necessary.

(g)(6) Any applicant shall submit additional information prior to release of the Tentative Determination by the Commissioner, to address any requirements that become applicable to the Title V source or upon becoming aware of any incorrect submittal, with an explanation for such action and a certification pursuant to subdivision (b)(4) of this section.

(g)(7) Any application for renewal shall include all of the information required pursuant to this subsection and any changes from the original application.

(h) Compliance Plans.

(h)(1) As part of the application on forms provided by the Commissioner the owner or operator of a Title V source shall submit to the Commissioner in writing a compliance plan which describes the compliance status of the Title V source with respect to all applicable requirements, including information pursuant to Public Act 94-205 Section 1. (b) and subdivisions (h)(2) through (h)(4), inclusive, of this section.

(h)(2) For applicable requirements with which the Title V source is in compliance, a statement that the Title V source will continue to comply with such requirements shall be submitted to the Commissioner.

(h)(3) A schedule of compliance for Title V sources that are not in compliance with all applicable requirements at the time of application shall be submitted to the Commissioner as part of the compliance plan. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the Title V source will be in noncompliance at the time of Title V operating permit issuance. Any such submittal of a compliance schedule shall not preclude the Commissioner from taking enforcement action based on such noncompliance.

(h)(4) For applicable requirements that have future effective compliance dates, during the Title V operating permit term, a statement that the Title V source will meet such requirements by such dates shall be submitted to the Commissioner.

(i) Standards for granting Title V operating permits and renewals of Title V operating permits.

(i)(1) The Commissioner may impose reasonable conditions within any permit to operate, including requirements beyond normal due diligence in operation and maintenance.

(i)(2) The Commissioner shall not grant a Title V operating permit to operate a Title V source to the owner or operator of that Title V source unless the Commissioner determines that the owner or operator of the Title V source will comply with the relevant and applicable provisions of subdivision (i)(1) and subparagraphs (A) through (M), inclusive, of subdivision (i)(2) of this section, and such relevant and applicable provisions are included in the Title V operating permit.

(A) The permit contains an expiration date which does not exceed a term of five (5) years.

(B) The permit contains a statement that the owner or operator is required to operate the Title V source in compliance with the applicable regulations or terms of an order or permit of the Commissioner for that Title V source.

(C) The permit contains a description of allowable emissions for each regulated air pollutant through an emission limitation or emission rate. Such description will not preclude the creation or use of emission reduction credits in accordance with subparagraph (K) of this subdivision.

(D) For each emissions unit, the permit contains all limitations and standards, including those operational requirements and limitations necessary to assure compliance with all applicable requirements.

(E) The permit contains all alternative emission limits or means of compliance.

(F) The permit contains all terms and conditions applicable to any method of operation.

(G) The permit contains requirements for performing monitoring or regulated air pollutants from such source to determine compliance with emission limitations or standards of this section. Such monitoring shall include any combination of the following:

(i) all emissions monitoring and analysis procedures or test methods required under the applicable requirements;

(ii) all monitoring requirements, terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement and good engineering practices; and

(iii all emissions monitoring analysis procedures and test methods shall contain specifications concerning the use, maintenance, and where appropriate, installation of monitoring equipment or methods.

(H) The permit contains all applicable record keeping and reporting requirements pursuant to subsections (m) and (o) of this section.

(I) The permit contains a statement that the owner or operator of the Title V source had submitted and the Commissioner has received and approved a comprehensive operation and maintenance plan for all air pollutant emitting activities and the air pollution control equipment, which will ensure continuous compliance with applicable requirements or Title V operating permit requirements.

(J) The permit contains a statement that the owner or operator of the Title V source has submitted an emergency abatement or standby plan, and such plan has been approved by the Commissioner as required by section 22a-174-6 of the Regulations of Connecticut State Agencies.

(K) The permit contains all the terms and conditions enabling the creation and use of any emissions reduction credits in accordance with Public Act 93-235, Public Act 94-170, the provisions of the EPA's "Economic Incentive Program Rules", published April 7, 1994 (Federal Register, Volume 59, Number 67), and EPA's "Emissions Trading Policy Statement", published December 4, 1986 (Federal Register, Volume 51, Number 233).

(L) The permit contains the compliance schedule that identifies the methods for achieving compliance and the dates by which compliance will be reached, in addition to the monitoring, recordkeeping and reporting dates.

(M) The permit contains a severability clause to ensure the continued validity of the various Title V operating permit requirements in the event of a challenge to any portions of the Title V operating permit.

(N) The permit contains all terms and conditions of any permit previously issued to such owner or operator pursuant to Connecticut General Statute 22a-174.

(i)(3) The Commissioner shall not grant a Title V operating permit unless the owner or operator has paid to the Department all fees required by Section 22a-174-26 of the Regulations of Connecticut State Agencies.

(j) Public Notice.

(j)(1) Any person who submits an application for a Title V operating permit or to modify a Title V operating permit shall:

(A) include with such application a signed statement

certifying that the applicant will publish notice of such application on a form supplied by the Commissioner in accordance with this subsection;

(B) publish notice of such application in a newspaper of general circulation in the affected area; and

(C) send the Commissioner a certified copy of such notice as it appeared in the newspaper.

(j)(2) The Commissioner shall not process an application until the applicant has submitted to the Commissioner a copy of the notice required by this subdivision. Such notice shall include:

(A) the name and mailing address of the applicant and the address of the location at which the proposed activity will take place;

(B) the application number, if available;

(C) the type of permit sought, including a reference to the applicable statute or regulation;

(D) a description of the activity for which a permit is sought;

(E) a description of the location of the proposed activity and any natural resources affected thereby;

(F) the name, address and telephone number of any agent or the applicant from whom interested persons may obtain copies of the application; and

(G) a statement that the application is available for inspection at the Department's Bureau of Air Management.

(j)(3) The Commissioner, at least thirty (30) days before approving or denying an application for a Title V operating permit shall publish or shall cause to be published, at the applicant's expense, once in a newspaper having a substantial circulation in the affected area, notice of his tentative determination regarding such application. Such notice will include:

(A) the name and mailing address of the applicant and the address of the location of the proposed activity;

(B) the application number;

(C) the tentative decision regarding the application;

(D) the type of permit or other authorization sought, including a reference to the applicable statute or regulation;

(E) a description of the location of the proposed activity and any natural resources affected thereby;

(F) the name, address and telephone number of any agent of the applicant from whom interested persons may obtain copies of the application;

(G) 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 application; and

(H) such additional information the Commissioner deems necessary to comply with any provision of title 22a of the General Statutes, or regulations adopted thereunder, or with the federal Clean Air Act, Federal Clean Water Act, or the federal Resource Conservation and Recovery Act.

(j)(4) The applicant shall send a copy of any notice required pursuant to subsection (j)(2) or subsection (j)(3) of this section to the Administrator through Region I of the U.S. Environmental Protection Agency. Such applicant shall also send a copy of any notice required pursuant to subsection (j) (3) of this section to:

(A) the Chief Executive Officer of the municipality where the Title V source is or will be located;

(B) the appropriate Connecticut Regional Planning Agency;

(C) any federally recognized Indian governing body whose lands may be affected by emissions from the Title V source; and

(D) the Director of the air pollution control program in the states of Massachusetts, New Jersey, New York, and Rhode Island.

(j)(5) The Commissioner may require an applicant to post a sign at the Title V source or to provide any other reasonable form of notice necessary to apprise the public and abutting landowners in accordance with Public Act 94-85 Section 1.

(j)(6) For the purposes of this subsection, the term application means a request for a Title V operating permit, or a request for modification or renewal of such permit.

(k) Public Hearings.

(k)(1) Any person may file, within thirty (30) days following the public notice of a tentative determination under subdivision (j)(3) of this section, written comments on such determination. Any such comments opposing the issuance of such permit shall set forth the basis thereof in detail and may be accompanied by a request for an public informational meeting, a public hearing, or both.

(k)(2) Following receipt of a request for a public informational meeting, or upon the Commissioner's own initiative, the Commissioner shall, prior to the issuance of the Title V operating permit, hold such meeting. A notice of such public informational meeting shall be published in a newspaper of general circulation in the affected area. Such notice shall include the date, time and location of the public informational meeting. The Commissioner shall maintain a record of all comments made at such public informational meeting. The Commissioner may consider more than one application at any such meeting.

(k)(3) Following receipt of a request for a public hearing or upon the Commissioner's own initiative, the Commissioner may, prior to the issuance of such permit, hold such hearing. A notice of such public hearing shall be published in a newspaper of general circulation in the affected area. Each notice shall include the date, time and location of the public hearing. Following the close of the public hearing, the Commissioner shall make a decision based on all available evidence, including the record of 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 operating permit.

(l) Permit Modifications

(l)(1) The permittee may apply, on forms provided by the Commissioner, to modify a Title V operating permit for the reasons specified in subparagraphs (A) through (D), inclusive. Following public notice and opportunity for public hearing and comment pursuant to subsections (j) and (k) of this section, the Commissioner may modify such permit to incorporate the following changes:

(A) to incorporate any applicable requirement adopted by

the Commissioner or the Administrator after the issuance of such permit;

(B) to modify the frequency, form or type of any monitoring, reporting or record keeping requirement of such permit;

(C) to incorporate an applicable MACT standard promulgated by the Administrator eighteen (18) months prior to the expiration date of such permit; or

(D) to incorporate an individual MACT determination approved by the Commissioner pursuant to subsection (e)(2) of this section eighteen months prior to the expiration date of such permit.

(1)(2) Notwithstanding the requirements of subdivision (1)(1) of this section, the Commissioner may, without further proceedings, modify a Title V operating permit for any of the reasons specified in subparagraphs (A) through (F), inclusive. The permittee may implement such changes after submitting a written request to the Commissioner to modify a Title V operating permit for the reasons set forth in this subparagraph:

(A) to correct clerical errors;

(B) to change the name, address, or phone number of any person identified in the Title V operating permit, or provides a similar minor administrative change at the Title V source;

(C) with the consent of the permittee, to require more frequent monitoring or reporting;

(D) to record a change in ownership or operational control of a Title V source where the Commissioner determines that no other change in the Title V operating permit is necessary, provided that a written agreement containing a specific date for transfer of Title V operating permit responsibility, coverage, and liability between the permittee and new owner or operator of such Title V source has been submitted to the Commissioner;

(E) with the consent of the permittee, to incorporate into such permit the requirements of any permit or modification thereof issued to such source pursuant to Section 22a-174-3 of the Regulations of Connecticut State Agencies; or

(F) to incorporate into such permit the requirements of any permit or order issued to such source for use of emission reduction credits in accordance with Public

Act 93-235, Public Act 94-170, EPA's "Economic Incentive Program Rules", published April 7, 1994 (Federal Register, Volume 59, No. 67), and the EPA's "Emissions Trading Statement", published December 4, 1986 (Federal Register, Volume 51, No. 233).

(l)(3) Before making any other change which increases actual or potential emissions at the Title V source of any regulated air pollutant over the emissions allowable under the Title V operating permit, and which is not covered by subdivisions (l)(1) and (l)(2) of this subsection, the permittee shall provide written notice to the Commissioner and the Administrator through Region I of the U. S. Environmental Protection Agency, describing the change to be made, the date on which the change will occur, any changes in emissions, and any Title V operating permit terms and conditions that are affected. The owner or operator of such Title V source shall thereafter maintain a copy of the notice with the Title V operating permit.

(m) Monitoring Reports

(m)(1) The owner or operator of any Title V source required to perform monitoring pursuant to the Title V operating permit shall submit written monitoring reports as specified in the Title V operating permit. Such monitoring reports shall include the following:

(A) the date, place, and time of sampling or measurements;

(B) the date(s) analyses were performed;

(C) the company or entity that performed the analyses;

(D) the analytical techniques or methods used for such analyses;

(E) the results of such analyses;

(F) the operating conditions existing at the time of sampling or measurement;.

(G) any violations from Title V operating permit requirements that have been monitored by the monitoring systems required under the Title V operating permit; and

(H) any violations of the monitoring, record keeping and reporting requirements under such permit.

(m)(2) The owner or operator of a Title V source shall retain records for all required monitoring data and support information

for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Unless otherwise specified by the Title V operating permit, such owner or operator shall maintain and make such records available for inspection at the Title V source for a period of two years from the date of the monitoring sample, measurement, report, or application and or submit such records to the Commissioner upon request. Support information shall include all calibration and maintenance records and all original strip-chart recordings or computer printouts for continuous monitoring instrumentation, and copies of all reports required by the Title V operating permit.

(m)(3) The owner or operator of the Title V source shall, contemporaneous with making a change from one method of operation to another pursuant to a Title V operating permit, maintain a record at the Title V source of the current method of operation.

(n) Notifications

(n)(1) The owner or operator of a Title V source shall notify the Commissioner in writing of any violation of an applicable requirement, or any violation of any term or condition of the Title V operating permit, identifying the probable cause of the violations and all corrective action or preventive measures taken and the dates of actions as follows:

(A) any violation of an applicable requirement, or of any term or condition of the Title V operating permit resulting from an emergency shall be reported within two working days of the date on which the owner or operator first becomes aware of such violation; and

(B) any violation of an applicable requirement, or of any term or condition of the Title V operating permit that poses an imminent and substantial danger to public health, safety, or the environment shall be reported immediately and within twenty-four (24) hours of commencement of such violation.

(n)(2) Any such report of a violation of an applicable requirement, or of any term or condition of the Title V operating permit shall be certified pursuant to subdivision (b)(4) of this section.

(o) Progress Reports and Compliance Certifications

(o)(1) The owner or operator of a Title V source shall submit a written progress report to the Commissioner semi-annually or more frequently if specified in the applicable requirement or in the

Title V operating permit. Such report shall be consistent with an applicable schedule of compliance pursuant to subparagraph (L) of subdivision (i)(2) of this section and shall include a certification signed in accordance with subdivision (b)(4) of this section and shall contain the following:

(A) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(B) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted and the future schedule for such compliance.

(o)(2) The owner or operator of a Title V source shall submit a written compliance certification to the Commissioner annually, or more frequently if specified in the applicable requirement or in the Title V operating permit. Such certification shall identify the terms and conditions contained in the Title V operating permit for the entire premise, including emission limitations, and shall contain the following:

(A) a means for monitoring the compliance of the source with emissions limitations, standards, and work practices;

(B) the identification of each term or condition of the permit that is the basis of the certification;

(C) the Title V source's, owner and operator's compliance status';

(D) whether compliance was continuous or intermittent;

(E) the method(s) used for determining the compliance status of the Title V source, currently and throughout the reporting period in accordance with this section; and

(F) such other facts as the Title V operating permit may require to determine the compliance status of the Title V source.

(o)(3) Any report or certification submitted pursuant to this subsection shall be certified pursuant to subdivision (b)(4) of this section.

(o)(4) The owner or operator shall submit any report or certification pursuant to this subsection to the Administrator through Region I of the U. S. Environmental Protection Agency as

well as to the Commissioner;

(p) Transfers.

(p)(1) No person shall act under the authority of a Title V operating permit issued to another person unless such permit has been transferred in accordance with this section. The Commissioner may approve a transfer in accordance with this section if he finds that the proposed transferee is willing and able to comply with the terms and conditions of the 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.

(p)(2) The permittee and the proposed transferee shall submit to the Commissioner a request for transfer of such permit 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 require the proposed transferee to submit with any such request:

(A) any information required by law to be submitted with an application for such a 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 section, including any information required by law.

(p)(3) Upon approving a request for transfer, the Commissioner shall modify the Title V operating permit accordingly, in accordance with subsection (i) of this section. After the Commissioner transfers a permit in accordance with this section, the transferee shall be responsible for complying with all applicable regulations and with all the terms and conditions of the transferred permit.

(q) Revocations.

(q)(1) The Commissioner may revoke a Title V operating permit on his own initiative or on request of the permittee or any other person for the reasons specified in this subsection. Any such request shall be in writing and contain facts and reasons supporting the request. A permittee requesting revocation of a Title V operating permit shall state the requested date of revocation and shall, prior to revocation, provide the Commissioner with satisfactory evidence that the emissions have been permanently eliminated.

(q)(2) The Commissioner may revoke a Title V operating permit during its term in accordance with section 4-182(c) of the Connecticut General Statutes as amended, and 22a-3a-6 of the Regulations of Connecticut State Agencies, the Department's Rules of Practice, for any reason specified as follows:

(A) the permittee has violated a statute, regulation, permit or order administered or issued by the Commissioner, or has committed any other violation of law relevant to the permitted activity;

(B) the permittee or a person on his behalf failed to disclose all relevant and material facts in the application for the Title V operating permit or during any Department proceeding associated with the application;

(C) the permittee or a person on his behalf misrepresented a relevant and material fact at any time, including, without limitation, in the application for the Title V operating permit or in a report or laboratory analysis submitted to the Department;

(D) the permittee failed to comply with a reasonable request by the Commissioner for any information related to the Title V operating permit, activity, or Title V source which is the subject of the Title V operating permit, or to the permittee's compliance with the Title V operating permit, or any statute, regulation, or order administered or issued by the Commissioner;

(E) the activity authorized by the Title V operating permit is causing or is reasonably likely to cause air pollution or to endanger human health, safety, or welfare or the environment; or

(F) a change in pertinent law or technology.

STATEMENT OF PURPOSE: To adopt regulations implementing the provisions of Title V of the Clean Air Act Amendments of 1990 concerning operating permits including provisions to enforce necessary requirements of Titles III and IV of the Clean Air Act Amendments of 1990.