STATE OF CONNECTICUT

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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[redacted]othy R. E. Keeney
Commissioner

January 28, 1994

Legislative Regulation Review Committee
Room 1800
Legislative Office Building
Hartford, Connecticut 06106

Committee Members:

In accordance with the provisions of Section 4-170 of the Connecticut General Statutes, enclosed are the original and eighteen copies of a proposed amendment to the Regulations of Connecticut State Agencies. This amendment concerns changes to section 22a-174-3 regarding New Source Review. These regulations set the standards for Permits to Construct or Modify and Permits to Operate Stationary Sources of air pollution.

If there are any questions on this proposal, please feel free to contact Phil Florkoski at 566-2506. Thank you for your assistance.

Sincerely,

Timothy R.E. Keeney
Commissioner

TREK/pf/ko
Enclosures

IMPORTANT: Read Instructions on bottom of Certification Page before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations.

STATE OF CONNECTICUT

REGULATION

OF

NAME OF AGENCY

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Concerning

SUBJECT MATTER OF REGULATION

ABATEMENT OF AIR POLLUTION - NEW SOURCE REVIEW

SECTION 1

Section 22a-174-3 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 22a-174-3.["]Permits to construct["] and ["]permits to operate["] ["]stationary sources["] or ["]modifications["].

(a) Those who must apply for a permit.

(a)(1) In addition to the requirements of subdivisions 22a-174-3 (a)(2), (a)(3), (a)(4), (b)(4) or (g)(4), the owner or ["]operator["] of any of the new ["]stationary sources["] or ["]modifications["] described in subparagraphs (a)(1)(A) through (a)(1)(K) inclusive,of section 22a-174-3 shall apply for a permit under this section prior to the ["]commencement["] of ["]construction["]. The ["]Commissioner["] shall provide forms which shall require an applicant to describe the nature and location of the ["]source["] along with the type and amount of ["]air pollutant["] ["]emissions["] from the ["]source["].

(A) Equipment in a manufacturing process involving surface coating including, but not limited to, printing, spray or dip painting, roller coating, electrostatic depositing or spray cleaning, and in which the maximum rated capacity of coating material and organic compounds used is thirty (30) pounds or more in any one hour.

(B) Equipment which is used in a solvent metal cleaning, etching, or plating process or other manufacturing processes involving metal cleaning and/or surface preparation which is connected to a ventilation system controlling escape of ["]air pollutants["] or contaminants to the workroom air where:

(i) for a wet system the total capacity of such equipment is one thousand (1,000) gallons or more;
(ii) for a dry system the ["]potential emissions["] to the ["]ambient air["] from the dry system equipment are greater than five (5) tons per year; or

(iii) for any solvent degreasing units the total liquid capacity is one thousand (1,000) gallons or more.

(C) Equipment used in manufacturing process, other than as set forth elsewhere in this subdivision in which the combined weight of all materials introduced, excluding air and water, is two thousand (2,000) pounds or more in any one hour or sixteen thousand (16,000) pounds or more in any one day. For a cyclical or batch operation, the process weight per hour shall be derived by dividing the total process weight by the number of hours in one complete operation, from the beginning of any given

process to the completion thereof, excluding any time during which the equipment is idle.

(D) Any liquid storage ["]tank["], reservoir, or container used for the storage of acids, ["]volatile organic compounds["] with a vapor pressure of one and one-half (1.5) pounds per square inch absolute or greater under actual storage conditions, inks, colorants, lacquers, enamels, varnishes, or liquid resins and having a capacity of forty thousand (40,000) gallons or more.

(E) ["]Fuel-burning equipment["] using liquid fuel in which the maximum heat input guaranteed by the manufacturer of such equipment is five million (5,000,000) ["]BTU["] per hour or more except as required by subparagraph (a)(1)(G) or subdivision (a)(2) of section 22a-174-3.

(F) ["]Fuel-burning equipment["] using gaseous fuel in which the maximum heat input guaranteed by the manufacturer of such equipment is eleven million (11,000,000) ["]BTU["] per hour or more.

(G) ["]Fuel-burning equipment["] burning solid fuels, or ["]fuel-burning equipment["] burning fuel oils having a specific gravity in API degrees of thirty (30) or less, unless the maximum heat input guaranteed by the manufacturer of such equipment is less than one million (1,000,000) ["]BTU["] per hour.

(H) ["]Stationary sources["] used as ["]incinerators["] except afterburners used for the disposal of waste gases from a ["]source["] which has a permit or order from the ["]Commissioner["] requiring the afterburner.

(I) All industrial ["]flares["] for the disposal of liquids or gases.

(J) Any ["]stripping facility["] with ["]potential emissions["] in excess of Table 3(a)(1) below.

Table 3(a)(1)

Table the pollutant is listed on in section 22a-174-29	Total pounds per hour of all pollutants
Table 29-1	0.1
Table 29-2	0.2
Table 29-3	0.4

(K) Any new ["]stationary source["] or ["]modification["] including any process, operation, equipment, or activity whose ["]potential emissions["] of any particular ["]air pollutant["] are greater than five (5) tons per year or whose ["]maximum uncontrolled emissions["] of any individual ["]air pollutant["] are greater than one hundred (100) tons per year except any ["]stationary source["] which the ["] Commissioner["] determines to be physically incapable of operating at a rate which would exceed the above limits. In determining the applicability of this subparagraph the ["]Commissioner["] shall not allow the ["]netting["] of emissions.

(a)(2) In addition to any provision of subdivision 22a-174-3(a)(1) the owner or ["]operator["] of any new

["]stationary source["] or ["]modification["] which is subject to those sections of Title 40 of the Code of Federal Regulations Part 60 or Part 61, as from time to time may be amended, which the ["]Commissioner["] has been delegated authority to enforce by the ["]Administrator["] shall apply for a permit under this section.

(a)(3) In addition to any provision of subdivision 22a-174-3(a)(1) the owner or ["]operator["] of any new MAJOR ["]stationary source["] or MAJOR modification [which increases emissions above the levels listed in Table 3(k)-1 of subsection 22a-174-3(k) for the applicable air pollutants fluorides to beryllium inclusive or which increases the emissions of any air pollutant which is federally regulated under the Clean Air Act and which is not listed in Table 3(k)-1 of subsection 22a-174-3(k)] shall apply for a permit under this section.

(a)(4) In addition to any provision of subdivision 22a-174-3(a)(1) the owner or ["]operator["] of any ["]stationary source["] subject to the provisions of subdivisions (b)(4) or (g)(4) of section 22a-174-3 shall apply for a permit under this section.

(a)(5) The ["]Commissioner["] shall not require an application for a permit for a ["]mobile source["] under this section.

(a)(6) For the purposes of section 22a-174-3 the ["]Commissioner["] shall provide forms and instructions which if properly followed will ensure that the application will be deemed [complete] SUFFICIENT.

(b) Those who must obtain a ["]permit to construct["] prior to ["]commencement["] of ["]construction["].

(b)(1) Except as provided in subdivision 22a-174-3(b)(6) the owner or ["]operator["] of any of the following ["]stationary sources["] or ["]modifications["] subject to the provisions of subdivisions (a)(1) through (a)(4) inclusive or (b)(4) of section 22a-174-3 must apply for and obtain a ["]permit to construct["] prior to the ["]commencement["] of ["]construction["] or ["]modification["] of any ["]stationary source["] which:

(A) will have or has ["]potential emissions["] of any individual ["]air pollutant["] equal to or greater than fifteen (15) tons per year; or

(B) will be or is a ["]major stationary source["]; or

(C) will be or is a ["]major modification["] to a ["]major stationary source["]; or

(D) will be or is subject to those sections of Title 40 of the Code of Federal Regulations Part 60 or Part 61 which the ["]Commissioner["] has been delegated authority to enforce by the ["]Administrator["].

(b)(2)(A) The owner or ["]operator["] of each ["]stationary source["] described in subdivision (b)(1) or (b)(4) of section 22a-174-3 shall make application for such ["]stationary source["] on forms furnished by the ["]Commissioner["]. In the application the owner or ["]operator["] shall include siting information; descriptions of the equipment and processes involved; a description of fuels and process materials to be used; the nature, source and quantity of uncontrolled and controlled

SECTION 1

["]emissions["]; the type, size and efficiency of control facilities; and such other information as the ["]Commissioner["] may require including a plot plan describing building locations, actual dimensions, stack locations and final grade elevations for all structures located on the applicable ["]premise["] which may affect the ground level concentration in the ["]ambient air["] due to downwash, wakes or eddy effects.

(B) In addition, for each individual ["]air pollutant["] for which the ["]stationary source["] has ["]potential emissions["] equal to or greater than five (5) tons per year, ["]maximum uncontrolled emissions["] of one hundred (100) tons per year or more, or emissions of any individual ["]air pollutant["] in excess of the amount listed in Table 3(k)-1 of subsection 22a-174-3(k), the owner or ["]operator["] shall include:

(i) a determination of the ["]Best Available Control Technology["]; or

(ii) a determination of the ["]Lowest Achievable Emission Rate["] for each individual ["]air pollutant["] for which the ["]stationary source["] is subject to the provisions of subsection 22a-174-3(l).

(b)(3) For the purposes of subsection 22a-174-3(b) the ["]Commissioner["] shall combine the emissions from all fuel-burning equipment connected to a common stack. Unless the ["]Commissioner["] determines otherwise, when two or more ["]stationary sources["] of a similar or identical nature are constructed or modified in the same plant or ["]premise["] they shall be considered a single aggregate ["]stationary source["] and subject to interpretation under subsection 22a-174-3(a). When two OR more dissimilar ["]stationary sources["] are constructed or modified, THE COMMISSIONER MAY REQUIRE a separate permit [is required] for each ["]stationary source["]. For the purposes of this subdivision the ["]Commissioner["] shall aggregate emissions from new ["]stationary sources["] or ["]modifications["] on the same ["]premise["] which have the same first two-digit code as described in the Standard Industrial Classification Manual, 1972 as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(b)(4) The owner or ["]operator["] of any ["]stationary source["] which was subject to section 22a-174-3 on or after June 1, 1972 who failed to apply for and receive a valid permit pursuant to the regulations in effect at the time of ["]construction["] or ["]modification["] shall be subject to the requirements of the applicable provisions of subsections (a), (b) [or] AND (f) of section 22a-174-3, unless there was a previous exemption issued by the ["]Commissioner["].

(b)(5) In determining the applicability of subparagraph 22a-174-3(b)(1)(A) the ["]Commissioner["] shall not allow the ["]netting["] of emissions.

(b)(6) Notwithstanding the provisions of subdivision 22a-174-3(b)(1) the ["]Commissioner["] shall not require the owner or ["]operator["] of any ["]modification["] to obtain a ["]permit to construct["] when the ["]modification["] is solely because of the use of natural gas as an alternative fuel.

(c) Standards for granting a ["]permit to construct["].

(c)(1) The ["]Commissioner["] shall not grant a ["]permit to construct["] a new ["]stationary source["] or ["]modification["] subject to the provisions of subdivisions (a)(1) through (a)(4) inclusive or (b)(4) of section 22a-174-3 unless the ["]Commissioner["] determines, upon evidence submitted by the applicant or otherwise made part of the record, that the owner or ["]operator["] will comply with the applicable and relevant provisions of subparagraphs (A) through (K) inclusive of this subdivision.

(A) The owner or ["]operator["] shall operate the new ["]stationary source["] or ["]modification["] in accordance with all applicable and relevant, provisions of this subsection, ["]emission limitations["] regulations, schedules for performance tests under subdivision 22a-174-3(g)(3), conditions of the ["]permit to operate["] under subsection 22a-174-3(g) or other order of the ["]Commissioner["].

(B) The owner or ["]operator["] of any ["]stationary source["] or ["]modification["], the ["]allowable emissions["] of which have a significant impact on air quality, shall operate that ["]stationary source["] without preventing or interfering with the ["]attainment["] or maintenance of any applicable ["]ambient air quality standards["] or any Prevention of Significant Deterioration increments under subsection 22a-174-3(k). The ["]Commissioner["] shall use the procedures in subdivisions (k)(5) and (k)(6) of section 22a-174-3 to determine compliance with the prevention of significant deterioration increments under subsection 22a-174-3(k) and the ["]air pollutant["] emissions inventory the ["department"] DEPARTMENT maintains to determine compliance with the requirements of this subparagraph. For the purposes of this subparagraph, in order to determine if the ["]allowable emissions["] of an individual ["]air pollutant["] do not have a significant impact on air quality the amount of ["]ambient air["] impact that will not be considered significant is less than the amounts listed in Tables 3(c)-1 and 3(c)-2 below. For the purpose of calculating allowable emissions of a ["]stationary source["] for Table 3(c)-1 or Table 3(c)-2, any physical or operational restriction on the capacity of the source to emit a pollutant, including air pollution control equipment, or restrictions on production rates, hours of operation, and types of materials processed, stored or combusted which limit the ["]maximum rated capacity["] shall be treated as part of its design if the limitation or the effect of the limitation on emissions is ["]federally enforceable["].

Table 3(c)-1

["]AIR POLLUTANT["]	AMBIENT IMPACT (micrograms per cubic meters)
["]TSP"	
Annual average	1
24-hour average	5]
["]PM_{10}["]	
Annual average	1
24-hour average	5
Sulfur dioxide	
Annual average	1
24-hour average	5
3-hour average	25
Carbon monoxide	
8-hour average	500
1-hour average	2000
Nitrogen dioxide	
Annual average	1

For any ["]stationary source["] which emits a ["]hazardous air pollutant["] for which there is an ["]ambient air quality standard["] listed in section 22a-174-24, the ["]Commissioner["] shall use the ambient impacts listed in Table 3(c)-2 below except for those pollutants listed in Table 3(c)-1 of subdivision 22a-174-3(c)(1):

Table 3(c)-2

Table the pollutant is listed on in section 22a-174-29	Percent of standard listed in section 22a-174-24
Table 29-1	5
Table 29-2	10
Table 29-3	20

(C) The owner or ["]operator["] shall operate the new ["]stationary source["] or ["]modification["] in accordance with all applicable ["]emission standards["] and standards of performance under Title 40 of the Code of Federal Regulations Part 60 and Part 61, as from time to time may be amended, which the ["]Commissioner["] has been delegated authority to enforce by the ["]Administrator["].

(D) The owner or ["]operator["] of the new ["]stationary source["] or ["]modification["] shall install:

(i) sampling ports of a size, number and location as the ["]Commissioner["] may reasonably require;

(ii) such instrumentation to monitor and record ["]emission["] data as the ["]Commissioner["] may reasonably require; and

(iii) such other sampling and testing facilities as the ["]Commissioner["] may reasonably require.

(E) The owner or ["]operator["] of the new ["]major stationary source["] or ["]major modification["] shall operate that ["]stationary source["] or ["]modification["] without significantly interfering with either ["]attainment["] of any National ["]Ambient Air Quality Standard["] in any other ["]state["] or any other requirements in the applicable ["]state implementation plan["] for such ["]state["].

(F) The owner or ["]operator["] of the new ["]stationary source["] or ["]modification["] has paid to the ["]Department["] fees in accordance with a permit fee schedule adopted by the ["]Commissioner["] within forty-five (45) days of receipt of a [proposed final decision] TENTATIVE DETERMINATION of the ["]Commissioner["].

(G) The owner or ["]operator"["] of any new ["]stationary source["] or ["]modification["] who must obtain a permit pursuant to the provisions of this section, shall incorporate ["]Best Available Control Technology["] as determined by the ["]Commissioner["], for each individual ["]air pollutant["] with ["]potential emissions["] equal to or greater than five (5) tons per year, ["]maximum uncontrolled emissions["] of any individual ["]air pollutant["] equal to or greater than one hundred (100) tons per year or as may be required under section 22a-174-29. The owner or ["]operator["] of any ["]stripping facility["] who is required to apply for and obtain a permit under this section shall incorporate ["]BACT["] as determined by the ["]Commissioner["]. The owner or ["]operator["] of any new ["]stationary source["] or ["]modification["] shall make and submit to the ["]Commissioner["], for approval, a ["]BACT["] determination for each ["]air pollutant["], as required by the ["]Commissioner["], including cost estimates of all control options as may be specified by the ["]Commissioner["]. The provisions of this subparagraph do not apply for those ["]air pollutant["] emissions for which the ["]stationary source["] is subject to the requirements of ["]LAER["] under subdivision 22a-174-3(l)(4).

(H) For the purposes of this subparagraph, continuous emission monitoring equipment may include such equipment that the ["]Commissioner["] deems necessary to provide the ["]Department["] with remote telemetry access to the continuous emission monitoring equipment or data at the new ["]stationary source["] as required under section 22a-174-4. The equipment may include but is not limited to, equipment which provides information regarding operating conditions such as temperature and flow rates along with information on emissions as required by a permit or other order of the ["]Commissioner["]. The owner or ["]operator["] of the new ["]stationary source["] or ["]modification["] shall install and operate in a manner acceptable to the ["]Commissioner["] continuous emission monitoring equipment which:

(i) meets the provisions of Appendix P to Title 40 Code of Federal Regulations Part 51 and other requirements established by the ["]Commissioner["]; and

(ii) the ["]Commissioner["] determines to be reasonably available for each individual ["]air pollutant["] for which the new ["]stationary source["] has ["]potential emissions["] equal to or greater than one hundred (100) tons per year.

(I) The owner or ["]operator["] of the new ["]stationary source["] or ["]modification["] shall agree to incorporate all the terms and conditions specified in the ["]permit to construct["] as part of any ["]permit to operate["] issued under subsection 22a-174-3(g).

(J) The owner or ["]operator["] of the new ["]stationary source["] or ["]modification["] has provided the ["]Commissioner["] with current information regarding ["]air pollutant["] emissions from the subject source and any other ["]sources["] located on the applicable ["]premise["].

(K) The owner or ["]operator["] of the new ["]stationary source["] or ["]modification["] has complied with the applicable provisions of subsections (k), (l) or (m) of section 22a-174-3.

(c)(2) In addition to the requirements of subdivision 22a-174-3(c)(1) the owner or ["]operator["] of a new ["]major stationary source["] or ["]major modification["] shall demonstrate that the degree of ["]emission limitation["] required of the ["]source["] for control of any ["]air pollutant["] shall not be affected by that portion of the ["]source's["] ["]stack["] height that exceeds ["]good engineering practice["] or by any other ["]dispersion technique["] even when the degree of ["]emission limitation["] required may be economically or technologically infeasible to obtain except that ["]stack["] heights in existence, or ["]dispersion techniques["] implemented, prior to December 31, 1970; or coal-fired steam electric generating units, subject to section 118 of the [Federal] Clean Air Act, which ["]commenced["] operation before July, 1957, and whose ["]stacks["] were constructed under a construction contract awarded before February 8, 1974 shall not be subject to this requirement.

(A) In order to take credit for the amount of ["]emission limitation["] attributable to that part of the ["]stack["] height which exceeds ["]good engineering practice["], the owner or ["]operator["] of the new ["]major stationary source["] must demonstrate, after public notice and opportunity for public hearing, that a greater height is necessary to prevent ["]excessive concentration["] of any ["]air pollutant["] in the immediate vicinity of the new ["]major stationary source["].

(B) In no event may the ["]Commissioner["] prohibit any increase in any ["]stack["] height or restrict in any manner the ["]stack["] height of any ["]stationary source["].

(c)(3) Any ["]person["] who makes estimates of ["]ambient air["] quality impacts for either new ["]major stationary sources["] or ["]major modifications["] shall use applicable air quality models, data bases or other requirements approved by the ["]Commissioner["] and the ["]Administrator["] for the subject ["]source["] and any other ["]source["] which is included in the analysis. For all other sources, any ["]person["] who makes

estimates of ["]ambient air["] quality impacts shall use applicable air quality models, data bases or other techniques approved by the ["]Commissioner["]. The ["]Commissioner["] may request any applicant to submit an ["]ambient air["] quality impact analysis using applicable air quality models and modeling protocols approved by the ["]Commissioner["].

(c)(4) In those cases where an Environmental Impact Statement (EIS) has been or will be prepared under the National Environmental Policy Act (42 U.S.C. 4321) or similar state or local laws, the ["]Commissioner["] shall make use of the EIS wherever reasonably possible in order to avoid needless duplication of information gathering and analysis.

(c)(5) In order to determine compliance with the provisions of subdivision 22a-174-3(c)(1) the ["]Commissioner["] shall consider the following:

(A) The peak ["]emissions["] from an operation averaged over the appropriate time period for an applicable ["]ambient air quality standard["] or Prevention of Significant Deterioration increments under subsection 22a-174-3(k) when such time period is shorter than:

(i) the cycle time for a batch operation; or

(ii) the operating time for a continuous process; and

(B) The ["]emissions["] from an operation averaged over the appropriate time period for an applicable ["]ambient air quality standard["] or Prevention of Significant Deterioration increments under subsection 22a-174-3(k) when such time period is equal to or longer than:

(i) the cycle time for a batch operation including successive periods of operation and down time as appropriate; or

(ii) the operating time for a continuous process including successive periods of operation and down time as appropriate.

(d) Action on application for permits under this section.

(d)(1) The ["Commissioner" shall not apply the provisions of subparagraphs (J), (L), or (M) of subdivision 22a-174-3(g)(2) in issuing a "permit to operate" to the owner or "operator" of any "stationary source" for which a public notice was published in accordance with the provisions subparagraph 22a-174-3(j)(2)(A) prior to May 1, 1989. Notwithstanding the foregoing, the] owner or ["]operator["] of any ["]resources recovery facility["] for which a ["]permit to operate["] is issued shall comply with the provisions of subparagraphs (g)(2)(C), (g)(2)(E) and (g)(2)(J) of section 22a-174-3.

(d)(2) Within forty-five (45) days after receipt of an application for a ["]permit to construct["] under this section or of any amendment to such application, the ["]Commissioner["] shall advise the applicant in writing that the application is deemed [complete] SUFFICIENT or of any deficiency in the application or in the information submitted which in the judgment of the ["]Commissioner["], has rendered such application [incomplete] INSUFFICIENT. In the event of such a deficiency, the date of receipt of the revised application shall be the date on which the

["]Commissioner["] received all required information and the ["]Department["] shall notify the applicant in writing of the date on which the application is deemed [complete] SUFFICIENT.

(d)(3) Within sixty (60) days of the [completeness] determination OF SUFFICIENCY under subdivision 22a-174-3(d)(2), the ["]Department["] shall make an engineering evaluation, which is based upon a review of the ["]stationary source's["] process parameters and air pollution control equipment, and shall determine whether the application may be recommended for approval, pending the results of any ["]air pollutant["] modeling required under subdivisions (c)(3), (k)(5) or (k)(6) of section 22a-174-3, or recommended for disapproval. The applicant shall be notified in writing of such preliminary determination. Once any applicant has been notified in writing that the application may be recommended for disapproval based upon the engineering evaluation required under this subdivision, the applicant must submit any additional material to the ["]Commissioner["] within sixty (60) days or the application will be withdrawn from the ["]Department["] files. Any additional information submitted by the applicant will be reviewed by the ["]Commissioner["] within sixty (60) days of receipt of the material as required by this subdivision.

(d)(4) Within sixty (60) days of the notice regarding the engineering evaluation under subdivision 22a-174-3(d)(3) that the application may be recommended for approval, the ["]Department["] shall complete any ["]air pollutant["] modeling required under subdivisions (c)(3), (k)(5) or (k)(6) of section 22a-174-3 or review any such modeling which the ["]Commissioner["] has requested that the applicant perform under subdivision 22a-174-3(c)(3) and recommend either approval or disapproval of the subject application. The applicant shall be notified in writing of such recommendation. Once any applicant has been notified in writing that the application may be recommended for disapproval based upon the ["]air pollutant["] modeling analysis required under this subdivision, any additional information submitted by the applicant will be reviewed by the ["]Commissioner["] within sixty (60) days of receipt of the material as required by this subdivision.

(d)(5) Within thirty (30) days of the recommendation under subdivision (d)(4) if any ["]air pollutant["] modeling is required or under subdivision (d)(3) if ["]air pollutant["] modeling is not required, the ["]Department["] shall prepare a staff report recommending approval, denial, modification or conditional [approving] APPROVAL OF the permit for the subject ["]stationary source["].

(d)(6) Any change in an application which may result in a change in the ["]potential emissions["] or the air quality impact of any ["]air pollutant["] emitted from the subject ["]stationary source["] after the application has been deemed [complete] SUFFICIENT under subdivision 22a-174-3(d)(2) may result in the application being deemed [incomplete] INSUFFICIENT or requiring an additional review under subdivisions (d)(3) or (d)(4) of section 22a-174-3. The provisions of this subdivision may not apply to changes made as a result of written notifications from the ["]Department["] under this subsection or to any changes made prior to the ["]Department["] beginning to perform any required air quality modeling.

(d)(7) The ["]Department["] shall make the best effort to comply with the deadlines delineated in this subsection. However, in the event that any or all of these deadlines are exceeded no

application shall be deemed either [complete] SUFFICIENT or approved. The ["]Department["] shall make its best effort to process permits on an as received basis and [completeness] determination OF SUFFICIENCY pursuant to the provisions of subdivision 22a-174-3(d)(2). However, in setting permitting priorities the ["]Commissioner["] may take into consideration whether the owner or ["]operator["] of the subject ["]stationary source["] has received other required permits, licenses or other approvals of applicable state agencies or local governments.

(d)(8) A permit shall be available at the site throughout the period of such permit and shall be effective for such period as is specified by the ["]Commissioner["] in the permit.

(d)(9) If construction of the ["]stationary source["] will not be completed within the time specified, the holder of the ["]permit to construct["] shall apply for renewal of the permit at least one hundred twenty (120) days prior to the expiration date of the permit.

(e) Cancellation of a ["]permit to construct["].

(e)(1) The ["]Commissioner["] may cancel or revise the conditions of a ["]permit to construct["] if:

(A) Construction or ["]modification["] authorized by the permit is not begun within one year from the date of issuance, or such other period, as is allowed by the applicable ["]permit to construct["]; or

(B) During construction or ["]modification["], work is suspended for one year; or

(C) The ["]Commissioner["] determines that any provision of subsection (c) has not been or is not being met.

(f) ["]Those who must obtain a ["]permit to operate["].

(f)(1) No person shall commence construction until the ["]Commissioner["] has issued written notice that the application has been deemed ["complete"] SUFFICIENT for any ["]source["] required to apply for a permit under subsection 22a-174-3(a). In addition, prior to beginning operation of any such ["]stationary source["] or ["]modification["], the owner or operator shall obtain a ["]permit to operate["] if the subject ["]stationary source["] or ["]modification["]:

(A) Will have ["]potential emissions["] of any individual ["]air pollutant["] equal to or greater than five (5) tons per year; [or]

(B) Will have ["]maximum uncontrolled emissions["] of any individual ["]air pollutant["] equal to or greater than one hundred (100) tons per year; [or]

(C) Must obtain a ["]permit to construct["] under subsection 22a-174-3(b); [or]

(D) Fails to demonstrate continued compliance with the conditions of operation which formed the basis of a permit exemption when such failure causes ["]potential emissions["] of any individual ["]air pollutant["] equal to or greater than five (5) tons per year; [or]

(E) Is an ["]incinerator["]; or

(F) Is a ["]stripping facility["] with ["]potential emissions["] in excess of Table 3(f)-1 below unless the ["]stripping facility["] has incorporated ["]BACT["], as determined by the ["]Commissioner["] as part of a state order or permit issued by the ["]Commissioner["] to remediate a soil or groundwater contamination problem.

Table 3(f)(1)

Table the pollutant is listed on in section 22a-174-29	Total pounds per hour of all pollutants
Table 29-1	0.1
Table 29-2	0.2
Table 29-3	0.4

(f)(2) Prior to issuance of a ["]permit to operate["], the ["]Commissioner["] may require the owner or ["]operator["] of a ["]stationary source["] or ["]modification["] to provide such additional information as the ["]Commissioner["] deems necessary and which has not already been included in the application or submitted during the course of construction.

(f)(3) In determining the applicability of subsection 22a-174-3(f) the ["]Commissioner["] shall not allow the ["]netting["] of emissions.

(g) Standards for granting ["]permits to operate["] and renewals of ["]permits to operate["].

(g)(1) The ["]Commissioner["] may impose reasonable conditions within any ["]permit to operate["], including requirements beyond normal due diligence in operation and maintenance.

(g)(2) The ["]Commissioner["] shall not grant a ["]permit to operate["] a ["]stationary source["] to the owner or ["]operator["] of that ["]stationary source["] who is required to obtain a ["]permit to operate["] under subsection 22a-174-3(f) or to renew a ["]permit to operate["] under subdivisions (g)(4) or (g)(5) of section 22a-174-3 unless the ["]Commissioner["] determines that the owner or ["]operator["] will comply with the relevant and applicable provisions of subparagraphs (A) through [(L)](M) inclusive of this subdivision.

(A) The owner or ["]operator["] will operate the ["]stationary source["] in compliance with applicable regulations or terms of an order or permit of the ["]Commissioner["] for that ["]stationary source["].

(B) The owner or ["]operator["] will operate the ["]stationary source["] without preventing or interfering with the ["]attainment["] or maintenance of applicable ["]Ambient Air Quality Standards["] or available Prevention of Significant Deterioration increment listed in Table 3(k)-2 in subsection 22a-174-3(k).

(C) The owner or ["]operator["] has equipped the ["]stationary source["] with instrumentation to monitor

and record ["]emission["] data or other information about the operation of the ["]stationary source["] which satisfies the requirements of the ["]Commissioner["], including those requirements contained in subparagraph 22a-174-3(c)(1)(H).

(D) The owner or ["]operator["] constructed the ["]stationary source["] in accordance with and meets the requirements, standards, and conditions set forth in any applicable ["]permit to construct["] or other order of the ["]Commissioner["] for that ["]stationary source["].

(E) Performance tests conducted at the owner's or ["]operator's["] expense, in accordance with methods prescribed by the ["]Commissioner["] or the ["]Commissioner's["] duly authorized representative and with the ["]Department's["] observation and participation if the ["]Commissioner["] so requires, demonstrate that the ["]stationary source["] has in fact met the requirements, standards, and conditions of any applicable permit or other order of the ["]Commissioner["] for that ["]stationary source["] and is in compliance with applicable regulations, and that the owner or ["]operator["] of the ["]stationary source["] verifies the results in a form satisfactory to the ["]Commissioner["]. For ["]resources recovery facilities["] such performance tests shall include stack emissions tests for ["]dioxin emissions["] in accordance with the provisions of subsection 22a-174-5(g) and stack emission tests for any other air pollutant listed on Tables 29-1, 29-2 or 29-3 of section 22a-174-29. Any such tests shall be conducted in a manner acceptable to and approved by the ["]Commissioner["].

(F) An emergency abatement or standby plan, has been submitted for the ["]stationary source["] and approved by the ["]Commissioner["] as required by section 22a-174-6.

(G) The owner or operator of any resources recovery facility has submitted to the Commissioner a comprehensive operation and maintenance plan for the premise and received the Commissioner's approval of the plan. The plan shall include equipment maintenance and inspection procedures along with schedules which ensure that all critical elements of air pollution control, combustion efficiency and continuous monitoring systems operate so as to achieve continuous compliance with the requirements of the applicable regulations or permit.

(H) The owner or ["]operator["] of the ["]stationary source["] or ["]modification["] has incorporated ["]Best Available Control Technology["] by complying with the provisions of subparagraph 22a-174-3(c)(1)(G) except as provided in subdivision 22a-174-3(g)(8).

(I) The owner or ["]operator["] of the ["]stationary source["] or ["]modification["] has paid to the ["]Department["] fees in accordance with the permit fee schedule in section 22a-174-26 within forty-five (45) days of receipt of a [proposed final decision] TENTATIVE DETERMINATION FROM the ["]Commissioner["].

(J) The owner or ["]operator["] of the ["]major stationary source["] or the ["]major modification["] has submitted

to the ["]Commissioner["], and received the ["]Commissioner's["] approval of [the plan,] 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 regulations or permit requirements.

(K) The owner or ["]operator["] of the ["]stationary source["] or ["]modification["] has complied with the applicable provisions of subsections (k), (l) [or] AND (m) of section 22a-174-3.

(L) The owner or ["]operator["] operates the ["]premise["] or ["]stationary source["] without causing a violation of any applicable ["]ambient air quality standard["], available Prevention of Significant Deterioration increment listed in Table 3(k)-2 of subsection 22a-174-3(k) or applicable ["]emission limitation["].

(M) The owner or ["]operator["] has completed and submitted a pre-inspection questionnaire which describes the equipment, processes and materials used on forms prescribed by the ["]Department["] or on other media as may be required.

(g)(3) In circumstances where performance tests must be conducted during actual operations, the ["]Commissioner["] may issue a conditional permit to ["]commence["] operations for up to one year which shall be non-renewable. In those instances where a reliable performance test demonstrates that the ["]stationary source["] does not meet all applicable ["]emission limitations["], the ["]Commissioner["] may issue an order to the owner or ["]operator["] to allow continued performance testing of the ["]stationary source["].

(g)(4) ["]Permits to operate["] issued after June 1, 1972 and prior to February 1, 1989 shall be maintained at the site of operation and need not be renewed even if there is an expiration date on the permit except when the ["]Commissioner["] has placed an expiration date on a ["]permit to operate["] issued after April 1, 1986. Notwithstanding the preceding sentence, the ["]Commissioner["] may issue an order requiring the renewal of a ["]permit to operate["] for any ["]source["] which:

(A) Has a significant impact on air quality as defined in subparagraph (c)(1)(B) of section 22a-174-3, and causes or contributes to a violation of an ["]ambient air quality standard["] contained in section 22a-174-24 or applicable Prevention of Significant Deterioration increment listed in Table 3(k)-2 of subsection 22a-174-3(k); or

(B) Has a violation of a ["]maximum allowable stack concentration["] or causes a violation of a ["]hazard limiting value["] pursuant to section 22a-174-29; or

(C) Is required to reduce emissions or otherwise modify its operation as part of a revision to the ["]state implementation plan["] for air quality for an applicable national ["]ambient air quality standard["]; or

(D) Is an ["]incinerator["] or ["]resources recovery facility["]; or

(E) Causes a nuisance due to improper ["]stack["] height; or

(F) Fails to commence operation within eighteen (18) months of the receipt of the ["]permit to operate["] issued in accordance with this subsection.

(g)(5) Notwithstanding the provisions of subdivision 22a-174-3(g)(4) the holder of a ["]permit to operate["] which was issued after April 1, 1986 must apply for the renewal of that permit if the subject permit contains an expiration date at least one hundred twenty (120) days prior to the permit expiration date. A request for renewal of a ["]permit to operate["] under this subdivision must be made in writing and shall consist of a description of any change made to the ["]stationary source["] since the last ["]permit to operate["], or renewal thereof, was issued which would constitute a change in the data provided in the original application or subsequent renewals.

(g)(6) Any ["]person["] who operates or causes the operation of a ["]stationary source["] specified in subsection 22a-174-3(a) of the regulations which were in effect prior to July 1, 1979, the construction of which ["]commenced["] prior to June 1, 1972, but which did not begin operation prior to October 1, 1972, is required to obtain a ["]permit to operate["] from the ["]Commissioner["] in accordance with the requirements of this subsection.

(g)(7) The ["]Commissioner["] shall require that none of the terms and conditions of the ["]permit to operate["] in any way result in an increase in ["]emissions["] of any ["]air pollutant["] federally regulated under the Clean Air Act or an increase in the impact on air quality from the conditions of the ["]permit to construct["].

(g)(8) The ["]Commissioner["] shall not apply the provisions of subparagraph 22a-174-3(g)(2)[(G)](H) to any initial ["]permit to operate["] if the ["]stationary source["] has received a ["]permit to construct["] and complied with the provisions of subparagraph 22a-174-3(c)(1)(G).

(h) Transfer of ["]permit to operate["].

The holder of a ["]permit to construct["] or a ["]permit to operate["] may not transfer it without prior written notification to the ["]Commissioner["]. Each new owner or ["]operator["] or holder of the permit shall be responsible for complying with all applicable regulations and with the conditions of the permit.

(i) Denial, revocation or change in the conditions of a permit.

(i)(1) The ["]Commissioner["] may deny, revoke, or change the conditions of any permit for failure to comply with the terms of subsections (c) or (g) of section 22a-174-3 or the terms of a permit issued under section 22a-174-3.

(i)(2) Notice of denial, revocation or change in the conditions of either a ["]permit to construct["] or a ["]permit to operate["] shall set forth the reasons for the action taken and shall be effective thirty (30) days after the date of service of the notice, unless a hearing is requested prior to the expiration of the thirty (30) day period.

(i)(3) Any ["]person["] considering himself aggrieved by the notice of denial, revocation, or change in the conditions of a permit under this subsection, may consider the notice a written order of violation under subdivision 22a-174-12(b)(2) and may obtain a hearing thereon by filing a written answer and request for a hearing in accordance with subdivision 22a-174-12(b)(5). Filing of the answer and request for the hearing shall postpone the effective date of the notice until conclusion of the hearing and issuance of the decision of the ["]Commissioner["].

(j) Public information and hearing procedures for a STATIONARY SOURCE ["]permit to construct["] or [a "]permit to operate[" "stationary sources"].

(j)(1)[The owner or "operator" of any "stationary source" who is required to obtain a "permit to construct" or a "permit to operate" pursuant to any regulation adopted under section 22a-174 of the Connecticut General Statutes shall publish any notice required in a daily newspaper, as specified by the "Commissioner", in each region in which the "stationary source" is located. The owner or "operator" shall publish any notice within fifteen (15) days of notification by the "Commissioner".]

FOR ANY APPLICATION SUBMITTED TO THE COMMISSIONER PURSUANT TO THIS SECTION, THE PROVISIONS OF SUBPARAGRAPHS (A) AND (B) OF THIS SUBDIVISION SHALL APPLY.

(A) ANY PERSON WHO SUBMITS AN APPLICATION TO THE COMMISSIONER FOR ANY PERMIT PURSUANT TO SECTION 22A-174 OF THE GENERAL STATUTES, EXCEPT AN APPLICATION FOR AUTHORIZATION UNDER A GENERAL PERMIT, SHALL:

(i) 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;

(ii) NO LATER THAN TEN (10) DAYS AFTER THE DATE SUCH APPLICATION IS SUBMITTED, PUBLISH NOTICE OF SUCH APPLICATION IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AFFECTED AREA; AND

(iii) SEND THE COMMISSIONER A CERTIFIED COPY OF SUCH NOTICE AS IT APPEARED IN THE NEWSPAPER NO LATER THAN TWENTY (20) DAYS AFTER THE DATE SUCH NOTICE WAS PUBLISHED.

(B) 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:

(i) THE NAME AND MAILING ADDRESS OF THE APPLICANT AND THE ADDRESS OF THE LOCATION AT WHICH THE PROPOSED ACTIVITY WILL TAKE PLACE;

(ii) THE APPLICATION NUMBER, IF AVAILABLE;

(iii) THE TYPE OF PERMIT SOUGHT, INCLUDING A REFERENCE TO THE APPLICABLE STATUTE OR REGULATION;

(iv) A DESCRIPTION OF THE ACTIVITY FOR WHICH A PERMIT IS SOUGHT;

(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 APPLICANT FROM WHOM INTERESTED PERSONS MAY OBTAIN COPIES OF THE APPLICATION; AND

(vii) A STATEMENT THAT THE APPLICATION IS AVAILABLE FOR INSPECTION AT THE BUREAU OF AIR MANAGEMENT.

(j)(2)[The "Commissioner" shall require the following notices:

(A) Notice of the receipt of an application which has been deemed complete under subdivision 22a-174-3(d)(2) for a "permit to construct" under subsection 22a-174-3(b) or a renewal of a "permit to operate" under subdivision 22a-174-3(g)(4);

(B) Notice of all recommended decisions prepared by the "Department" under subdivision 22a-174-3(d)(5) proposed final decisions approving, denying, modifying or conditionally approving any permit for a "stationary source" or "modification" which is subject to the notice provisions of subparagraph 22a-174-3(j)(2)(A) including information on the opportunity for public comment; and

(C) Notice of all proposed final decisions approving, denying, modifying or conditionally approving any permit for a "stationary source" or "modification" which is subject to the notice provisions of subparagraph 22a-174-3(j)(2)(A).]

FOR ANY APPLICATION PROCESSED BY THE COMMISSIONER PURSUANT TO THIS SECTION, THE PROVISIONS OF SUBPARAGRAPHS (A) AND (B) OF THIS SUBDIVISION SHALL APPLY.

(A) THE COMMISSIONER, AT LEAST THIRTY (30) DAYS BEFORE APPROVING OR DENYING AN APPLICATION UNDER SECTION 22A-174 OF THE GENERAL STATUTES, SHALL PUBLISH, 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 SHALL INCLUDE:

(i) THE NAME AND MAILING ADDRESS OF THE APPLICANT AND THE ADDRESS OF THE LOCATION OF THE PROPOSED ACTIVITY;

(ii) THE APPLICATION NUMBER;

(iii) THE TENTATIVE DECISION REGARDING THE APPLICATION;

(iv) THE TYPE OF PERMIT OR OTHER 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 APPLICANT FROM WHOM INTERESTED PERSONS MAY OBTAIN COPIES OF THE APPLICATION; AND

(vii) 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 CLEAN AIR ACT, FEDERAL CLEAN WATER ACT, OR FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT.

(B) FOR THE PURPOSES OF THIS SUBSECTION, APPLICATION MEANS A REQUEST FOR A LICENSE OR RENEWAL THEREOF, OR FOR ANY PERMIT OR MODIFICATION OF A LICENSE OR PERMIT OR RENEWAL THEREOF IF THE MODIFICATION IS SOUGHT BY THE LICENSEE.

(j)(3) Any ["]person["] may file, within a FIFTEEN (15)-day period following the public notice of a [proposed final decision] TENTATIVE DETERMINATION under subparagraph 22a-174-3(j)(2)(A)[(C)] for a permit application for a ["]stationary source["] or ["]modification["], a written objection setting forth the basis thereof in detail with the ["]Department["] opposing the approvals of the permit in its entirety or requesting that specific conditions be attached to it. The objection may be accompanied by a request for a public hearing.

(j)(4) Following receipt of a request for a public hearing pursuant to subdivision 22a-174-3(j)(3) by twenty-five (25) or more people or by an association representing twenty-five (25) or more members or upon the ["]Commissioner's["] own initiative, the ["]Commissioner["] may, prior to the issuance of the permit for a ["]stationary source["] or ["]modification["], hold a public hearing. A NOTICE OF SUCH PUBLIC HEARING 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 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 the recommendation of the hearing examiner, IF ANY, as to whether to approve, deny or conditionally approve the ISSUANCE OF THE permit. Notice of such decision shall be published [according to subdivisions 22a-174-3(j)(1) and (j)(2)] IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AFFECTED AREA.

(j)(5) [Opportunity for public comment required by subdivisionS (j)(1), (j)(2) or (j)(3) includes as a minimum:

(A) A notice by advertisement in a newspaper of general circulation in the "region" affected of the application for a permit;

(B) Availability for public inspection in the office of the director of air compliance of the information submitted by the owner or "operator" and of the analysis by the "Commissioner" or the "Commissioner's" designee; and

(C) A fifteen (15) day period from the date of the notice required by this subsection for submittal of public comment.

(j)(6)] Any ["]person["] may file, within a thirty (30) day period following the public notice [of receipt of an application for a permit which has been deemed complete under] PUBLISHED PURSUANT TO subparagraph 22a-174-3(j)(2)(B) for a new ["]major stationary source["] or ["]major modification["] or any ["]stationary source["] with a stack height in excess of ["]good engineering practice["], a written objection setting forth the basis thereof in detail with the ["department"] DEPARTMENT opposing the application in its entirety or requesting that

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specific conditions be attached to it. The objection may be accompanied by a request for a public hearing and the ["]Commissioner["] shall honor such request. A NOTICE OF SUCH PUBLIC HEARING 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 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 the recommendation of the hearing examiner, if any, as to whether to approve, deny or conditionally approve the ISSUANCE OF THE permit. Notice of such decision shall be published [according to subdivisions 22a-174-3(j)(1) and (j)(2)] IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AFFECTED AREA. THE REQUIREMENTS OF THIS SUBDIVISION SHALL NOT APPLY TO THE OWNER OR OPERATOR OF A MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION WHICH, WHILE OBTAINING A PERMIT TO CONSTRUCT, OBTAINS INTERNAL OFFSETS PURSUANT TO THE PROVISIONS OF SUBPARAGRAPHS (K)(1)(B) OR (L)(2)(C) OF SECTION 22A-174-3.

(k) Requirements for the Prevention of Significant Deterioration of Air Quality (PSD) Program.

(k)(1) Applicability.

(A) Except as provided in subdivision 22a-174-3(k)(3), the requirements of subsection 22a-174-3(k) apply to the owner or ["]operator["] of a ["]major stationary source["] which is a new ["]major stationary source["] or ["]major modification["] due to ["]emissions["] of a particular ["]criteria air pollutant["] other than a ["]criteria air pollutant["] for which the air quality control region or portion thereof, in which the new ["]major stationary source["] or ["]major modification["] is located is classified as a ["]non-attainment area["].

(B) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (K)(1)(A), THE COMMISSIONER SHALL NOT APPLY THE PROVISIONS OF SUBSECTION 22A-174-3(K) TO THE OWNER OR OPERATOR OF A NEW MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION FOR WHICH:

(i) THE INCREASE IN ALLOWABLE EMISSIONS OF THE PARTICULAR AIR POLLUTANT IS REDUCED WITH INTERNAL OFFSETS AT A RATIO OF AT LEAST 1.3 TO 1.0;

(ii) SUCH INTERNAL OFFSETS HAVE APPROXIMATELY THE SAME QUALITATIVE SIGNIFICANCE FOR PUBLIC HEALTH AND WELFARE AS THAT ATTRIBUTED FROM THE ALLOWABLE EMISSIONS INCREASE; AND

(iii) SUCH INTERNAL OFFSETS MEET THE PROVISIONS OF SUBPARAGRAPHS (A),(B),(D),(E),(F),(G),(H),(I) AND (K) OF SUBDIVISION 22A-174-3(L)(5).

(k)(2) Netting AND INTERNAL OFFSETS.

In determining the applicability of subdivision 22a-174-3(k)(1) the ["]Commissioner["] shall not allow the ["]netting["] of emissions EXCEPT INTERNAL OFFSETS ARE ALLOWED, IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPH (K)(1)(B).

(k)(3) Exemptions.

(A) Notwithstanding the provisions of subdivision 22a-174-3(k)(1), the ["]Commissioner["] shall not apply

the provisions of subdivisions (k)(4) through (k)(6) of section 22a-174-3, inclusive, to the owner or ["]operator["] of a new ["]major stationary source["] or a ["]major modification["] which:

[(A)](i) Received a Prevention of Significant Deterioration permit under federal regulations prior to February 1, 1989; or

[(B)](ii) Is a ["]major modification["] solely because of the use of gaseous fuel which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any ["]federally enforceable[" "]permit to construct["] which was issued after January 6, 1975.

(B) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH 22A-174-3(K)(1)(A), THE COMMISSIONER SHALL NOT APPLY THE PROVISIONS OF SUBSECTION 22A-174-3(K) TO THE OWNER OR OPERATOR OF A NEW MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION OF NITROGEN OXIDES FOR WHICH THE PERMITTED ALLOWABLE EMISSIONS INCREASE OF NITROGEN OXIDES WILL BE LESS THAN FORTY (40) TONS PER YEAR.

(k)(4) Best Available Control Technology.

In addition to the requirements of subsections (a) through (j) inclusive, of section 22a-174-3 the owner or ["]operator["] of a new ["]major stationary source["] or ["]major modification["] subject to this subsection shall install ["]Best Available Control Technology["] as determined by the ["]Commissioner["] for each particular ["]air pollutant["] for which the new ["]major stationary source["] or ["]major modification["] has ["]potential emissions["] equal to or greater than the amount listed in Table 3(k)-1 below. The owner or ["]operator["] of any new ["]major stationary source["] or ["]major modification["] shall make and submit to the ["]Commissioner["], for approval, a ["]BACT["] determination for each ["]air pollutant["], as required by the ["]Commissioner["], including cost estimates of all control options as may be specified by the ["]Commissioner["]. For phased construction projects the ["]Commissioner["] shall review the determination and make modifications as appropriate, at the latest time up to eighteen months prior to the commencement of construction of each independent phase of the project. At that time, the owner or operator may be required to demonstrate the adequacy of any previous determination.

(k)(5) [Increment Consumption for Sulfur Dioxide.

The owner or "operator" of a "new major stationary source" or "major modification" subject to the provisions of subdivision 22a-174-3(k)(1), the "allowable emissions" of which have a significant impact on air quality, shall not cause or contribute to a violation of the maximum allowable increase of sulfur dioxide listed in Table 3(k)-2 below, after the baseline date in any "attainment area" for that "air pollutant". For the purposes of this subdivision, baseline concentration means the "ambient air" sulfur dioxide concentration levels in existence on December 17, 1984.

For the purposes of subsection 22a-174-3(k) in order to determine if the "allowable emissions" of an individual "air pollutant" do not have a significant impact on air quality the amount of "ambient air" impact which will not be considered significant is

less than the amounts listed to Table 3(c)-1 in subdivision 22a-174-3(c)(1)(B).

In determining the increase from the baseline concentration for the subject new "major stationary source" or "major modification", the "Commissioner" shall take into consideration:

(A) "Allowable emissions" from the new "major stationary source" or "major modification" subject to the provisions of subdivision 22a-174-3(k)(1);

(B) "Actual emissions" from all "major stationary sources" which were required to receive a "permit to construct" from the "Commissioner" after January 6, 1975;

(C) Any "modification" with "actual emissions" equal to or greater than fifteen (15) tons per year to a "major stationary source" which was required to receive a "permit to construct" after January 6, 1975 and before December 17, 1984 except that "allowable emissions" will be used if the "modification" was on the applicant's "premise"; and

(D) All "stationary sources" other than "major stationary sources" with "actual emissions" equal to or greater than fifteen (15) tons per year and which were required to receive a "permit to construct" from the "Commissioner" on or after December 17, 1984. The "Commissioner" may consider the "allowable emissions" from "stationary sources" for which a "permit to construct" is pending and which has been deemed complete in accordance with subdivision 22a-174-3(d)(3) in any increment consumption modeling analysis required pursuant to this subsection.

In addition the "Commissioner" may take into consideration decreases in "actual emissions" and "federally enforceable" "allowable emissions" from "sources" located on the applicant's "premise" which occurred on or after December 17, 1984 and any proposed decreases in "actual emissions" and "allowable emissions" which will occur prior to the new "major stationary source" or "major modification" starting operation. For the purpose of calculating "allowable emissions" of a "stationary source" for this subdivision, any physical or operational restriction on the capacity of the "source" to emit a pollutant, including air pollution control equipment, or restrictions on production rates, hours of operation, and types of materials processed, stored or combusted which limit the "maximum rated capacity" shall be treated as part of its design if the limitation or the effect of the limitation on emissions is "federally enforceable".]

BASELINE CONCENTRATION AND DATES.

THE FOLLOWING DEFINITIONS APPLY FOR THE PURPOSES OF SUBDIVISION K(6):

(A) "BASELINE CONCENTRATION" MEANS THE AMBIENT CONCENTRATION OF SULFUR DIOXIDE, NITROGEN DIOXIDE OR PARTICULATE MATTER WHICH EXISTED AT THE TIME OF THE APPLICABLE MINOR SOURCE BASELINE DATE FOR SUCH POLLUTANT. IN DETERMINING SUCH AMBIENT CONCENTRATION, THE COMMISSIONER SHALL INCLUDE THE EFFECTS OF ACTUAL EMISSIONS REPRESENTATIVE OF STATIONARY SOURCES IN EXISTENCE ON THE APPLICABLE MINOR SOURCE BASELINE DATE AND THE EFFECTS OF ALLOWABLE EMISSIONS OF MAJOR STATIONARY SOURCES

WHICH COMMENCED CONSTRUCTION BEFORE THE MAJOR STATIONARY SOURCE BASELINE DATE BUT WERE NOT IN OPERATION BY THE APPLICABLE MINOR SOURCE BASELINE DATE.

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

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

(k)(6) [Increment Consumption for All Other "Air Pollutants".

The owner or "operator" of a "major stationary source" or "major modification" with "potential emissions" equal to or greater than the amount listed in Table 3(k)-1 below, subject to the provisions of subdivision 22a-174-3(k)(1), the "allowable emissions" of which have a significant impact on air quality, shall not cause a violation of the maximum allowable increase of any "air pollutant" listed in Table 3(k)-2 below, after the baseline date in any "attainment area". For the purposes of this subdivision, baseline concentration means the ambient concentration levels of a particular "air pollutant" in existence on the baseline date. For the purposes of subsection 22a-174-3(k) in order to determine if the "allowable emissions" of an individual "air pollutant" do not have a significant impact on air quality the amount of "ambient air" impact which will not be considered significant is less than the amounts listed in Table 3(c)-1 in subparagraph 22a-174-3(c)(1)(B). For the purposes of this subdivision, baseline date means the date on which the first complete application is submitted by a new "major stationary source" or "major modification" of the particular "air pollutant" subject to the provisions of this subsection. In determining the increase from the baseline concentration for the subject "major stationary source" or "major modification", the "Commissioner" shall take into consideration:

(A) "Allowable emissions" from the proposed "major stationary source" or "major modification";

(B) "Actual emissions" from all "major stationary sources" which were required to receive a "permit to construct" from the "Commissioner" after January 6, 1975;

(C) Any "modification" with "actual emissions" equal to or greater than fifteen (15) tons per year to a "major stationary source" which was required to receive a "permit to construct" after January 6, 1975 and before the baseline date except that "allowable emissions" will be used if the "modification" was on the applicant's "premise"; and

(D) All "stationary sources" other than "major stationary sources" with "actual emissions" equal to or greater than fifteen (15) tons per year and which were required to receive a "permit to construct" from the "Commissioner" after the baseline date.

The "Commissioner" may consider the "allowable emissions" from "stationary sources" for which a "permit to construct" is pending and which has deemed complete in accordance with subdivision 22a-174-3(d)(3) in any

increment consumption modeling analysis required pursuant to this subsection.

In addition the "Commissioner" may take into consideration decreases in "actual emissions" and "federally enforceable" "allowable emissions" from "sources" located on the applicant's "premise" which occurred on or after the baseline date and any proposed decreases in "actual emissions" and "allowable emissions" which will occur prior to the new "major stationary source" or "major modification" starting operation. For the purpose of calculating "allowable emissions" of a "stationary source" for this subdivision, any physical or operational restriction on the capacity of the "source" to emit a pollutant, including air pollution control equipment, or restrictions on production rates, hours of operation, and types of materials processed, stored or combusted which limit the "maximum rated capacity" shall be treated as part of its design if the limitation or the effect of the limitation on emissions is "federally enforceable".]

SOURCE IMPACT ANALYSIS.

(A) THE OWNER OR OPERATOR OF A MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION, SUBJECT TO THE REQUIREMENTS OF SUBPARAGRAPH (K)(1)(A) AND WITH ALLOWABLE EMISSIONS WHICH WILL HAVE A SIGNIFICANT IMPACT ON AIR QUALITY, SHALL NOT EXCEED OR CONTRIBUTE TO AN EXCEEDANCE OF THE MAXIMUM ALLOWABLE INCREASE ESTABLISHED IN TABLE 3(K)-2. FOR THE PURPOSES OF THIS SUBSECTION, THE ALLOWABLE EMISSIONS OF AN AIR POLLUTANT WILL NOT HAVE A SIGNIFICANT IMPACT ON AIR QUALITY IF SUCH IMPACT IS LESS THAN THE AMOUNT LISTED IN TABLE 3(C)-1.

(B) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (C), THE APPLICANT FOR A PERMIT SUBJECT TO THIS SUBSECTION SHALL SUBMIT TO THE COMMISSIONER A CALCULATION OF THE INCREASE IN AMBIENT CONCENTRATIONS ABOVE THE BASELINE CONCENTRATION. SUCH CALCULATION SHALL INCLUDE THE FOLLOWING:

(i) ALLOWABLE EMISSIONS FROM THE PROPOSED MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION;

(ii) ACTUAL EMISSIONS FROM ALL MAJOR STATIONARY SOURCES WHICH WERE REQUIRED TO OBTAIN A PERMIT TO CONSTRUCT AFTER THE MAJOR SOURCE BASELINE DATE;

(iii) ACTUAL EMISSIONS FROM ALL MODIFICATIONS TO A MAJOR STATIONARY SOURCE, WHERE SUCH MODIFICATION HAD ACTUAL EMISSIONS EQUAL TO OR GREATER THAN FIFTEEN (15) TONS PER YEAR AND WAS REQUIRED TO OBTAIN A PERMIT TO CONSTRUCT AFTER THE MAJOR SOURCE BASELINE DATE AND BEFORE THE MINOR SOURCE BASELINE DATE. THE APPLICANT SHALL USE ALLOWABLE EMISSIONS INSTEAD OF ACTUAL EMISSIONS IF SUCH MODIFICATION WAS LOCATED ON THE APPLICANT'S PREMISE;

(iv) ACTUAL EMISSIONS FROM ALL STATIONARY SOURCES, OTHER THAN MAJOR STATIONARY SOURCES, WITH ACTUAL EMISSIONS EQUAL TO OR GREATER THAN FIFTEEN (15) TONS PER YEAR AND WHICH WERE REQUIRED TO OBTAIN A PERMIT TO CONSTRUCT AFTER THE MINOR SOURCE BASELINE DATE. THE

APPLICANT SHALL INCLUDE IN THE CALCULATIONS ALLOWABLE EMISSIONS FOR ANY STATIONARY SOURCE FOR WHICH A PERMIT TO CONSTRUCT IS PENDING AND WHICH THE COMMISSIONER HAS DETERMINED IS SUFFICIENT PURSUANT TO SUBDIVISION (D)(3); AND

(v) REDUCTIONS IN ACTUAL EMISSIONS AND FEDERALLY ENFORCEABLE ALLOWABLE EMISSIONS FROM SOURCES LOCATED ON THE APPLICANT'S PREMISE WHICH OCCURRED ON OR AFTER THE MINOR SOURCE BASELINE DATE.

(C) IN DETERMINING THE INCREASE FROM THE BASELINE CONCENTRATION FOR THE NEW MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION, THE COMMISSIONER SHALL TAKE INTO CONSIDERATION THE INFORMATION SUBMITTED PURSUANT TO SUBPARAGRAPH (K)(6)(B). IN ADDITION, THE COMMISSIONER MAY CONSIDER ANY PROPOSED REDUCTIONS IN ACTUAL EMISSIONS AND ALLOWABLE EMISSIONS WHICH WILL OCCUR PRIOR TO THE OPERATION OF THE PROPOSED MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION.

(D) FOR THE PURPOSE OF CALCULATING ALLOWABLE EMISSIONS OF A STATIONARY SOURCE FOR THIS SUBDIVISION, ANY PHYSICAL OR OPERATIONAL RESTRICTION ON THE CAPACITY OF THE SOURCE TO EMIT A POLLUTANT, INCLUDING AIR POLLUTION CONTROL EQUIPMENT, OR RESTRICTIONS ON PRODUCTION RATES, HOURS OF OPERATION, AND TYPES OF MATERIALS PROCESSED, STORED OR COMBUSTED WHICH LIMIT THE MAXIMUM RATED CAPACITY SHALL BE TREATED AS PART OF ITS DESIGN IF THE LIMITATION OR THE EFFECT OF THE LIMITATION ON EMISSIONS IS FEDERALLY ENFORCEABLE.

(k)(7) Monitoring

(A) Any application for a permit under subsection (k) shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(i) For the subject source, each pollutant that it has potential emission in excess of the amount listed in Table 3(k)-1 below.

(ii) For the modification, each pollutant for which it would result in an emissions increase in excess of the amount listed in Table 3(k)-1 below.

(iii) is listed in Section 22a-174-24 or is a National ["]Ambient Air Quality Standard["].

(B) For any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Commissioner determines is necessary to assess ambient air quality for that pollutant in any area that the emissions for that pollutant would affect.

(C) For any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, that analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase listed in Table 3(k)-2 below.

(D) In general, the continuous air monitoring data that is required shall have been gathered over a period of one year and shall represent the year preceding receipt of the application, except that, if the Commissioner determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter that one year (but not to be less than four months), that data that is required shall have been gathered over at least that shorter period.

(E) The owner or operator of a major stationary source or major modification subject to this subsection shall after construction of the stationary source or modification, conduct such ambient monitoring as the Commissioner determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(F) The owner or operator shall meet the requirements of Title 40 Code of Federal Regulations Part 58, Appendix B during the operation of monitoring for purposes of satisfying this subsection.

(k)(8) Additional Impact Analyses.

The owner or ["]operator["] of the new ["]major stationary source["] or ["]major modification["] shall, as part of the application, provide the ["]Commissioner["] with:

(A) An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the construction and operation of the new ["]major stationary source["] or ["]major modification["] and of the general commercial, residential, industrial and other associated growth. The owner or ["]operator["] need not provide an analysis of the impact on vegetation having no significant commercial or residential value; and

(B) An analysis, based upon methods approved by the ["]Commissioner["], of the ["]ambient air["] quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the new ["]major stationary source["] or ["]major modification["].

(k)(9) Source Information.

The owner or ["]operator["] of the new ["]major stationary source["] or ["]major modification["] shall submit all information necessary to perform any analysis or make any determination under this subsection. Such information shall include, but may not be limited to:

(A) A description of the nature, location, design capacity and typical operating schedule of the new ["]major stationary source["] or ["]major modification["], including specifications and drawings showing its design and plant layout;

(B) A schedule for construction of the new ["]major stationary source["] or ["]major modification["]; and

(C) A detailed description as to what system of continuous emission reduction is planned for the new ["]major stationary source["] or ["]major modification["],

["]emission["] estimates, or any other information necessary to determine that the ["]Best Available Control Technology["] would be applied.

(k)(10) Additional Information.

Upon the request of the ["]Commissioner["], the owner or ["]operator["] of the new ["]major stationary source["] or ["]major modification["] shall also provide information on:

(A) The ["]ambient air["] quality impact of the new ["]major stationary source["] or ["]major modification["], including meteorological and topographical data necessary to estimate such impact; and

(B) The ["]ambient air["] quality impacts and the nature and extent of general commercial, residential, industrial and other growth which has occurred since August 7, 1977 in the area the new ["]major stationary source["] or ["]major modification["] would affect. [In the event that the August 7, 1977 reference date is changed by federal, judicial or administrative action, the applicant shall apply that date which is valid under federal law.]

(k)(11) Additional Source Obligations.

(A) The granting of a permit under this subsection shall not relieve any owner or ["]operator["] of the responsibility to comply fully with applicable provisions of these regulations and any other requirements under local, state or federal law.

(B) At such time that a particular ["]stationary source["] or ["]modification["] becomes a ["]major stationary source["] or ["]major modification["] solely by virtue of a relaxation in any enforceable limitation if such enforceable limitation was established after August 7,1980, on the capacity of the ["]stationary source["] or ["]modification["] otherwise to emit a particular ["]air pollutant["], such as a restriction on the hours of operation, then the requirements of this subsection shall apply to the ["]stationary source["] or ["]modification["] as though construction had not yet ["]commenced["] on the ["]stationary source["] or ["]modification["].

(k)(12) Additional Public Participation Requirements.

In addition to the PUBLIC PARTICIPATION requirements of subsection 22a-174-3(j)[, the "Commissioner" shall require additional public participation activities. This includes but is not limited to requiring the applicant to]:

(A) [Notify the public, by advertisement in a newspaper of general circulation in each region in which the new "major stationary source" or "major modification" would be constructed, of the application, the "Department's" recommended decision on the subject application under subdivision 22a-174-3(d)(5) and any other] THE COMMISSIONER SHALL INCLUDE IN THE NOTICE PUBLISHED PURSUANT TO SUBPARAGRAPH 22A-174-3(J)(2)(A) ANY support material the ["]Commissioner["] deems appropriate, the degree of Prevention of Significant Deterioration increment consumption that is expected from the new ["]major stationary source["] or ["]major

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modification["], and the opportunity for comment at a public hearing, if one is requested, as well as written comment; and

(B) [Send] THE APPLICANT SHALL SEND a copy of the notice required under subparagraph [22a-173-3(k)(12)(A)] 22A-174-3(K)(12)(A) to:

(i) the ["]Administrator["] through the Boston regional office of the U.S. Environmental Protection Agency;

(ii) the chief executive of the municipality where the source or modification would be located;

(iii) the appropriate Connecticut Regional Planning Agency;

(iv) any ["]Indian Governing Body["] whose lands may be affected by emissions from the new ["]major stationary source["] or ["]major modification["]; and

(v) the Director of the air pollution control program in adjoining states.

Table 3(k)-1

EMISSION LEVELS

Air Pollutant	TONS PER YEAR
Carbon monoxide	100
Nitrogen oxides	[40] 25
Sulfur dioxide	40
Particulate matter	25
PM-10	15
Volatile organic compounds	[40] 25
Hydrogen sulfide (H_2S)	10
Total reduced sulfur (including H_2S)	10
Reduced sulfur compounds (including H_2S)	10
Sulfuric acid mist	7
Fluorides	3
Vinyl chloride	1
Lead	0.6
Mercury	0.1
Asbestos	0.007
Beryllium	0.0004
[Any other "air pollutant" federally regulated under the Clean Air Act]	0.0

MUNICIPAL WASTE COMBUSTOR ORGANICS (MEASURED AS TOTAL TETRA-THROUGH OCTA-CHLORINATED DIBENZO-P-DIOXINS AND DIBENZOFURANS)	3.5×10^{-6}
MUNICIPAL WASTE COMBUSTOR METALS (MEASURED AS PARTICULATE MATTER)	15
MUNICIPAL WASTE COMBUSTOR ACID GASES (MEASURED AS SULFUR DIOXIDE AND HYDROGEN CHLORIDE)	40

Table 3(k)-2

MAXIMUM ALLOWABLE INCREASE ABOVE BASELINE CONCENTRATION

Air Pollutant	PSD Increment (ug/m^3)
Total Suspended Particulate	
Annual Geometric Mean	19
24-Hour Average	37
Sulfur Dioxide	
Annual [Geometric] ARITHMETIC Mean	20
24-Hour Average	91
3-Hour Average	512
NITROGEN DIOXIDE	
ANNUAL ARITHMETIC MEAN	25

(l) PERMIT REQUIREMENTS FOR ["]Non-attainment["] areas.

(l)(1) Applicability.

[For the purposes of this subsection any "stationary source" subject to the provisions of subdivision 22a-174-3(b)(4) will be considered a new "stationary source". For the purposes of this subsection, the "Commissioner" shall use the first application deemed complete by the "Commissioner" under subdivision 22a-174-3(d)(2) for a particular project to determine if the subject "stationary source" is a new "major stationary source" or "major modification". This provision applies even if the applicant withdraws and resubmits the application unless the "Commissioner" determines that the resubmitted application is for a different project.]

Except as provided in subdivision 22a-174-3(l)(2), the owner or ["]operator["] of any new ["]major stationary source["] or ["]major modification["] with respect to any ["]non-attainment["] ["]air pollutant["] shall comply with the provisions of this subsection for any new ["]major stationary source["] or ["]major modification["] which:

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

(B) Is located in an ["]attainment area["] or ["]unclassifiable area["], but the ["]allowable

emissions["] of the applicable ["]non-attainment["] ["]air pollutant["] from the new ["]major stationary source["] or ["]major modification["] would cause or exacerbate a violation of a national ["]ambient air quality standard["] for such ["]air pollutant["] in an adjacent ["]non-attainment area["]. In order for a ["]stationary source["] to not exacerbate a violation of a national ["]ambient air quality standard["] its air quality impact resulting from the ["]allowable emissions["] of the applicable ["]non-attainment[" "]air pollutant["] must not be significant as defined in subparagraph 22a-174-3(c)(1)(B). For the purpose of calculating ["]allowable emissions["] of a ["]stationary source["] for this subparagraph any physical or operational restriction on the capacity of the source to emit a pollutant, including air pollution control equipment, or restrictions on production rates, hours of operation, and types of materials processed, stored or combusted which limit the ["]maximum rated capacity["] shall be treated as part of its design if the limitation or the effect of the limitation on emissions is ["]federally enforceable ["].; OR

(C) IS LOCATED IN A SERIOUS OR SEVERE NON-ATTAINMENT AREA FOR OZONE AND WHICH IS A MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION OF VOLATILE ORGANIC COMPOUNDS, OR A MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION OF NITROGEN OXIDES.

(1)(2) Exemptions.

Notwithstanding the provisions of subdivision 22a-174-3(l)(1), the ["]Commissioner["] shall not apply:

(A) The provisions of this subsection to any ["]major modification["] which is a ["]modification["] solely because of the use of gaseous fuel which the ["]stationary source["] was capable of accommodating before December 21, 1976, unless such change would be prohibited under any ["]federally enforceable["] ["]permit to construct["] which was issued after December 21, 1976; [or]

(B) [The provisions of subdivision 22a-174-3(l)(5) to any "non-attainment" "air pollutant" for which the "Commissioner" has submitted an approved "state implementation plan" which demonstrates "attainment" by the deadline of the Federal Clean Air Act and expressly identifies and quantifies the "emissions" of any such "air pollutant" which will be allowed to result from construction and operation of new "major stationary source" or "major modifications" which would be subject to this subsection.]

THE PROVISIONS OF SUBDIVISION (L)(5) OF THIS SECTION TO A NEW MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION WHICH IS LOCATED IN A ZONE WITHIN THE NON-ATTAINMENT AREA, IDENTIFIED BY THE ADMINISTRATOR, IN CONSULTATION WITH THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, AS A ZONE TO WHICH ECONOMIC DEVELOPMENT SHOULD BE TARGETED, PROVIDED THAT EMISSIONS OF SUCH POLLUTANT RESULTING FROM THE PROPOSED NEW OR MODIFIED MAJOR STATIONARY SOURCE WILL NOT CAUSE OR CONTRIBUTE TO EMISSIONS LEVELS WHICH EXCEED THE

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ALLOWANCE PERMITTED BY THE STATE IMPLEMENTATION PLAN PURSUANT TO SECTION 173(A)(1)(B) OF THE CLEAN AIR ACT; OR

(C) THE PROVISIONS OF THIS SUBSECTION TO THE OWNER OR OPERATOR OF A NEW MAJOR STATIONARY SOURCE OR A MAJOR MODIFICATION FOR WHICH:

(i) THE EXISTING PREMISE HAS POTENTIAL EMISSIONS OF LESS THAN ONE HUNDRED (100) TONS PER YEAR FOR THE INDIVIDUAL AIR POLLUTANT;

(ii) THE INCREASE IN PERMITTED ALLOWABLE EMISSIONS OF THE NON-ATTAINMENT AIR POLLUTANT WILL BE REDUCED WITH INTERNAL OFFSETS AT A RATIO OF AT LEAST 1.3 TO 1.0;

(iii) SUCH INTERNAL OFFSETS HAVE APPROXIMATELY THE SAME QUALITATIVE SIGNIFICANCE FOR PUBLIC HEALTH AND WELFARE AS THAT ATTRIBUTED FROM THE ALLOWABLE EMISSIONS INCREASE; AND

(iv) SUCH INTERNAL OFFSETS MEET THE PROVISIONS OF SUBPARAGRAPHS (A),(B),(D),(E),(F),(G),(H),(I) AND (K) OF SUBDIVISION 22A-174-3(L)(5).

(l)(3) Analysis of alternatives.

The owner or ["]operator["] of a ["]stationary source["] subject to subsection 22a-174-3(l), shall provide an analysis of alternative sites, sizes, production processes, and environmental control techniques which are available and reasonable for such proposed ["]stationary source["] or ["]modification.["] Such analysis [shall be performed with respect to ozone and carbon monoxide and] shall demonstrate that the benefits of the proposed ["]stationary source["] significantly outweigh the environmental and social costs imposed as a result of its location, construction or ["]modification.["] The owner or ["]operator["] shall submit such analysis prior to the issuance of any ["]permit to construct["] under subsections (b) and (c) of section 22a-174-3.

(l)(4) Control technology review.

The ["]Commissioner["] shall not grant a permit under this section unless the ["]Commissioner["] determines that the owner or ["]operator["] of a new ["]major stationary source["] or major modification subject to this subsection will install ["]air pollution["] control technology which complies with the ["]Commissioner's["] determination of ["]Lowest Achievable Emission Rate[" "](LAER)["] for each ["]non-attainment["] ["]air pollutant["] with ["]potential emissions["] in excess of the amount listed in Table 3(k)-1 of subsection 22a-174-3(k). The ["]Commissioner["] shall only require ["]LAER["] for the portion of the ["]premise["] for which the subject application has been made. The owner or ["]operator["] of any new ["]major stationary source["] or ["]major modification["] shall make and submit to the ["]Commissioner["], for approval, a ["]LAER["] determination for each ["]air pollutant["], as required by the ["]Commissioner["], including [costs] COST estimates of all control options as may be specified by the ["]Commissioner["]. However, if the ["]premise["] is ["]modified["] intermittently and any of these intermittent ["]modifications["] have not previously been subject to the requirements under this subdivision, the ["]Commissioner["] shall consider the stage of construction of each such intermittent ["]modification["] and the ability of the ["]stationary source["] to install additional control equipment at the time the

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["]premise["] becomes subject to the requirements of this subsection.

(A) In no event shall the specified ["]LAER["] result in the ["]emission["] of any ["]pollutant["] in excess of the amount allowable under the applicable federal standards for new ["]stationary sources["] under Title 40 of the Code of Federal Regulations Part 60 and Part 61, as from time to time may be amended.

(B) The requirement for the ["]LAER["] shall apply to a new ["]major stationary source["] or ["]major modification["] subject to the provisions of this subsection regardless of its location.

(C) FOR EACH NON-ATTAINMENT AIR POLLUTANT FOR WHICH A NEW STATIONARY SOURCE OR MODIFICATION IS A NEW MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION, THE OWNER OR OPERATOR OF SUCH SOURCE SHALL BE SUBJECT TO BACT INSTEAD OF LAER FOR SUCH AIR POLLUTANT IF THE CONDITIONS LISTED IN ITEMS (ii), (iii) AND (iv) OF SUBPARAGRAPH (L)(2)(C) ARE MET. IN ADDITION, IF SUCH CONDITIONS ARE MET THEN THE NEW MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION SHALL NOT BE SUBJECT TO ANY PART OF SUBDIVISION (L)(5) THAT IS NOT OTHERWISE LISTED IN ITEM (iv) OF SUBPARAGRAPH (L)(2)(C).

(1)(5) OFFSETTING EMISSION REDUCTIONS.[Emission offsets.]

Prior to the commencement of operation the ["]owner or operator["] of any new ["]major stationary source["] or ["]major modification["] SUBJECT TO THIS SUBDIVISION shall provide reductions of ["]actual emissions["] from existing ["]stationary sources[",] sufficient to offset the PROPOSED ["]allowable emissions["] [from the] INCREASE FOR EACH INDIVIDUAL NON-ATTAINMENT AIR POLLUTANT FOR WHICH THE NEW STATIONARY SOURCE OR MODIFICATION IS A new ["]major stationary source["] or ["]major modification["]. THE COMMISSIONER SHALL NOT GRANT A PERMIT FOR A SOURCE SUBJECT TO THIS SUBDIVISION UNLESS SUCH EMISSION REDUCTIONS MEET ALL PROVISIONS OF SUBPARAGRAPHS (A) THROUGH (L) INCLUSIVE. [The "Commissioner" may allow the use of reductions obtained in the previous two (2) years unless the "Commissioner", in the permit, deems another period more representative, but in no event shall such period be earlier than the design year of the applicable "state implementation plan" for air quality.]

For the purpose of calculating ["]allowable emissions["] of a ["]stationary source["] for this subdivision any physical or operational restriction on the capacity of the ["]source["] to emit a pollutant, including air pollution control equipment, or restrictions on production rates, hours of operation, and types of materials processed, stored or combusted which limit the ["]maximum rated capacity["] shall be treated as part of its design if the limitation or the effect of the limitation on emissions is ["]federally enforceable["].

(A) THE EMISSION REDUCTIONS MUST OCCUR IN THE TWO YEAR PERIOD PRIOR TO THE DATE THAT THE NEW STATIONARY SOURCE OR MODIFICATION BECOMES OPERATIONAL AND BEGINS TO EMIT ANY POLLUTANT. THE COMMISSIONER MAY ALLOW OR REQUIRE THE USE OF ANOTHER PERIOD WHICH IS DEEMED MORE REPRESENTATIVE, BUT IN NO EVENT SHALL SUCH PERIOD BEGIN EARLIER THAN JANUARY 1, 1990.

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(B) [(A)]THE EMISSION REDUCTIONS MUST NOT BE REQUIRED BY ANY OF THE FOLLOWING:

(i) THE CLEAN AIR ACT;

(ii) A FEDERALLY ENFORCEABLE PERMIT OR ORDER;

(iii) THE STATE IMPLEMENTATION PLAN; OR

(iv) [Offset credit is allowed only for "emission" reductions which otherwise would not be accomplished as a result of] the regulations OR STATUTES in effect at the time the application for a ["]permit to construct["] is deemed [complete] SUFFICIENT under subdivision 22a-174-3(d)(2), notwithstanding that such reductions may have qualified as offsets at some earlier time. [No offset credit is available if the effect of an "emission" reduction is simply to bring a "stationary source" into compliance with regulations adopted under section 22a-174 of the General Statutes.]

(C) [(B)] The owner or ["]operator["] of the new ["]major stationary source["] or ["]major modification["] may propose [offsets which involve] EMISSION reductions from ["]stationary sources["] controlled by that owner or ["]operator["], or [which involve] EMISSION reductions from ["]stationary sources["] controlled by others.

(D) [(C)] The emission reduction [committed to] must be incorporated into a permit or other order of the ["]Commissioner["], must be ["]federally enforceable["] WHEN THE PERMIT TO CONSTRUCT FOR THE NEW MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION IS ISSUED, and must [be accomplished] OCCUR by the time the proposed ["]stationary source["] is to ["]commence["] operation.

[(D) Connecticut or any political subdivision thereof may commit to reducing "emissions" from existing "sources" to sufficiently outweigh the impact of the proposed new "major stationary source" or "major modification. Such commitment must be part of the "state implementation plan" approved by the "Administrator" which demonstrates "attainment" by the deadlines set forth by the"Administrator". For such emission offsets, several different new "major stationary sources" or "major modifications" may be allowed to construct as a result of a general "state implementation plan" revision.

(E) If the emission reduction committed to is in excess of the minimum required to produce the necessary reduction which would authorize construction, the excess reduction in "actual emissions" will be eligible for consideration as a future offset for the applicant or subsequent holder of such offset rights for up to ten (10) years.]

(E) [(F)] [Emission offsets must be greater than one-to-one and] THE EMISSION REDUCTIONS, IN CONJUNCTION WITH THE PROPOSED EMISSIONS INCREASE, must produce a net air quality benefit. IN DETERMINING THE NET AIR QUALITY BENEFIT, THE COMMISSIONER MAY CONSIDER EMISSIONS ON AN HOURLY, DAILY, SEASONAL OR ANNUAL BASIS. For carbon monoxide, or ["]particulate matter["], the net air quality benefits determined by the use of atmospheric

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modeling procedures approved by the ["]Commissioner["] and the ["]Administrator["]. Upon the request of the ["]Commissioner["], the owner or ["]operator["] of any new ["]major stationary source["] or ["]major modification["] shall make and submit to the ["]Commissioner["], for approval, a net air quality benefit determination for each ["]air pollutant["], as required by permit or order of the ["]Commissioner["]. SUCH DETERMINATION SHALL INCLUDE ALL INCREASES AND DECREASES OF EMISSIONS FROM STATIONARY SOURCES AT ANY PREMISE PROVIDING THE EMISSION REDUCTIONS FOR SUCH OFFSETS.

[(G) For a new "major stationary source" or "major modification", otherwise subject to the provision of subsection 22a-174-3(l) "emission" offsets of the applicable "non-attainment" "air pollutant" are not required if:

(i) The subject new "major stationary source" or "major modification" is not required to obtain offsets under Title 40 Code of Federal Regulations Part 51.18 as specified in the Federal Register of August 7,1980; or

(ii) after the application of "LAER" the "potential emissions" of the applicable "non-attainment" "air pollutant" from a new "stationary source" are less than one hundred (100) tons per year; or

(iii) after the application of "LAER" the "potential emissions" of the applicable "non-attainment" "air pollutant" from a "modification" are less than the level listed in Table 3(k)-1.]

(F) [(H)] The [offsets] EMISSION REDUCTIONS must be [calculated] BASED on [a] THE pounds per hour ["]allowable emissions["] [basis for] INCREASE FROM the new ["]major stationary source["] or ["]major modification["]. The ["]Commissioner["] shall consider other averaging periods, e.g., tons per year and pounds per day, in addition to the pounds per hour basis to carry out the intent of this subdivision.

(G) [(I)] The reductions must come from the emissions inventory maintained by the ["]Commissioner["], or they must otherwise be approved by the ["]Commissioner["] and must meet all other criteria specified in subsection 22a-174-3(l).

(H) EMISSION REDUCTIONS RESULTING FROM THE SHUT DOWN OR CURTAILMENT OF PRODUCTION OR OPERATING HOURS AT AN EXISTING SOURCE MAY ONLY BE USED TO OFFSET EMISSION INCREASES IF SUCH REDUCTIONS OCCUR AFTER NOVEMBER 15, 1990 AND THE ADMINISTRATOR HAS NOT ISSUED THE STATE ANY NOTICE RESTRICTING THE USE OF SUCH EMISSION REDUCTIONS. [The "Commissioner" shall allow as offset credit reductions resulting from the shutdown or curtailment in production or hours of operation of existing "stationary sources" or equipment provided that the work force to be affected has been notified of the proposed shutdown or curtailment. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emissions offset credits. However, where an

applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one year prior to the date of the permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment credit for such shutdown or curtailment may be applied to offset emissions from the new source.]

(I)[(J)] [Only intrapollutant emission offsets will be acceptable, e.g., particulates for particulates.] EMISSION REDUCTIONS OF A PARTICULAR POLLUTANT MAY ONLY BE USED TO OFFSET INCREASES IN THE SAME POLLUTANT, SUCH AS VOLATILE ORGANIC COMPOUNDS FOR VOLATILE ORGANIC COMPOUNDS. IN NO EVENT SHALL REDUCTIONS OF PERCHLOROETHYLENE OR THE EXEMPT VOLATILE ORGANIC COMPOUNDS LISTED IN TABLE 1(A)-1 OF SECTION 22A-174-1 BE USED TO OFFSET VOLATILE ORGANIC COMPOUNDS.

[(K) Offsets for all "pollutants" must come from the Connecticut portion of the "region" in which the proposed new "major stationary source" or "major modification" is located except that offsets for "volatile organic compounds" may come from anywhere in the state.]

(J) THE EMISSION REDUCTIONS MUST BE OBTAINED FROM EITHER:

(i) SOURCES IN THE SAME NON-ATTAINMENT AREA; OR

(ii) FOR VOLATILE ORGANIC COMPOUNDS OR NITROGEN OXIDES, SOURCES IN A DIFFERENT NON-ATTAINMENT AREA WHERE, UNDER THE CLEAN AIR ACT, SUCH AREA HAS AN EQUAL OR HIGHER NON-ATTAINMENT CLASSIFICATION THAN THE AREA IN WHICH THE NEW OR MODIFIED SOURCE WOULD BE LOCATED, AND EMISSIONS FROM SUCH AREA CONTRIBUTE TO A VIOLATION OF A NATIONAL AMBIENT AIR QUALITY STANDARD IN THE NON-ATTAINMENT AREA IN WHICH THE PROPOSED NEW OR MODIFIED SOURCE WOULD BE LOCATED.

(K) [(L)] Offsets for the applicable ["]non-attainment["] ["]air pollutant["] must be from reductions in ["]actual emissions["]. [, from "sources" having an impact on the same area as the impact from the new "major stationary source" or "major modification" except that offsets for "volatile organic compounds" may be from anywhere in the State.]

(L) EMISSION REDUCTIONS OF ACTUAL EMISSIONS SHALL OFFSET EMISSION INCREASES OF ALLOWABLE EMISSIONS AT A RATIO GREATER THAN ONE TO ONE. IN ADDITION THE RATIO FOR VOLATILE ORGANIC COMPOUNDS OR NITROGEN OXIDES SHALL BE:

(i) AT LEAST 1.3 TO 1 IN ANY SEVERE NON-ATTAINMENT AREA FOR OZONE; AND

(ii) AT LEAST 1.2 TO 1 IN ANY SERIOUS NON-ATTAINMENT AREA FOR OZONE.

(l)(6) ["]Source["] obligation.

(A) The owner or ["]operator["] of the proposed new ["]major stationary source["] or ["]major modification["] subject to the provisions of subsection 22a-174-3(l) must demonstrate that all ["]stationary sources["] owned,

operated or controlled by him in Connecticut are in compliance, or are on a ["]federally enforceable["] schedule of compliance, with all applicable ["]emission limitations["] and standards.

(B) [In addition, the] THE owner or ["]operator["] of the proposed new ["]major stationary source["] or ["]major modification["] must demonstrate that all enforcement orders for ["]stationary sources["] in Connecticut owned, operated or controlled by him are on the most expeditious compliance schedule practicable. Where practicable, a more expeditious compliance schedule shall be required by the ["]Commissioner["] as a condition of the permit for the new ["]major stationary source["] or ["]major modification["].

(l)(7) Public participation.

[The owners or "operator" of a new "major stationary source" or "major modification" subject to the provisions of subsection 22a-174-3(l) shall comply with the public participation requirements set forth in subsection 22a-174-3(j).]

IN ADDITION TO THE PUBLIC PARTICIPATION REQUIREMENTS OF SUBSECTION 22A-174-3(J) THE PROVISIONS OF SUBPARAGRAPHS A AND B SHALL APPLY TO ANY SOURCE SUBJECTED TO THIS SUBSECTION:

(A) THE COMMISSIONER SHALL INCLUDE IN THE NOTICE PUBLISHED PURSUANT TO SUBPARAGRAPH 22A-174-3(J)(2)(A) ANY SUPPORT MATERIAL THE COMMISSIONER DEEMS APPROPRIATE, THE AMOUNT AND LOCATION OF EMISSIONS REDUCTIONS THAT WILL OFFSET THE POTENTIAL EMISSIONS INCREASE FROM THE NEW SOURCE OR MODIFICATION, THE DETERMINATION OF LAER, AND THE OPPORTUNITY FOR COMMENT AT A PUBLIC HEARING, IF ONE IS REQUESTED, AS WELL AS WRITTEN PUBLIC COMMENT; AND

(B) THE APPLICANT SHALL SEND A COPY OF THE NOTICE REQUIRED UNDER SUBPARAGRAPH 22A-174-3(L)(7)(A) TO:

(i) THE ADMINISTRATOR THROUGH THE BOSTON REGIONAL OFFICE OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY;

(ii) THE CHIEF EXECUTIVE OF THE MUNICIPALITY WHERE THE SOURCE OR MODIFICATION WOULD BE LOCATED;

(iii) THE APPROPRIATE CONNECTICUT REGIONAL PLANNING AGENCY;

(iv) ANY INDIAN GOVERNING BODY WHOSE LANDS MAY BE AFFECTED BY EMISSIONS FROM THE NEW MAJOR STATIONARY SOURCE OR MAJOR MODIFICATION; AND

(v) THE DIRECTOR OF THE AIR POLLUTION CONTROL PROGRAM IN ADJOINING STATES;

(l)(8) Additional source obligations.

(A) The granting of a permit under subsection 22a-174-3(l) shall not relieve any owner or ["]operator["] of the responsibility to comply fully with applicable provisions of regulations adopted under section 22a-174 of the CONNECTICUT General Statutes and any other requirements under local, state or federal law; and

(B) At such time that a particular new ["]stationary source["] or ["]modification["] becomes a ["]major stationary source["] or ["]major modification["] solely by virtue of a relaxation in any limitation which was established after August 7, 1980, on the capacity of the ["]stationary source["] or ["]modification["] otherwise to emit a particular pollutant, such as a restriction on the hours of operation, then the requirements of subsection 22a-174-3(l) shall apply to the ["]stationary source["] or ["]modification["] as though construction had not yet ["]commenced["] on the ["]stationary source["] or ["]modification["].

(m) Additional permit requirements for hazardous air pollutants

(1) In addition to determining that the owner or ["]operator["] of a ["]stationary source["] or ["]modification["] who is required to apply for a permit and who obtains a permit under either subsection (b) or (f) after the effective date of this subsection complies with the applicable provisions of subsections (a)through (l) inclusive, the ["]Commissioner["] shall not grant any permit under this section unless he also finds that the operation of that ["]source["] will not exceed any applicable ["]Maximum Allowable Stack Concentration["] for any ["]hazardous air pollutant["] at the ["]discharge point.["]

(2) In determining whether the owner or ["]operator["] of a ["]stationary source["] or ["]modification["] complies with the provisions of subdivision (m)(1), the ["]Commissioner["] shall use the ["]HLV's["] listed in either Table 29-1, 29-2, or 29-3 and the procedures specified in section 22a-174-29.

(3) The provisions of this subsection do not apply to any ["]criteria air pollutant["] except lead.

(4) The ["]Commissioner["] shall not apply the provisions of this subsection to the owner or ["]operator["] of any ["]stationary source["] who applies for a permit under these regulations prior to March 1, 1986 and receives a notice of a [complete] SUFFICIENT application prior to the effective date of this subsection or to any other owner or ["]operator["] who receives a permit under these regulations prior to the effective date of this subsection.

STATEMENT OF PURPOSE: To amend the requirements for obtaining a permit for the construction or modification of a source of air pollution consistent with the requirements of the Clean Air Act Amendments of 1990.

CERTIFICATION
R-39 REV. 1/77

Be it known that the foregoing:

[X] Regulations [ ] Emergency Regulations

Are:

[ ] Adopted [X] Amended as hereinabove stated [ ] Repealed

By the aforesaid agency pursuant to:

[X] Section 22a-174 of the General Statutes.

[ ] Section _____ of the General Statutes, as amended by Public Act No. _____ of the _____ Public Acts.

[ ] Public Act No. _____ of the Public Acts.

[ ] publication in the Connecticut Law Journal on December 8, 19 92 of the notice of the proposal to:

[ ] Adopt [X] Amend [ ] Repeal such regulations

(If applicable): [X] And the holding of an advertised public hearing on 5th, 6th &7th day of January 19 93

WHEREFORE, the foregoing regulations are hereby:

[ ] Adopted [X] Amended as hereinabove stated [ ] Repealed

Effective:

[X] When filed with the Secretary of the State.

(OR)

[ ] The _____ day of _____ 19____.

In Witness Whereof:	DATE 1/11/94	SIGNED *(Head of Board, Agency or Commission)* Timothy R. C. Kenny	OFFICIAL TITLE, DULY AUTHORIZED Commissioner
Approved by the Attorney General as to legal sufficiency in accordance with Sec. 4-169, as amended, C.G.S.:		SIGNED [signature] 1/24/94	OFFICIAL TITLE, DULY AUTHORIZED

[ ] Approved

[ ] Disapproved

[ ] Disapproved in part, *(Indicate Section Numbers disapproved only)*

[ ] Rejected without prejudice.

By the Legislative Regulation Review Committee in accordance with Sec. 4-170, as amended, of the General Statutes.	DATE	SIGNED *(Clerk of the Legislative Regulation Review Committee)*

Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications in accordance with Section 4-172, as amended, of the General Statutes.

DATE	SIGNED *(Secretary of the State.)*	BY

INSTRUCTIONS

1. One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his determination of legal sufficiency. Section 4-169 of the General Statutes.

2. Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statutes.

3. Each regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.

4. Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language in capital letters and deleted language in brackets. Section 4-170 of the General Statutes.

Exhibit E

AGENCY FISCAL ESTIMATE OF PROPOSED REGULATION

AGENCY SUBMITTING REGULATION Environmental Protection DATE 12/8/92

SUBJECT MATTER OF REGULATION Abatement of Air Pollution - Definitions Permits to Construct and Permits to Operate Stationary Sources or Modifications

REGULATION SECTION NO. 22a-174-1 & 3 STATUTORY AUTHORITY 22a-174

OTHER AGENCIES AFFECTED NONE

EFFECTIVE DATE USED IN COST ESTIMATE 4/1/94

ESTIMATE PREPARED BY Phil Florkoski TELEPHONE 566-2506

SUMMARY OF STATE COST AND REVENUE IMPACT OF PROPOSED REGULATION

Agency Environmental Protection Fund Affected General

	First Year 19 94	Second Year 19 95	Full Operation 19 96
Number of Positions	0	0	0
Personal Services	0	0	0
Other Expenses	0	0	0
Equipment	0	0	0
Grants	0	0	0
Total State Cost (Savings)	0	0	0
Estimated Revenue Gain (Loss)	0	0	0
Total Net State Cost (Savings)	0	0	0

EXPLANATION OF STATE IMPACT OF REGULATION:

None

EXPLANATION OF MUNICIPAL IMPACT OF REGULATION:

No impact on municipal activities.

Exhibit A

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notice of Intent to Adopt Regulations and to Revise the State Implementation Plan for Air Quality

The Commissioner of Environmental Protection hereby gives notice of a public hearing as part of a rulemaking proceeding. The purpose of this proceeding is to amend the Regulations of Connecticut State Agencies concerning abatement of air pollution. The regulations will be submitted to the U.S. Environmental Protection Agency (EPA) for their review and approval as a revision to the State Implementation Plan (SIP) for air quality. The public hearing will cover the proposed revisions to the Regulations of Connecticut State Agencies and the SIP as outlined below.

– Proposed changes to the regulations for the review of new or modified sources of air pollution (section 22a-174-1 – Definitions and section 22a-174-3 – Permits to Construct and Permits to Operate Stationary Sources or Modifications).

– Proposed changes to the regulations for the control of volatile organic compounds (subsection 22a-174-20 (ee) – Reasonably Available Control Technology for large sources, subsection 22a-174-20 (v) – Graphic arts rotogravures and flexography and subsection 22a-174-20 (s) – Miscellaneous metal parts and products).

– Requirements for detailed annual reporting (emission statements) by companies whose actual emissions from all sources at a plant site total 25 tons per year or more of Volatile Organic Compounds (VOC) or Nitrogen Oxides (NOx). For the second reporting year, the state will lower the reporting threshold to 5 tons per year or more of VOC or NOx. For the third reporting year, the state will expand the reporting requirement to 5 tons or more of carbon monoxide, sulfur dioxide, lead, and small particulate matter the other criteria pollutants. The 5 ton per year threshold is consistent with the Department's current permitting program and the emissions inventory reporting threshold for point sources. Sources meeting the threshold emissions described above are required to submit emission statements whether or not the sources are sent reporting forms by the state.

– Requirements for a Small Business Assistance Program which establishes an ombudsman's office, technical assistance programs, and mechanisms for small firms to obtain advice on self-audits and pollution prevention to comply with Clean Air Act Amendments.

– A narrative which explains the implementation of the requirements of State II Vapor Recovery for gasoline dispensing facilities which pump 10,000 gallons or more of gasoline per month.

All interested persons are invited to express their views on the proposed revision and regulations. Comments should be submitted to the Bureau of Air Management, Room 144, State Office Building, 165 Capitol Avenue, Hartford, Connecticut 06106. All comments must be received by January 11, 1993.

In addition to accepting written comments, the DEP will also hold the public hearings described below. Persons appearing at the hearing are requested

ROTECTION

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to submit a written copy of their statement. However, oral comments will also be made part of the record and are welcome.

Tuesday, January 5, 1993 - 7:00 p.m.
Room 301 Norwich City Hall
100 Broadway, Norwich, CT

Wednesday, January 6, 1993 - 7:00 p.m.
Common Council Chambers, City Hall
45 Lyon Terrace, Bridgeport, CT

Thursday, January 7, 1993 - 9:30 a.m.
Auditorium, Hartford Public Library
500 Main Street, Hartford, CT

Copies of materials describing the above programs will be available for public inspection during normal business hours at the Bureau of Air Management. Additional copies will be available for review at the New London Public Library, Torrington Public Library and at the main branch of the Bridgeport Public Library.

The authority to adopt this plan and regulations is granted by sections 22a-6 and 22a-174 of the Connecticut General Statutes (CGS). This notice is required by 4-168 and 22a-6 CGS and Title 40 Code of Federal Regulations Part 51.102.

An informational meeting will be held on Thursday, December 10, 1992 at 9:30 a.m., in the first floor conference room of the Connecticut Business and Industry Association, 370 Asylum Street, Hartford, CT. The information received at this informational meeting will not be made part of the public hearing record, however interested parties are welcome to attend.

For further information contact Phil Florkoski of the Bureau of Air Management at 566-4030.

TIMOTHY R. E. KEENEY
Commissioner

NOTICE

HAZARDOUS WASTE MANAGEMENT SERVICE

Notice of Availability of Draft Plan

Pursuant to Section 1 of Public Act 92-45, the Connecticut Hazardous Waste Management Service has prepared the draft 1993 Low-Level Radioactive Waste Management Plan Volume 1: LLRW Management, Projections, Disposal Technologies, Transportation and Cost Distribution.

To receive a copy of the draft plan, call the Service in Hartford at 244-2007 (outside the Hartford calling area, call 1-800-246-LLRW); write to: Draft

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Section 22a-174-3 Permits to construct and permits to operate stationary sources or modifications.

SUMMARY OF AMENDMENTS

Subsection (a)	Identifies those who must apply for a permit.
Subsection (b)	Identifies those who must obtain a permit to construct prior to commencement of construction.
Subsection (c)	Sets the standards for granting a permit to construct.
Subsection (d)	Describes the actions taken on application for permits under this section.
Subsection (e)	Outlines the procedures for cancellation of a permit to construct.
Subsection (f)	Identifies those who must obtain a permit to operate.
Subsection (g)	Outlines the standards for granting permits to operate and renewals of permits to operate.
Subsection (h)	Provides for the transfer of a permit to operate.
Subsection (i)	Outlines the procedures for Denial, revocation or change in the conditions of a permit.
Subsection (j)	Describes Public information and hearing procedures for a stationary source permit to construct or permit to operate.
Subsection (k)	Lists the requirements for the Prevention of Significant Deterioration of Air Quality (PSD) Program.
Subsection (l)	Lists the permit requirements for Non-attainment areas.
Subsection (m)	Describes additional permit requirements for hazardous air pollutants

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

HEARING REPORT

Amendments to the Regulations of Connecticut State Agencies Concerning the Abatement of Air Pollution Sections 22a-174-1 and 22a-174-3

December, 1993

PAGE	CONTENTS

(Printed on Recycled Paper)
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HEARING REPORT

Amendments to the Regulations of Connecticut State Agencies Concerning the Abatement of Air Pollution Sections 22a-174-1 and 22a-174-3

December, 1993

I. INTRODUCTION

In the December 8, 1992 Connecticut Law Journal the Commissioner of Environmental Protection gave notice of his intent to amend the Department's Regulations Concerning Abatement of Air Pollution sections 22a-174-1 and 22a-174-3. Public hearings were held in Norwich, Bridgeport and Hartford on January 5,6, and 7, 1993. Written comments on the proposed rule were submitted to DEP through January 29, 1993.

This Hearing Report is being made available pursuant to 4-168 of the Connecticut General Statutes (CGS). Section II of this report discusses the principle reasons in support of the proposed revised regulations. Section III summarizes the principle considerations raised in favor and in opposition to the proposed regulations along with the Department's reasons for rejecting any considerations. A listing of the individuals who provided written comments is included in this section. The proposed final wording of the revised regulations is available for public review and a Notice of Availability will be sent to interested parties.

II. SUMMARY OF REASONS FOR THE AMENDED REGULATIONS

The Clean Air Act Amendments of 1990 require that the Connecticut Department of Environmental Protection (DEP) make numerous revisions to its New Source Review (NSR) program, with an emphasis on ozone nonattainment areas. This summary describes the changes being made to the Regulations in sections 22a-174-1 (Definitions) and 22a-174-3 (Permits to Construct and Permits to Operate). Additional changes relating to NSR in attainment areas are being made at this time to incorporate requirements for the Federal prevention of significant deterioration (PSD) increments for nitrogen oxides into section 22a-174-3.

The most important elements of the revised NSR program for nonattainment areas include the following:

- **NOx.** Requiring nonattainment review for sources of nitrogen oxides as precursors to ozone.
- **Major source levels.** Establishing lower applicability levels for the definition of major stationary source and major modification.

- **Offset ratios.** A requirement for new major sources to offset increased emissions of ozone precursors (i.e. NOx or VOC) with emission reductions at a ratio of 1.2 to 1 or 1.3 to 1, depending on the location of the new source.

A number of other changes are also being made to the NSR rules in order to be consistent with the Clean Air Act (CAA), and to more clearly and succinctly carry out the intent of the State's New Source Review Program. Issues relating to these changes are described in more detail below.

Discussion of Issues

1. **Nitrogen oxides as precursors to ozone** (see section 22a-174-1: definitions of "major modification", "major stationary source", and "non-attainment air pollutant"; and subdivision 22a-174-3(l)(1).

   Tropospheric ozone is formed through a complex set of chemical reactions between nitrogen oxides (NOx) and volatile organic compounds (VOC) in the presence of sunlight. In the past, ozone attainment strategies focused on reducing VOC emissions, but it has become increasingly apparent that significant reductions of nitrogen oxides will be needed in order to attain the ozone air quality standard in the Northeast. Section 182(f) of the Clean Air Act requires the nonattainment provisions for ozone to apply to major stationary sources of nitrogen oxides, as well as for VOC. In section 22a-174-1 the definitions of "major modification" and "major stationary source" have been modified accordingly and a new definition for "non-attainment air pollutant" has also been added to clarify that NOx and VOC are each non-attainment air pollutants for ozone. Subparagraph 22a-174-3(l)(1)(C) has been added to clarify that a major modification or major stationary source of NOx or VOC that is located in a serious or severe non-attainment area for ozone is subject to the non-attainment provisions of subdivision (l)(1).

2. **New major stationary source and major modification thresholds** (see section 22a-174-1 and Table 3(k)-1 of subsection 22a-174-3(k).

   The revised definition of "major stationary source" (section 22a-174-1) incorporates new, lower, emission thresholds for VOC and NOx of 50 tons per year in serious non-attainment areas for ozone and 25 tons per year in severe non-attainment areas for ozone. Table 3(k)-1 of subsection 22a-174-3(k) contains the revised major modification threshold of 25 tons per year for major VOC and NOx sources. However, the 40 ton per year NOx PSD applicability threshold has been retained with language added under subparagraph 22a-174-3(k)(3)(B).

3. **Offset ratios** (see subparagraph 22a-174-3(l)(5)(L))

   For new major stationary sources or major modifications of VOC or NOx in nonattainment areas for ozone the required ratio at which

actual emission reductions must offset proposed allowable emission increases is 1.3 to 1 in severe nonattainment areas and 1.2 to 1 in serious nonattainment areas.

4. **De minimis rule** (see section 22a-174-1: definition of "major modification").

The Clean Air Act's "de minimis rule" for major modifications of VOC or NOx in a nonattainment area (CAA section 182(c)(6)) requires new source review at a facility "unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive years which includes the calendar year in which such increase occurred."

This concept, consistent with past EPA interpretation, allows netting to avoid Federal new source review. However, as stated in EPA's Preamble to Title I (74FR13515, April 16, 1992), "In a break with previous EPA policy, this provision requires this 5-year evaluation even if the proposed increase standing alone would not exceed the de minimis threshold of 25 tons. Consequently, even a small proposed increase (itself less than 25 tons) may not be de minimis and could cause the proposed change to be treated as a major modification..."

The concept of netting emissions increases with decreases to avoid technology review requirements or to avoid obtaining a permit to construct or operate has never been allowed in Connecticut's permitting program. Since DEP does not allow netting, a more stringent approach to the "de minimis rule" has been taken by requiring the aggregation of all increases in actual emissions from the subject premise over the most recent five consecutive calendar year period (excluding emission increases previously permitted under subsection 22a-174-3(l)), as opposed to requiring the aggregation of the net increases. In section 22a-174-1 the definition of "major modification" has been modified accordingly.

5. **Special rules for modifications, and internal offsets** (see section 22a-174-1: new definition of "internal offset"; and subparagraph 22a-174-3(l)(4)(C)).

In compliance with the special rules for modifications of the Clean Air Act (sections 182(c)(7) and (c)(8)), a new increase of NOx or VOC can avoid being treated as a major modification or a major stationary source if (i) the existing premise has potential emissions of less than 100 tons per year of NOx or VOC, and (ii) the allowable emissions increase of NOx or VOC is reduced at an internal offset ratio of at least 1.3 to 1 (see new definition of "internal offset" and subparagraph 22a-174-3(l)(2)(C)). For a new increase of NOx or VOC occurring at an existing premise with potential emissions of greater than 100 tons per year of NOx or VOC, LAER can be avoided (BACT will apply instead) if the

allowable emissions increase of NOx or VOC is reduced at an internal offset ratio of at least 1.3 to 1 (see subparagraph 22a-174-3(l)(4)(C). While the Clean Air Act addresses internal offsets only for NOx and VOC in nonattainment areas, DEP has decided, in response to the hearing comments, to allow internal offsets for all pollutants, both in attainment (see subparagraph 22a-174-3(k)(1)(B)) and nonattainment (see subparagraph 22a-174-3(l)(4)(C)) areas. This does not violate any of EPA's or the Clean Air Act's requirements since EPA allows the less stringent netting of emissions for all pollutants, with the exception of NOx and VOC in nonattainment areas, in which case internal offsets would apply. However, it will provide more flexibility for the regulated community without compromising environmental quality.

6. **NO_2 PSD revisions** (see subsection 22a-174-3(k))

The prevention of significant deterioration (PSD) program, established in 1975, originally included maximum allowable increases (PSD increments) for only two pollutants: sulfur dioxide (SO_2) and particulate matter (as total suspended particulate, TSP). In February 1988, EPA proposed regulations to add nitrogen oxides (NOx) to the PSD program. The Federal regulations were promulgated into law on October 17, 1988 (53 FR 40656) and include PSD increments for nitrogen dioxide (NO_2) as a surrogate for NOx. States are required to adopt programs to ensure that these increments will not be exceeded at any time in the future. DEP has been implementing the Federal program through a delegation agreement with EPA since November 19, 1990.

The purpose of the regulatory changes relevant to this issue is to implement a Federally approved State program for the prevention of significant deterioration of air quality for nitrogen oxides as required in the Code of Federal Regulations (40 CFR 51.166; for background information see Federal Register, 53 FR 40656, October 17, 1988). Revisions to subsection 22a-174-3(k) of the Regulations are being made to accomplish the following:

a) revise Table 3(k)-2 to include the NO_2 Class II increment;

b) replace subdivision 22a-174-3(k)(5) with definitions of several PSD terms used in subdivision 22a-174-3(k)(6); and

c) revise subdivision 22a-174-3(k)(6) describing impact analysis procedures.

a) Revisions to Table 3(k)-2: PSD Increments. The Code of Federal Regulations (40 CFR Part 51.166(c)) lists the PSD increments for NO_2 as shown in the following table:

MAXIMUM ALLOWABLE INCREASE ABOVE BASELINE CONCENTRATION

Area Designation	Nitrogen Dioxide PSD Increment Annual Arithmetic Mean (micrograms per cubic meter)
CLASS I AREAS	2.5
CLASS II AREAS	25
CLASS III AREAS	50

Currently the entire State of Connecticut is considered a Class II attainment area for nitrogen dioxide. Connecticut does not anticipate any portion of the State being reclassified in the foreseeable future.

The NO_2 PSD increment for Connecticut of 25 ug/m^3 (annual arithmetic mean) is being added to Table 3(k)-2 of the Regulations. Table 3(k)-2 lists the maximum allowable increase above baseline concentrations for all pollutants with Federally promulgated PSD increments. This list now includes increments for total suspended particulate (TSP), sulfur dioxide (SO_2) and nitrogen dioxide (NO_2).

b) Replacement of subdivision 22a-174-3(k)(5): Baseline Concentration and Dates. Subdivision 22a-174-3(k)(5) previously addressed procedures for assessing increment consumption for SO_2, while subdivision 22a-174-3(k)(6) addressed increment consumption for other air pollutants. These procedures are now combined in subdivision 22a-174-3(k)(6) for all pollutants with promulgated PSD increments, while subdivision 22a-174-3(k)(5) now provides definitions for terms used in subdivision 22a-174-3(k)(6). The terms defined in the new subdivision 22a-174-3(k)(5) include "baseline concentration," "major source baseline date" and "minor source baseline date." These terms are used to define what emissions consume PSD increment and what emissions should be included in tracking PSD increment consumption.

c) Revisions to subdivision 22a-174-3(k)(6): Source Impact Analysis. As discussed above, the requirements for assessing increment consumption are now combined in subdivision 22a-174-3(k)(6). The current revisions do not include any substantive differences from the previous language other than: (i) combining the section pertaining to SO_2 with all other pollutants; and (ii) incorporating new terms and dates defined in subdivision 22a-174-3(k)(5).

The portion of subsection 22a-174-3(k) on source impact analysis is but one of the Federal requirements for approval of State PSD programs (40 CFR 51.166(k)). It requires that an applicant, before obtaining a permit to construct a new major stationary

source or major modification, demonstrate that allowable emissions from the proposed facility, when combined with emissions from other PSD increment consuming sources, will not result in air pollutant concentrations greater than the PSD increments. In effect, subdivision 22a-174-3(k)(6) defines those sources which must be considered in any PSD increment consumption analysis.

7. **Deletion of quotation marks**

Under the existing regulations all terms that are defined in section 22a-174-1, and which are then used throughout the remainder of the regulations, are enclosed in quotation marks. Since it can be somewhat cumbersome to read sentences where every other word is in quotation marks, the quotation marks around all defined terms in sections 22a-174-1 and 22a-174-3 have been deleted, except for where the terms are initially defined in section 22a-174-1.

8. **Deletion of subdivision numbers in section 22a-174-1**

Since all of the defined terms in section 22a-174-1 are in alphabetical order it seems unnecessary to number these terms as well. As such, the subdivision numbers preceding each of the defined terms in section 22a-174-1 have been deleted.

9. **Definition of "CFR"**

The term "CFR" has been added to section 22a-174-1 to mean the Code of Federal Regulations.

10. **Definitions of "complete" and "sufficient"**

In order to be consistent with terms used throughout DEP's air, waste and water programs, the term "complete" has been deleted and replaced with the term "sufficient"; the new definition for "sufficient" is the same as that used for "complete" in the existing regulations. In addition, the words "incomplete" and "completeness determination" used throughout section 22a-174-3 have been replaced with the words "insufficient" and "determination of sufficiency", respectively.

11. **Definitions of "heat input" and "nitrogen oxides"**

New definitions of "heat input" and "nitrogen oxides" have been added to section 22a-174-1 to clarify these terms that are used throughout the existing and revised regulations.

12. **Definitions of "modification" and "stationary source"**

The definitions of "modification" and "stationary source" in Section 22a-174-1 have been revised to allow permitted portable stripping facilities to move from site to site, just as portable rock crushers are allowed to move from site to site, without being considered a modification, provided that the permit specifically

allows them to do so and they inform the Commissioner prior to the move.

13. **Definition of "volatile organic compound"**

The definition of "volatile organic compound" in section 22a-174-1 has been revised to be consistent with new language in the amended Clean Air Act. In addition, the list of exempt VOC's has been clarified by changing the exempt VOC's to their correct chemical names and by adding common synonyms for these compounds.

14. **Deletion of subsection 22a-174-1(b)**

Upon further review of the definitions of "actual emissions" and "potential emissions", it was determined that subsection 22a-174-1(b) is unnecessary, therefore this subsection has been deleted.

15. **Public participation requirements** (see subsection 22a-174-3(j) and subdivision 22a-174-3(l)(7))

On July 1, 1993 the Connecticut General Assembly enacted Public Act 93-428, parts of which deal with public notification requirements with regard to permits issued by DEP. In order to be consistent with the requirements of the Public Act, subsection 22a-174-3(j) has been revised to include the applicable public notice requirements of the Public Act. Subdivision (j)(1) now requires that any applicant who submits an application pursuant to section 22a-174-3 shall: (i) submit a statement to DEP certifying that the applicant will publish a notice of such application in a local newspaper; (ii) include in such notice a full description of the application and of the activity for which a permit is being sought; and (iii) send a copy of such notice to DEP within twenty days after the date such notice is published. Subdivision (j)(2) now requires that at least thirty days before approving or denying an application, for both permits to construct and operate, DEP must publish a notice in a local newspaper giving a full description of DEP's tentative determination to approve or deny such application. Also, in keeping with the language of the Public Act, the term "proposed final decision" in subsection (j) has been replaced with the term "tentative determination". Lastly, the public participation requirements of subdivision (l)(7) have been revised to more closely resemble the existing language of subdivision (k)(12).

16. **Table 3(k)-1 and related revisions** (see Table 3(k)-1 of subsection 22a-174-3(k); subdivision 22a-174-3(a)(3); and definition of "modification")

The major modification emission thresholds of Table 3(k)-1 have been revised to include three new emission thresholds for municipal waste combustor emissions presently listed under 40 CFR 51.166. The zero emission threshold for "any other air pollutant Federally regulated under the Clean Air Act" listed in Table

3(k)-1 has been deleted. DEP feels that, in light of the Clean Air Act Amendments of 1990, Table 3(k)-1 should only include those pollutants subject to the New Source Review provisions of the Clean Air Act and should not include every pollutant regulated under the Clean Air Act. For example, the requirements for ozone depleting substances listed under section 602 of the CAA are for existing, not new sources. In addition, the CAA explicitly excludes the hazardous air pollutants listed under section 112 from PSD review. In a related revision, language under the definition of "modification" and under subdivision 22a-174-3(a)(3), which makes reference to any other air pollutant regulated under the Clean Air Act, has been deleted.

17. **Nonattainment review applicability** (see subdivision 22a-174-3(l)(1).

Prior to these revisions, the first paragraph of subdivision 22a-174-3(l)(1) required that the first application deemed complete by DEP for a particular project would be used to determine if that project were subject to a nonattainment review, even if the application for the project were withdrawn and resubmitted with emission rates below the nonattainment review applicability thresholds. This paragraph is now being deleted in order to be more consistent with the Federal regulations pertaining to nonattainment review applicability.

18. **Exemption for economic development zones** (see subparagraph 22a-174-3(l)(2)(B)).

Subparagraph 22a-174-3(l)(2)(B) was replaced with language which states that DEP will not require offsets for a new major stationary source or major modification which is located in a zone within the nonattainment area identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, provided that the emission of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emission levels which exceed the allowance permitted as contained in Connecticut's State Implementation Plan, pursuant to section 173(a)(1)(B) of the Clean Air Act.

19. **Emission offset criteria** (see subdivision 22a-174-3(l)(5))

Certain paragraphs in subdivision 22a-174-3(l)(5) have been resequenced and modified to include all CAA and EPA requirements. The revised paragraphs require that for emission reductions to be creditable for offset purposes, they must meet the criteria in paragraphs (A) through (L):

(A) emission reductions must be accomplished in the two year period prior to the date that the new source or modification becomes operational and begins to emit any pollutant;

(B) emission reductions must be surplus (i.e. not otherwise required by certain State and Federal regulations and requirements);
(C) emission reductions may come from other sources or premises not owned by the applicant;
(D) emission reductions must be enforceable before or when the construction permit is issued and must occur prior to operation of the new source;
(E) emission reductions, in conjunction with the proposed emissions increase, must produce a net air quality benefit, and in determining this net air quality benefit DEP may consider emissions on an hourly, daily, seasonal or annual basis;
(F) emission reductions and emission increases must be calculated for the same averaging times, hourly, daily and annually;
(G) emission reductions must come from the emission inventory maintained by the Commissioner;
(H) emission reductions from shutdowns and the curtailment of operations may be creditable unless EPA has deemed the SIP delinquent for this purpose;
(I) emission reductions for offset purposes will be allowed only on a pollutant for pollutant basis (i.e. VOC for VOC), and neither perchloroethylene nor the exempt VOCs listed in Table 1(a)-1 of section 22a-174-1 will be allowed to offset VOC emissions;
(J) emission reductions must be obtained from the same nonattainment area in which the new source is constructing, or, for VOC or NOx, from another nonattainment area of equal or higher nonattainment classification if emissions from such area contribute to a violation of an air quality standard in the nonattainment area in which the proposed new or modified source would construct;
(K) emission reductions must be in actual emissions of the applicable nonattainment pollutant and must also account for all increases in actual emissions, except for those increases that have been previously offset with emission reductions through a permit for a source subject to subdivision (1)(5); and
(L) emission reductions must be obtained at certain emission offset ratios, which are dependent on where the new source or modification is to be located (1.3:1 and 1.2:1 in severe and serious nonattainment areas, respectively).

III. RESPONSE TO COMMENTS

Public hearings on proposed revisions to the permitting regulations for new sources of air pollution were held in Norwich, Bridgeport and Hartford on January 5-7, 1993. Comments were received orally and in writing from representatives of the regulated community, environmental groups and the U.S. Environmental Protection Agency (EPA). The following is a listing of those who provided written comments:

United States Environmental Protection Agency, Region I

Arthur E. Slesinger, Boehringer Ingelheim Pharmaceuticals, Inc.

Richard A. Miller, Esquire, Connecticut Business & Industry Association

Lynn C. Blackwell, for Connecticut Natural Gas Corporation, Southern Connecticut Gas Company and Yankee Energy Services

Leslie Carothers, United Technologies Corporation

William D. Huhn, Pfizer, Inc.

Albert N. Henricksen, The United Illuminating Company

C.F. Sears, Northeast Utilities Service Company

Mark R. Sussman, Murtha, Cullina, Richter and Pinney

In this section, the comments have been grouped together by issue and summarized. DEP's response to each issue is then provided.

1. Summary of Comments - Netting

Several commenters requested that the Connecticut Department of Environmental Protection (DEP) regulations reflect as much as possible the language and intent of the United States Environmental Protection Agency (EPA) regulations, in particular with regard to the policy of netting and internal offsets. Since EPA's regulations allow netting, while DEP's regulations do not, some commenters feel that DEP's "no netting" policy is unduly burdensome to industry.

EPA noted that it was unclear if the regulations would allow netting, and under what circumstances and for what pollutants internal offsets would be allowed. EPA also requested that DEP's definition of "netting" include all of the Federal netting requirements found in 40 CFR section 51.165(a)(1)(vi), under the Federal definition of "net emission increase".

Response. The concepts of netting and internal offsets are similar in many respects. Netting allows a facility owner to construct a new

source of air pollution without obtaining a permit (therefore, without technology review or public notice), provided that air pollution emissions elsewhere at the facility are reduced so as to result in no net increase in emissions. Internal offsets also reduce emissions at the facility but must be made enforceable through a permit or order. Internal offsets can be used to avoid some of the more stringent Federal review requirements.

DEP is obligated to develop a program to bring areas of non-attainment into attainment with respect to air quality standards (and then keeping those areas in attainment). An integral part of DEP's program has always been to encourage new technologies for air pollution control through the concept of best available control technology. Therefore, DEP is retaining its "no netting" policy but at the same time, expanding its policy for internal offsets.

The circumstances under which internal offsets are to be allowed have been expanded to include all pollutants, in both attainment and non-attainment areas. In attainment areas, internal offsets will be allow a new source to avoid being subject to a Prevention of Significant Deterioration (PSD) review (see subparagraph 22a-174-3(k)(1)(B)). In non-attainment areas, internal offsets may be used (depending on the potential emissions from an existing premise) for a new source to avoid being subject to a non-attainment review as a new "major stationary source" or "major modification" (see subparagraph 22a-174-3(1)(2)(C)). Such a new source can also use internal offsets to avoid being subject to LAER but instead being subject to BACT (see subparagraph 22a-174-3(1)(4)(C)).

The definitions of "netting" and "internal offset" have not been revised to include the Federal netting requirements of 40 CFR section 51.165(a)(1)(vi), however, subdivision 22a-174-3(1)(5) of the State regulations, which lists requirements necessary for obtaining emission offsets, has been revised to incorporate the applicable portions of the Federal definition of "net emission increase". In addition, those portions of the proposed regulations which allow for the use of internal offsets (i.e. subparagraphs 22a-174-3(k)(1)(B), (1)(2)(C) and (1)(4)(C)) now require that certain subparagraphs under subdivision (1)(5) must be met in order for internal offsets to be creditable.

2. Summary of Comments - Sections 182(c)(7) and (c)(8) of the Clean Air Act regarding special rules for modifications

EPA and one other commenter suggested that DEP should not attempt to interpret the requirements of sections 182(c)(7) and (c)(8) of the Clean Air Act, which has to do with the use of internal offsets, but rather simply reference the two sections, or else incorporate the exact language of the two sections in the State regulations.

EPA noted that the requirements of sections 182(c)(7) and (c)(8) were added incorrectly to the definition of "major modification", and that the revised definition appeared to be less stringent than the requirements of sections 182(c)(7) and (c)(8). EPA also noted that

the new language added under subparagraph 22a-174-3(l)(4)(C) was inconsistent with the revised definition of "major modification", with respect to the requirements of sections 182(c)(7) and (c)(8).

Response. DEP feels that a simple reference to sections 182(c)(7) and (c)(8) of the Clean Air Act or the addition of the language verbatim of these sections into the State regulations would serve only to postpone the interpretation of somewhat ambiguous parts of these sections that would eventually have to be resolved at a later date. Therefore, DEP has decided to interpret and include the specific requirements of sections 182(c)(7) and (c)(8) of the Clean Air Act in the revised State regulations.

Upon closer review of the initial revised definition of "major modification", DEP agrees that under certain circumstances the definition would be less stringent than the requirements of sections 182 (c)(7) and (c)(8). The definition has again been revised and no longer includes language derived from sections 182(c)(7) and (c)(8). Instead, the use of internal offsets as allowed under sections 182(c)(7) and (c)(8) has been accounted for with the previously mentioned revisions made to subparagraphs 22a-174-3(k)(1)(B), (l)(2)(C) and (l)(4)(C).

3. Summary of Comments - Internal Offsets

EPA remarked on the ambiguity of subdivision 22a-174-3(k)(2) with respect to netting and internal offsets, and the apparent inconsistencies of this subdivision in relation to the definition of "major modification". Another commenter was concerned about the ratios at which internal offsets would be required or would be allowed, and requested that "full, rather than partial, credit for contemporaneous emission reductions at a 1 to 1 ratio" be allowed for netting and internal offsets. This commenter also suggested that internal offsets required for VOC and NOx in a non-attainment area for ozone should be at the same ratios as required for external offsets as stated in the Clean Air Act (i.e., 1.2 to 1 in a serious non-attainment area for ozone; 1.3 to 1 in a severe non-attainment area for ozone; etc.).

A third commenter suggested abandoning the idea of internal offsets altogether, and simply adopting the existing Federal policy of netting of emissions.

Response. Subdivision 22a-174-3(k)(2) has been re-evaluated and revised to more clearly state that in determining the applicability of subdivision (k)(1), the netting of emissions is not allowed, while internal offsets are allowed. With the latest revisions made to the definition of "major modification" (in response to comments addressed above), DEP feels that this definition is now consistent with the language of subdivision (k)(2).

Concerning the comment about allowing full, rather than partial, credit for emission reductions to be used for internal offset purposes, it appears that the commenter is referring to the initial

revision of the definition of "major modification", clause 22a-174-1(a)(46)(D)(ii), which stated, in part, that "the increases in subparagraph (i) above may be reduced by 0.77 times any actual emissions decrease, which have occurred at the premise". This clause has been deleted and, with the revisions made to subparagraphs 22a-174-3(k)(1)(B), (l)(2)(C) and (l)(4)(C) (in response to comments already addressed), it is now clear that internal offsets must be obtained at a ratio of at least 1.3 to 1 in order to be creditable (note that the revised subparagraphs do not make reference to or allow the netting of emissions). In response to the comment that the required internal offset ratio for VOC and NOx in a non-attainment area for ozone be the same as that required for external offsets, sections 182(c)(7) and (c)(8) of the Clean Air Act specifically state that where internal offsets are required they shall be at a ratio of at least 1.3 to 1 (this applies to both serious and severe non-attainment areas for ozone).

In response to the third commenter's remarks, because sections 182(c)(7) and (c)(8) of the Clean Air Act only allow for the use of internal offsets (as opposed to the less stringent netting of emissions), netting cannot be allowed for VOC and NOx in a serious or severe non-attainment area for ozone. As for allowing netting as opposed to internal offsets for pollutants other than VOC and NOx in a serious or severe non-attainment area for ozone, this issue has already been addressed in a previous response.

4. Summary of Comments - "Permit by rule" for internal offset purposes

Several commenters requested that emission decreases obtained for internal offset purposes should be creditable via a "permit by rule" process. Annual emission statements and/or Pre-Inspection Questionnaire (PIQ) forms would allow DEP the opportunity to determine whether or not a facility has obtained creditable emission decreases correctly. The commenters felt that this type of approach would greatly speed-up and streamline the permitting process.

Response. DEP has had very little experience in issuing permits for which offsets (internal or external) have been required. DEP has had no experience in implementing the new offset provisions of the Clean Air Act as amended in 1990. Until such time that DEP has gained sufficient experience in the actual implementation of internal offsets, DEP shall not consider emission decreases for internal offset purposes to be creditable via a "permit by rule" process. If and when DEP considers the implementation of a "permit by rule" process, EPA will be consulted prior to such implementation to ensure that such a process is consistent with all applicable Federal requirements. At the present time, however, it is quite uncertain if EPA would allow a "permit by rule" process for obtaining creditable emission decreases. This is particularly uncertain in light of the forthcoming state operating permit programs, which could be used to enforce any internal offsets that a source has committed to. Even if a "permit by rule" process were implemented, it is uncertain as to what extent this would speed-up the permitting process. A new source or modification for which internal offsets are to be obtained to avoid more stringent New

Source Review requirements would still be subject to all other applicable State permitting requirements, and construction and operation of the new source or modification would not be allowed until all appropriate permits were issued.

5. Summary of Comments - Applicability of NOx to both PSD and non-attainment review provisions

EPA requested that language be added to a number of parts of the State regulations explaining that a new major stationary source or major modification of nitrogen oxides may be subject to both the PSD review provisions of subsection 22a-174-3(k) and the non-attainment review provisions of subsection (l).

Response. Language has been added to subparagraphs 22a-174-3(k)(3)(B) and (l)(1)(C) stating when a new major stationary source or major modification of nitrogen oxides is subject to PSD and non-attainment review provisions. With this language added, DEP feels that EPA's comment has been adequately addressed.

6. Summary of Comments - Section 182(c)(6) of the Clean Air Act regarding the de minimis rule

EPA was concerned that the initial proposed language of the definition of "major modification", which deals with emissions aggregation at clause 22a-174-1(a)(46)(D)(i), was inconsistent with the requirements and intent of section 182(c)(6) of the Clean Air Act. EPA felt that DEP's regulations would exempt from emissions aggregation all previously permitted sources, whereas it would be more appropriate to exempt only those sources that had been previously permitted under subsection 22a-174-3(l) and had met all of the non-attainment review provisions (both State and Federal) pertaining to that subsection. EPA was also concerned that the five consecutive year period mentioned in the definition of "major modification" implied that the time period could extend into the future, and that the time period did not specifically state "calendar years", as does the language under section 182(c)(6).

Another commenter anticipated that there would be adverse comments, specifically from EPA, to DEP's exempting from emissions aggregation all previously permitted sources, and urged that DEP ignore such comments and keep the initial revised definition of "major modification" as is. This commenter feels that DEP is as competent as EPA in interpreting the requirements of the Clean Air Act and that the revised definition should not be revised further, at least not until EPA issues some type of interpretive rulemaking on section 182(c)(6).

Response. After reviewing the issues raised concerning the initial revised language of clause 22a-174-1(a)(46)(D)(i), DEP agrees with EPA's comments and the definition of "major modification" has been revised accordingly, under subparagraph (C) of this definition. Additional language has also been added to this subparagraph further explaining the requirements of section 182(c)(6) of the Clean Air Act.

In response to the request of the second commenter, since both DEP and EPA are in agreement that only those sources that have been previously permitted under subsection 22a-174-3(l) should be exempt from the five year aggregation requirement, the definition of "major modification" will be further revised, as stated in the previous paragraph.

7. Summary of Comments - Aggregation for permit applicability purposes

One commenter expressed concern about the aggregation of sources for the purposes of permit applicability and the time required to obtain a permit in such a situation. The commenter noted that the addition of a new, very small source could trigger, when aggregated with existing sources, permitting requirements and a full (and lengthy) PSD or non-attainment review. The commenter suggested that under such a scenario DEP should allow the new source to operate during the permitting process, and if necessary the new source could temporarily offset emissions by temporarily discontinuing operation of existing sources.

A second commenter requested that some type of "de minimis" level be used for emissions aggregation purposes, such that if a new source in and by itself emits less than this "de minimis" level, then it would not be considered at all for purposes of emissions aggregation.

Response. The concept of aggregating sources and their emissions "into" a non-attainment review and permit is mentioned specifically in the proposed State regulations (see definition of "major modification") because of the requirements of section 182(c)(6) of the Clean Air Act. If EPA issues some type of guidance document allowing a new source, subject to a non-attainment review and permit through aggregation, to operate prior to issuance of its permit, then at that time DEP shall consider the adoption of such guidance and if necessary shall revise its regulations. The idea of offsetting the new source's emissions to avoid review or to hasten the permitting process would be allowed only to the extent that internal offsets are allowed.

In response to the second commenter's request, since neither EPA nor the Clean Air Act has addressed a "de minimis" level for the exemption of individual sources from aggregation, DEP does not intend to impose one on its own, and thus be less stringent than the Clean Air Act. Section 182(c)(6) (the "de minimis rule") of the Clean Air Act and the most recently revised definition of "major modification" do, however, include language that allows the aggregate of emissions from sources (not emissions of individual sources) that are below a certain threshold to be exempt from being used to determine if a new source is a major modification.

8. Summary of Comments - Aggregation: State vs. Federal

There appeared to be great concern and confusion concerning the new aggregation language added to the initial revised subdivisions 22a-174-3(b)(3) and (b)(4) (this language was not added due to any requirements of the Clean Air Act, but was added only in an attempt to clarify how small sources of emissions should be aggregated for

existing State, not Federal, permit applicability purposes). Those who commented on this issue felt that having both a State aggregation policy (see the initially revised subdivisions (b)(3) and (b)(4)) and a Federal aggregation policy (see the definition of "major modification" and section 182(c)(6) of the Clean Air Act) would be very confusing and very difficult to implement.

EPA requested that DEP clarify how the provisions of these subdivisions would relate to the aggregation provisions of the definition of "major modification".

Another commenter requested that DEP adopt only the Federal aggregation policy.

Response. Upon further examination of this issue, DEP has decided not to change or revise the existing language pertaining to aggregation in subdivision 22a-174-3(b)(3) (the initial revised subdivision (b)(4) is again part of subdivision (b)(3)), with the exception of the addition of some minor clarifying language. If at a later date DEP feels it necessary to further address emissions aggregation for State permit applicability purposes then the language in subdivision (b)(3) will be revised at that time.

9. Summary of Comments - Ozone Transport Region

EPA requested that the major stationary source thresholds for VOC and NOx in the Ozone Transport Region (50 tons per year, as stated under section 184 of the Clean Air Act) be added to the definition of "major stationary source", and that the term "Ozone Transport Region" be defined under section 22a-174-1. EPA also requested that language be added to subdivision 22a-174-3(l)(1) explaining that, for attainment or unclassifiable areas within the Ozone Transport Region, a new source may be subject to both PSD and non-attainment requirements. Finally, EPA requested that the emission offset ratio of 1.15 to 1 required for applicable sources located in the Ozone Transport Region be added to subdivision (l)(5).

Response. All requirements to be met for a source located in an area classified as serious or severe non-attainment for ozone are as stringent or more stringent than the requirements for a source located in an attainment area or less-seriously classified non-attainment area in the Ozone Transport Region. With all of Connecticut classified as either serious and severe non-attainment for ozone, and with the whole State being located within the Ozone Transport Region, it follows that any source that meets the requirements for a source located in a serious or severe non-attainment area for ozone will also meet the requirements for a source located anywhere in the Ozone Transport Region. As such, the language requested to be added by EPA is considered unnecessary and has not been added.

10. Summary of Comments - Definition of "actual emissions"

EPA had several suggestions on the definition of "actual emissions":

a. Insert the word "actual" before "rate of emissions" in the first line of the definition.

b. Add the following language: "Where the implementation plan for an area is based on allowable emissions, or where actual emissions exceed allowable emissions, source-specific allowable emissions for the unit will be presumed to be equivalent to the actual emissions of the unit."

c. Add language stating that for a source which has not begun normal operations on a particulate date, actual emissions shall equal potential emissions on that date.

d. Change the language to "prior to the date of an application under subsection 22a-174-3(a)" to "prior to the particular date", because the present language may not be applicable in determining increment consumption, netting and emission offsets.

Response.

a. The insertion of the word "actual" would be redundant and confusing, therefore it was not added.

b. The language recommended by EPA is confusing, but it appears that the intent of the language is for the purposes of netting, internal offsets and non-attainment review. DEP does not allow netting, therefore the language suggested by the commenter is not necessary for the purposes of netting. The language under the definition of "internal offsets" and under subsection 22a-174-3(l) already correctly addresses the use of actual and allowable emissions under the scenarios described by the commenter (i.e. where the implementation plan for an area is based on allowable emissions, or where actual emissions exceed allowable emissions). In addition, it would seem more appropriate to state that the source-specific actual emissions for the unit will be presumed to be equivalent to the allowable emissions of the unit, and not the other way around. At any rate, DEP feels that it is unnecessary to add the suggested language, therefore it has not been added.

c. It is unclear what is meant by the suggested language. DEP feels that it is unnecessary to add the suggested language and that the present language is appropriate, therefore no changes have been made.

d. Again, the language recommended by EPA is confusing, because it does not clarify what "the particular date" is. DEP feels that the present language is appropriate therefore no changes have been made.

11. Summary of Comments - Definition of "allowable emissions"

Under the definition of "allowable emissions" EPA recommended that subparagraph (B) reference "the State Implementation Plan" and not "these regulations", and subparagraph (C) should be revised to include those permit conditions "with a future compliance date".

Response. Under the definition of "allowable emissions" subparagraph (B) has not been revised, but instead a new subparagraph (D) has been added. Subparagraph (C) has been revised as suggested.

12. Summary of Comments - Definition of "best available control technology"

To be more consistent with the Clean Air Act definition of "best available control technology", EPA suggested that the words "clean fuels" (as an example of a control technology technique) be added to the State's definition of "best available control technology".

Response. The recommended language has been added.

13. Summary of Comments - Definition of "Federally enforceable"

Under the definition of "Federally enforceable" EPA and one other commenter noted that the comma that was deleted after the words "State Implementation Plan" should be reinserted and the definition should read as follows: "... State Implementation Plan (SIP), requirements in...".

Response. The commenters are correct, however, a semicolon has been reinserted in place of the comma. Other minor changes have been made to the revised definition, but the intent of the definition remains the same.

14. Summary of Comments - Definition of "lowest achievable emission rate"

Under the definition of "lowest achievable emission rate" EPA suggested that the words "most stringent" be inserted before "rate of emissions" in the first line of the definition. EPA suggested that language also be added to clarify that for a modification of a premise, LAER would apply only to the new or modified emissions units within that premise.

Response. The insertion of the words "most stringent" would be redundant and confusing, therefore they were not added. However, the definition was clarified slightly by deleting the phrase "whichever is more stringent" at the end of subparagraph (B), and adding the words "the more stringent of" after "rate of emissions which reflects" in the first line of the definition. In response to the second comment, DEP feels that language presently under subdivision 22a-174-3(1)(4) sufficiently addresses the issue of the application of LAER. This language states, in part, that "The Commissioner shall only require

LAER for the portion of the premise for which the subject application has been made."

15. Summary of Comments - Definition of "modification"

Under the definition of "modification" EPA felt that the exemption which states that any change, "the sole purpose of which is to bring an existing source into compliance with regulations applicable to such source" is not considered a modification was too broad and might allow changes that should be subject to a PSD or non-attainment review to avoid such review.

A second commenter requested that DEP clarify that an increase in production for existing equipment is not to be considered a modification.

Response. DEP agrees that the existing exemption is too broad. The language under clause (B)(v) of the definition of "modification" has been retained, however, additional language has been added which states that if a change occurs that is a major modification or a major stationary source, then such change shall be considered a modification. Thus, changes that should be subject to a PSD or non-attainment review can not be constructed without review.

In response to the second commenter, clause (B)(iii) of the definition of "modification" already states under what circumstances an increase in production will and will not be considered a modification, therefore the requested revision has not been made.

16. Summary of Comments - Definition of "potential emissions"

EPA felt that the new language added to the definition of "potential emissions" that dealt with the Federal enforceability of permit limitations was not completely consistent with EPA's policy on Federally enforceable permit limitations, and EPA recommended that the new language be revised slightly. A second commenter recommended that the new language be deleted altogether. This commenter felt that the language was ambiguous and might imply that in some cases potential emissions should be calculated without regard to applicable permit limitations.

Response. After rethinking this issue, DEP has decided that it is not necessary to add to the definition of "potential emissions" the language initially added or the language suggested to be added by EPA. The issue raised by DEP's initial revision and EPA's suggested revision is that in order for a limitation or condition to be considered Federally enforceable, such limitation or condition must be enforceable as a practical matter, must ensure continuous compliance with the applicable restrictions, and must include adequate testing, monitoring and recordkeeping procedures sufficient to demonstrate compliance. However, DEP feels that the idea of requiring a limitation or condition to be enforceable as a practical matter is a concept too vague to be included in a regulation, but rather it is an idea better addressed when a permit which will include such Federally

enforceable limitation or condition is drafted. Language dealing with the demonstration of continuous compliance with restrictions (i.e. continuous emission monitoring equipment), and requirements for adequate testing, monitoring and recordkeeping procedures is already found in subsection 22a-174-3(c) of the State regulations. As such, only a very minor, clarifying revision has been made to the definition of "potential emissions".

17. Summary of Comments - Definition of "premise"

EPA requested that the definition of "premise" be revised to more closely resemble the definition of "building, structure, facility, or installation" found in 40 CFR section 51.165(a)(1). EPA's concern was that the present definition of "premise" would allow more netting and internal offsets than allowed under the Federal requirements.

Response. DEP feels that, with the revisions made to those portions of the regulations that deal with internal offsets, the present definition of "premise" is sufficient to allow a level of stringency equal to or greater than that allowed at the Federal level with regards to obtaining internal offsets. Since netting is not allowed at all under the State regulations, the definition of "premise" with regards to netting is irrelevant. As such, no revision has been made to the definition of "premise".

18. Summary of Comments - Definition of "serious non-attainment area for ozone" and "severe non-attainment area for ozone"

EPA suggested that the definitions of "serious non-attainment area for ozone" and "severe non-attainment area for ozone" be expanded to also include those non-attainment areas that are classified by the Administrator.

Response. DEP shall revise its regulations with respect to the classification of non-attainment areas for ozone at such time that the Administrator reclassifies such areas within the State of Connecticut. As such, the suggested revision has not been made.

19. Summary of Comments - Definition of "stationary source"

EPA requested that the definition of "stationary source" be revised to accommodate for the new requirements of section 302(z) of the Federal Clean Air Act. This section states that certain mobile internal combustion engines are exempt from being classified as "stationary sources".

Another commenter requested that the definition of "stationary source" be revised to exempt those sources whose normal operation is not expected to exceed 40 hours in any year.

Response. The definition of "stationary source" presently excludes mobile sources, i.e. sources that move from location to location during normal operation, and subdivision 22a-174-3(a)(5) of the most recently revised regulations states that mobile sources are not

subject to stationary source permit requirements. As such, EPA's suggested revision is unnecessary and has not been made. In a related revision, the words "or portable stripping facilities" in the definition of "stationary source" has been changed to "and portable stripping facilities", and the intent of these words has been explained further with the addition of clause (B)(vii) under the definition of "modification".

In response to the second commenter's request, such an exemption would be extremely difficult to enforce. Also, for larger stationary sources operating at 40 hours per year it would be quite possible to emit a considerable amount of pollutants that would truly warrant the issuance of a permit. Lastly, without Federally enforceable conditions in place such an exemption could allow a major modification or a major stationary source to go unregulated, thus violating both State and Federal permitting requirements. As such, the requested revision has not been made.

20. Summary of Comments - Definition of "volatile organic compound"

EPA pointed out that the State's revised definition of "volatile organic compound" is inconsistent with the Federal definition in that it exempts perchloroethylene from being considered as a VOC. EPA has proposed to exempt perchloroethylene, but at the present time it still considers perchloroethylene to be a VOC.

Response. DEP agrees with EPA and perchloroethylene has been deleted from the list of exempt volatile organic compounds. In a related revision, the list of exempt volatile organic compounds has been clarified by changing the exempt VOCs to their correct chemical names and by adding common synonyms for these compounds.

21. Summary of Comments - Incorrect reference of subdivision 22a-174-3(b)(4): applicability date

EPA noted that subdivisions 22a-174-3(a)(1), (b)(1), and (c)(1) incorrectly referenced subdivision (b)(4), and should have referenced subdivision (b)(5) instead.

Response. EPA was originally correct, but with additional changes made to subsection 22a-174-3(b), the original references to subdivision (b)(4) are now correct. With those additional changes, however, the references to subdivision (b)(5) under subdivision (a)(4) and subparagraph (b)(2)(A) became incorrect, and have been changed back to the original language which references subdivision (b)(4).

22. Summary of Comments - Subdivision 22a-174-3(a)(5): permit applicability

EPA recommended that subdivision 22a-174-3(a)(5) be revised to clarify for which pollutants the provision is applicable, and to make the language more consistent with the definition of "major modification".

Response. The initially revised subdivision 22a-174-3(a)(5) deals with the aggregation of emissions for "major modification" applicability purposes. With the newly revised definitions of "major modification" and "major stationary source" in place and with the revision made to subdivision (a)(3), which states that any new major modification or major stationary source must apply for a permit, the initially revised subdivision (a)(5) is no longer necessary and changes have been deleted. Similar language had also been added under the initially revised subparagraph (f)(1)(G), so changes to this subparagraph have also been deleted.

23. Summary of Comments - Subparagraph 22a-174-3(g)(2)(N): emissions reduction

The initially revised subparagraph 22a-174-3(g)(2)(N) stated that the Commissioner shall not issue a permit to operate unless he has determined that any emissions reduction committed to (i.e. for internal offset and offset purposes) is incorporated into the permit, enforceable and accomplished by the time the proposed modification is to commence operation. EPA suggested that this subparagraph be revised to apply not only to a proposed modification but to a proposed new source as well.

Response. Subparagraph 22a-174-3(l)(5)(D) already addresses the issues raised in the initially revised subparagraph (g)(2)(N), therefore this subparagraph has been deleted. EPA's suggested revision has been made to subparagraph (l)(5)(D).

24. Summary of Comments - Subsection 22a-174-3(j): public participation requirements

EPA was concerned that the public participation requirements under subsection 22a-174-3(j) are inconsistent with the Federal public participation requirements under 40 CFR section 51.161. EPA requested that subdivision (j)(4) be revised by deleting the requirement that a request by at least 25 people is needed for the Commissioner to hold a public hearing, and that a hearing should be held even if only one person requests it; that subparagraph (j)(5)(C) be revised to allow for a 30 day public comment period; and that language be added to subsection (j) to allow the public to comment on the agency's proposed approval or disapproval of the issuance of the permit. EPA also suggested that DEP clarify what is meant by the term "initial determination" found under subdivision (j)(3), and subparagraphs (j)(2)(B) and (k)(12)(A).

Response. The Federal requirements of 40 CFR section 51.161 are accounted for under the most recently proposed subdivision 22a-174-3(j)(5) (previously (j)(6)). In addition, this part of the regulation is being revised to incorporate new public notification requirements of CT Public Act 93-428.

Subdivision 3(j)(5) allows for a 30 day public comment period for a new major stationary source, a new major modification, or for any stationary source with a stack height in excess of good engineering

practice, except that any new major stationary source or major modification that has obtained internal offsets pursuant to subparagraphs (k)(1)(B) or (l)(2)(C) would not be subject to this subdivision (language has been added to subdivision (j)(5) to account for this). In addition, for sources subject to subdivision (j)(5) this subdivision requires that a public hearing be held upon receipt of any request for such a public hearing. Subdivision (j)(4) and subparagraph (j)(5)(C) of the initially revised regulations are applicable to sources that are subject to State permitting requirements only, therefore the requested revisions to these parts has not been made.

On July 1, 1993 the Connecticut General Assembly enacted Public Act 93-428, parts of which deal with public notification requirements with regard to permits issued by DEP (a copy of the applicable portions of the Public Act is attached). In order to be consistent with the requirements of the Public Act, subsection (j) has been revised to include the applicable public notice requirements of the Public Act. Subdivision (j)(1) has been replaced with new public notice requirements for permit applications submitted to DEP; subdivision (j)(2) has been replaced with new public notice requirements for permit applications processed by DEP. With these revisions in place, in addition to all of the other revisions made to subsection (j), DEP feels that it is fully understood that the comment periods specified under subsection (j) are for the purposes of allowing the public to comment on DEP's proposed approval or disapproval of the issuance of the permit, as well as all other aspects of the permit application and permitting process. As such, EPA's suggested revision has not been made.

The terms "initial determination" (found in the initially revised regulations) and "proposed final decision" (found in the existing regulations) have been deleted from the State regulations and a similar term, "tentative determination", is now used instead. DEP feels that, with the most recent revisions made to subsection (j), the meaning of the term "tentative determination" is clear; that is, the term means a determination made by DEP prior to its final decision on a permit application, which tentatively approves, denies, modifies or conditionally approves the issuance of a permit for a stationary source or modification. Subdivision (j)(3) and subparagraph (j)(k)(12)(A) have been revised by simply making reference to the language in subparagraph (j)(2)(A), which deals with the tentative determination public notice requirements. The public notice requirements under subdivision (l)(7) have also been revised in a similar manner.

In a related revision to subsection (j), language under the initially revised subdivision (j)(5), which states mainly that the public may inspect the permit application and all information that the Commissioner uses in his analysis of the permit application, has been deleted. All information submitted to and used by DEP for permit application processing purposes is, as allowed by Freedom of Information laws, public information and subject to public inspection. As such, DEP feels that subdivision (j)(5) is

unnecessary, with the exception of subparagraph (j)(5)(A) which states that all public notices required to be published must be published in a newspaper of general circulation in the region affected of the permit application; language to this effect has been added to subdivisions (j)(4) and (j)(5).

25. Summary of Comments - Subsection 22a-174-3(k): Table 3(k)-1 de minimis emission levels

Under Table 3(k)-1 of subsection 22a-174-3(k), EPA suggested that the major modification de minimis emission level for "Any other air pollutant Federally regulated under the Clean Air Act" should not be deleted in order to be consistent with the Federal regulations. EPA suggested that, to be consistent with the pollutants listed under section 602 of the Clean Air Act, CFC 112 should be deleted and replaced with CFC 113. EPA also suggested that the de minimis emission level for VOC should be footnoted to make reference to subsection (k), as was done for NOx.

Response. The de minimis emission level of zero (0.0) for "Any other air pollutant Federally regulated under the Clean Air Act" has remained deleted. DEP feels that the intent of this table is to allow modifications with insignificant (de minimis) pollutant increases at a facility to occur without new source review (see Federal definition of "significant", 40 CFR 51.165 and 51.166). With numerous additional pollutants now regulated under the Clean Air Act as amended in 1990, specifically the hazardous air pollutants under section 112 and the ozone depleting substances under section 602, DEP feels that it would be impractical and unduly burdensome to subject a source that increases its emissions by even one molecule of one of these pollutants to a PSD or non-attainment review. Sources emitting the hazardous air pollutants under section 112 will be subject to MACT standards and section 112b(6) specifically exempts these hazardous air pollutants from PSD review; and the ozone depleting substances under section 602 are scheduled to be phased out.

The proposed revision to Table 3(k)-1 includes all of the pollutants presently regulated under the Federal definition of "significant" (i.e. the pollutants vinyl chloride, mercury, asbestos and beryllium will not be deleted), and if this definition is revised to include additional pollutants DEP will revise its regulations accordingly. In addition, all CFCs (including CFC 112) and halons that were added to the initially revised Table 3(k)-1 (because they are ozone depleting substances regulated under section 602 of the Clean Air Act) have since been deleted, for the same reasons as stated above. In a related revision, language under the definition of "modification" and under subdivision (a)(3), which makes reference to any other air pollutant regulated under the Clean Air Act, has been deleted.

Instead of footnoting VOC as was done for NOx, the footnote and the 40 ton per year emission level have been deleted for NOx, and the emission level under Table 3(k)-1 for NOx and VOC each is now 25 tons per year. Therefore, any potential emissions increase of 25 tons per year or greater of either NOx or VOC that occurs at a major stationary

source will be considered a major modification for that pollutant. If for NOx the potential emissions increase is between 25 and 40 tons per year and the increase occurs at a major stationary source then the increase will still be considered a major modification, but under the newly revised subparagraph (k)(3)(B) such major modification shall be exempt from PSD requirements.

26. Summary of Comments - Subsection 22a-174-3(k): Table 3(k)-1 exemptions

Several commenters requested that exemptions be added for certain CFCs and halons listed in Table 3(k)-1 of subsection 22a-174-3(k). The commenters felt that those CFCs and halons that would be exempt from the phase-out requirements of section 604 of the Clean Air Act should also be exempt from New Source Review and PSD requirements.

Response. The exemptions allowed under section 604 of the Clean Air Act are applicable to the production of certain CFCs and halons, and not their use. The exemptions do not make reference to exemption from New Source Review and PSD requirements. As such, the commenters' requested revisions have not been made. However, with the revisions made to Table 3(k)-1 in response to the previous comment addressed, many of the concerns of these commenters may very well have been resolved.

27. Summary of Comments - Subdivision 22a-174-3(l)(1): non-attainment area applicability enforcement provision

EPA suggested that language be added to subdivision 22a-174-3(l)(1) stating that sources subject to subdivision (l)(1) shall not begin actual construction until they receive a permit.

Response. With language to this effect already under the existing subdivision 22a-174-3(b)(1), DEP feels that it is unnecessary to add similar language to subdivision (l)(1).

28. Summary of Comments - Subdivision 22a-174-3(l)(1): non-attainment area applicability and the definition of "major modification"

EPA recommended that the applicability language of subdivision 22a-174-3(l)(1) should be revised to be more consistent with the definition of "major modification".

Response. With the revisions made to the definition of "major modification" and to subparagraph 22a-174-3(l)(2)(C) (in response to comments already discussed), the paragraph that was added to the initially revised subdivision (l)(1) is no longer necessary and has been deleted.

29. Summary of Comments - Subdivision 22a-174-3(l)(1): non-attainment area applicability exemption for NOx as a precursor to ozone

EPA suggested that language be added to subdivision 22a-174-3(l)(1) clarifying that if the Administrator determines that the statutory

requirements of section 182(f) of the Clean Air Act do not apply, then a new major stationary source or major modification for NOx would not be considered a new major stationary source or major modification for ozone and would not be subject to the requirements of subsection (l).

Response. If and when the Administrator makes such a determination, DEP shall consider the revision of its regulations to allow for NOx being exempt from major stationary source and major modification classification for ozone. For now, the suggested revision has not been made.

30. Summary of Comments - Subparagraph 22a-174-3(l)(1): applicability of new non-attainment area provisions

EPA suggested that DEP adopt an applicability provision which clarifies when the non-attainment area New Source Review provisions of the amended Clean Air Act take effect. EPA suggested that the provision be at least as stringent as EPA's September 3, 1992 memorandum from John Seitz, Director of the Office of Air Quality Planning and Standards, and entitled "New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements".

Response. The September 3, 1992 memorandum cited by EPA contains numerous conditions that must be met in order for a new source or modification to be considered exempt from the new non-attainment provisions of the amended Part D of the Clean Air Act. One of these conditions states that the permit application for the new source or modification must be deemed complete, in writing, prior to November 15, 1992. Since DEP has no active permit applications (for new major stationary sources or major modifications) received prior to November 15, 1992 and not yet deemed complete, no new source or modification could conceivably take advantage of this exemption from the new non-attainment provisions. As such, the revision suggested by EPA is unnecessary and has not been made. For all permit applications not deemed complete on or after November 15, 1992, DEP fully intends to apply all of the applicable new Part D non-attainment provisions to such permit applications.

31. Summary of Comments - Subparagraph 22a-174-3(l)(2)(B) and the deleted subparagraph 22a-174-3(l)(5)(G): emission offset exemptions

EPA thought that the emission offset exemption originally moved to clause 22a-174-3(l)(2)(B)(ii) from clause 22a-174-3(l)(5)(G)(i), might be inconsistent with the new requirements of the Clean Air Act and might not be necessary. This clause "grandfathered" a source from offsets if they were not required under 40CFR51.18 as specified in the August 7, 1980 Federal Register. Two other commenters felt that the two other emission offset exemptions that were deleted from subparagraph (l)(5)(G) should be reinserted. These two clauses allowed an exemption from offsets when LAER reduced emission increases to below the applicability levels for new major stationary source or major modification, respectively.

Response. DEP agrees with EPA that the emission offset exemption originally moved to clause 22a-174-3(l)(2)(B)(ii), is inconsistent with DEP's present regulations and the Clean Air Act as amended in 1990. As such, clause (l)(2)(B)(ii) has been deleted and clause (l)(5)(G)(i) remains deleted.

The language in clauses (l)(5)(G)(ii) and (l)(5)(G)(iii) originally allowed an emission offset exemption for a new major stationary source or major modification that, after the application of LAER, had decreased its emissions below the major stationary source and major modification thresholds. With the deletion of the first paragraph under subdivision (l)(1), however, these types of exemptions would still be allowed; in fact one would be able to avoid being subject to subsection (l) altogether. As such, all of subparagraph (l)(5)(G) remains deleted.

32. Summary of Comments - Subdivision 22a-174-3(l)(3): alternative analysis language clarification

EPA suggested that language be added to the "Analysis of alternatives" requirements of subdivision 22a-174-3(l)(3) clarifying that such analysis shall demonstrate "to the satisfaction of the Commissioner" that certain requirements have been met.

Response. DEP feels that the addition of such language is unnecessary and that it is understood that DEP may disapprove of any information submitted pursuant to section 22a-174-3(l)(3). As such, the language suggested by EPA has not been added.

33. Summary of Comments - Subdivision 22a-174-3(l)(5): emission offset language clarification

EPA requested that the first paragraph of subdivision 22a-174-3(l)(5) be revised to read as follows: "Prior to the issuance of a permit under this section, the owner or operator shall obtain Federally enforceable reductions of..." EPA also suggested that language be added to explain that emission reductions need not be in effect until the date on which the new source or modification commences operation.

Response. The introductory paragraph of subdivision 22a-174-3(l)(5) now states that DEP shall not issue a permit for a source subject to subdivision (l)(5) unless all of the provisions of subparagraphs (l)(5)(A) through (l)(5)(L) are met. The newly revised subparagraph (l)(5)(D) states that emission reductions must be Federally enforceable and must be accomplished by the time the proposed stationary source is to commence operation. As such, the concepts suggested by EPA have been incorporated into subdivision (l)(5).

34. Summary of Comments - Subparagraph 22a-174-3(l)(5)(B): emission offset language clarification

EPA requested that under subparagraph 22a-174-3(l)(5)(C) (now (l)(5)(B)) the words "in the attainment demonstration" be added after the words "the State Implementation Plan".

Response. The language under the most recently revised subparagraph 22a-174-3(l)(5)(B) lists certain circumstances where emission reductions will not be allowed for offset purposes (in EPA's terms, the reductions must be "surplus"). DEP agrees with EPA's suggestion that emission reductions not be allowed for offset purposes if such reductions are otherwise required in the attainment demonstration. However, the attainment demonstration is expected to indicate non-specific emission reductions which will be specified as an accompanying revision to the SIP. Therefore this language was not added. Other changes have been made to the new subparagraph (l)(5)(B). Emission reductions will not be allowed for offset purposes if they are otherwise required by a Federally enforceable order, or by any State statute in effect at the time the subject permit application is deemed complete (or sufficient).

35. Summary of Comments - Subparagraph 22a-174-3(l)(5)(E): emission offset language clarification, and interference with other states' programs

EPA suggested that in the first sentence of subparagraph 22a-174-3(l)(5)(H) (now (l)(5)(E)) the words ", in conjunction with the proposed emissions increase," be added after the words "Emission offsets". In the second sentence, EPA suggested that the words "or sulfur dioxide" be added after the words "particulate matter". EPA also suggested that language be added to this subparagraph indicating that the emissions from the proposed new source shall not contribute to the violation of or interfere with the maintenance of the non-attainment, PSD, or protection of visibility provisions of any other state.

Response. Subparagraph 22a-174-3(l)(5)(E) has been revised to include EPA's recommended language and now reads "The emission reductions, in conjunction with the proposed emissions increase,..." Since Connecticut is attainment for sulfur dioxide, this pollutant has not been added to the list of those pollutants for which subparagraph (l)(5)(E) requires modeling. EPA's suggested language regarding emission violations in other states has not been added because this issue is already addressed under subparagraph (c)(1)(E). Lastly, clarifying language has been added to subparagraph (l)(5)(E) which states that in making a determination of net air quality benefit, emissions may be considered on an hourly, daily, seasonal or annual basis.

36. Summary of Comments - Subparagraph 22a-174-3(l)(5)(H): use of preapplication shutdowns for emission offset purposes

With reference to a June 28, 1989 EPA decision (Federal Register, Volume 54, page 27286), EPA proposed language to be added to subparagraph 22a-174-3(l)(5)(J) (now (l)(5)(H)) that would allow greater flexibility in the use of preapplication shutdowns for offset purposes.

Response. EPA's policy on the use of preapplication shutdowns for offset purposes has been reviewed and the language under 22a-174-3(l)(5)(H) has been greatly simplified. This language now states that emission reductions accomplished by shutting down or curtailing production or operating hours may only be used for offset purposes if such reductions occur after November 15, 1990 and the Administrator has not issued the State any notice restricting the use of such emission reductions. DEP feels that this language, in addition to all of the other requirements that must be met under subdivision (l)(5), is consistent with EPA's policy on the use of preapplication shutdowns for offset purposes.

37. Summary of Comments - Subparagraph 22a-174-3(l)(5)(I): emission offsets for volatile organic compounds

EPA requested that additional language be added to subdivision 22a-174-3(l)(5) explaining that, with respect to offsets for a proposed increase in VOC emissions, no emissions credit shall be allowed for reductions of any compound specifically excluded from the definition of "volatile organic compound".

Response. DEP agrees with EPA and appropriate language has been added under subparagraph 22a-174-3(l)(5)(I). In addition, language has been added under this same subparagraph which states that reductions of perchloroethylene shall not be used to offset emissions of volatile organic compounds.

38. Summary of Comments - Subparagraph 22a-174-3(l)(5)(L): emission offset ratios

EPA suggested that the language under subparagraph 22a-174-3(l)(5)(N) (now (l)(5)(L)) should be revised to more definitively explain how emission offsets and emission offset ratios are to be applied. Specifically, EPA suggested that it be made more clear that an allowable emissions increase of VOC or NOx should be offset by a reduction in actual emissions of the applicable pollutant.

Response. With slight modifications to the language suggested by EPA, the requested revision has been made to subparagraph 22a-174-3(l)(5)(L).

39. Summary of Comments - Subdivision 22a-174-3(l)(5): reasonable further progress

EPA proposed that a new subparagraph be added to subdivision 22a-174-3(l)(5) that would ensure that, when emission offsets are in effect for a new source or modification, reasonable further progress is made pursuant to section 172 of the Clean Air Act.

Response. DEP feels that enforcement of the reasonable further progress requirements of section 172 of the Clean Air Act is more appropriately carried out through enforcement of the specific reasonable further progress plan provisions required to be developed under section 172 of the Clean Air Act, and not by revising the

State's New Source Review regulations. As such, EPA's requested revision has not been made. In addition, the definition of "reasonable further progress" found under the initially revised section 22a-174-1 has also been deleted.

40. Summary of Comments - Subdivision 22a-174-3(1)(5) and its effect on the emissions trading and banking program

Two commenter's requested that the language of subdivision 22a-174-3(1)(5) for emission offsets be worded such that it does not conflict with the as yet to be developed emissions trading and banking program.

Response. Without an emissions trading and banking program in place it is difficult to anticipate all of the requirements of such a program. As such, subdivision 22a-174-3(1)(5) does not address to any great extent how emission reductions may be used in a trading and banking program. In fact, language under the initially proposed subparagraph (1)(5)(G), restricted to some extent the use of emission reductions for trading and banking purposes, has been deemed unnecessary and has since been deleted. Presently there is no language under subdivision (1)(5) that specifically prohibits trading and banking. Certainly the requirements of subdivision (1)(5) will be taken into account prior to the finalization of any emissions trading and banking program.

In a related revision, with the above-referenced deletion made to subparagraph (1)(5)(G) the term "emission reduction credit" is no longer used in section 22a-174-3. As such, this term has been deleted from the definitions in section 22a-174-1.

41. Summary of Comments - Subparagraph 22a-174-3(1)(6)(A): source obligation language clarification

EPA requested that language be added to the requirements of subdivision 22a-174-3(1)(7)(A) (now (1)(6)(A)) clarifying that the owner or operator of a new major stationary source or major modification subject to subsection (1) must demonstrate that all sources owned, operated or controlled by him in Connecticut that "are subject to emission limitations" are in compliance with all applicable emission limitations and standards "under the Clean Air Act".

Response. DEP feels that the language suggested by EPA would limit DEP's enforcement authority, in that the owner or operator of a new source subject to subparagraph 22a-174-3(1)(6)(A) would only have to demonstrate compliance with emission limitations and standards under the Clean Air Act, and not for any limitations or standards under the State Implementation Plan, the State regulations, or any State statute. As such, EPA's suggested revision has not been made.

42. Summary of Comments - Subdivision 22a-174-3(1)(6): action taken if the applicable implementation plan is not being adequately implemented

EPA requested that language be added to subdivision 22a-174-3(1)(6) stating that, for a source subject to subsection (1), the construction

permit would not be issued if the Administrator determined that the applicable implementation plan was not being adequately implemented for the non-attainment area in which the proposed new source or modification is to be constructed in accordance with the requirements of Part D of the Clean Air Act.

Response. DEP feels that it is inappropriate to add self-regulating language such as is being recommended by EPA. If would seem to be more the job of EPA to take whatever action they deem appropriate, and as is allowed under the Clean Air Act, if and when the Administrator determines that the applicable implementation plan is not being adequately implemented for the non-attainment area in which the proposed new source or modification is to be constructed. As such, the suggested language has not been added.

43. Summary of Comments - Subdivision 22a-174-3(n)(1): enforcement action on permit applications

One commenter felt that the language under subdivision 22a-174-3(n)(1) that would have required a source to comply with the terms of its permit application was inappropriate. The commenter agreed that it was appropriate to require a source to comply with the terms of its permit, but felt that the reference to compliance with the terms of a permit application should be deleted.

Response. DEP agrees with the commenter. In addition, after rethinking the enforcement issues raised under subsection 22a-174-3(n), DEP feels that it presently has sufficient enforcement authority under its State regulations and statutes to take appropriate enforcement action when necessary. As such, subsection (n) has been deleted.

44. Summary of Comments - PM-10 precursors

EPA suggested that DEP adopt provisions for PM-10 precursors, as referenced under section 189(e) of the Clean Air Act. EPA suggested that DEP add a definition of "PM-10 precursors" under section 22a-174-1, that the definitions of "major modification" and "major stationary source" be revised to state that for the purposes of subdivision 22a-174-3(l)(1) a significant net emissions increase of a PM-10 precursor is considered significant for PM-10, that Table 3(k)-1 of subsection (k) be revised to include the new de minimis emission levels for PM-10 precursors in moderate and serious PM-10 non-attainment areas, and that language be added to subdivision (l)(1) stating that the PM-10 precursor requirements shall not apply where the Administrator determines that such sources of PM-10 precursors do not significantly contribute to PM-10 levels which exceed the PM-10 ambient air quality standards in the area (language to this effect is found under section 189(e) of the Clean Air Act).

Response. Presently the State of Connecticut has one small area within the City of New Haven that is considered non-attainment for PM-10. DEP feels confident that the non-attainment status of this area is due almost solely, if not completely, to fugitive dust emissions in the

area and not to any PM-10 precursor pollutants (sulfur dioxide, nitrogen oxides and volatile organic compounds). As such, the suggested revisions have not been made, however, DEP has addressed the PM-10 precursor issue more formally in its PM-10 SIP submittal to EPA which is being processed independently from this SIP revision.

45. Summary of Comments - Pollution control projects at electric utility generating units

EPA suggested that DEP may want to add certain provisions promulgated in 40 CFR section 51.165 on July 21, 1992 (Federal Register, Volume 57, page 32314) for pollution control projects at electric utility generating units.

Response. DEP has briefly reviewed the above referenced 26-page decision and has decided not to revise its regulations to accommodate for the provisions of this decision at this time. DEP may address this issue in the future when time allows for a more in-depth review of this decision.

46. Summary of Comments - Federal enforceability of State permits to operate

Several commenters requested that DEP make its permits to operate Federally enforceable by including public participation requirements for all permits to operate issued. Reference was made to a June 28, 1989 EPA decision published in the Federal Register (Volume 54, page 27274) which lists requirements that must be met in order for State permits to operate to be considered Federally enforceable, one of which is that EPA and the public have the opportunity to comment on permit applications and proposed permits to operate prior to issuance of the permits to operate. The commenters expressed the following concerns in regards to permits to operate that are not Federally enforceable:

a) If a permit to operate is not Federally enforceable then EPA would be forced to look at potential emissions from the source without control equipment in place and without regard to any restrictions on production rates or hours of operation. Under such a scenario the Federal potential emissions from a number of these permits to operate could be aggregated into a major modification or a major stationary source, even though the aggregated State potential emissions may be well below any major modification or major stationary source thresholds.

b) It is uncertain if an emission decrease obtained from a source that is regulated under a permit to operate that is not Federally enforceable would be creditable for internal offset and emission offset purposes, whereas it is quite certain that such a decrease would be creditable if it were obtained from a source that is regulated under a Federally enforceable permit (assuming all other offset requirements are met).

Response. DEP is aware of the commenters' concerns but feels that the revisions that would be needed to accommodate for these concerns are beyond the scope of the revisions intended to be made to the State regulations at this time. DEP does intend to address this issue more fully in developing the CAA Title V operating permit program.

47. Summary of Comments - "Hidden emissions" from new electric end use equipment

Several commenters expressed concern over "hidden emissions" from new electric end use equipment installations that use electricity from electric utility plants, which in turn are subject to older, less stringent emission standards. The commenters felt that it was unfair to allow someone to go unregulated who purchases electricity from a utility plant that burns a "dirty" fuel (e.g. coal or oil), while greatly regulating and requiring offsets to be obtained from someone who installs their own new electricity generating unit that burns a "cleaner" fuel (e.g. natural gas). The commenters made the following suggestions in an attempt to create "a more level playing field":

a) For new fossil fuel burning equipment that would be subject to the NOx major stationary source or major modification thresholds, clearly define BACT in advance of implementing the revised regulations.

b) New electric end use equipment should be evaluated for its potential to emit at the electric utility plant. If such emissions are greater than major stationary source or major modification thresholds then the new end use equipment should be subject to all New Source Review permitting requirements, including emission offsets.

Response. In regard to the first comment, a BACT determination is made for new sources on a case-by-case basis and allows for the implementation of newer, more efficient control technologies as such technologies become available. Defining a fixed BACT determination, whether before or after the revision of the regulations, would violate both the State and Federal definition of "best available control technology." A fixed BACT determination would obviate the need for the installation of a newer, more stringent control technology if such technology were to become available. As such, the requested revision has not been made.

In regard to the second comment, the suggested revision would represent a radical change in the way that air pollutant emissions are presently regulated both at the State and Federal level. First, electric end use equipment does not fit under the existing or revised State definition of "stationary source". In addition, existing air emission regulations are geared towards regulating the primary source of air emissions; i.e. the equipment, process or operation that actually emits a given air pollutant. What the commenters are suggesting is that not only should the source of the air emissions

itself be regulated (and in this case electric utility plants are presently regulated under existing regulations, the NOx RACT and acid rain provisions of the Clean Air Act will require further regulation of such utility plants, and of course new electric utility plants are subject to complete New Source Review permitting requirements), but anyone who purchases a product (in this case electricity) produced from that source should also be subject to regulation. It would seem unfair to require this "double regulation" for emissions that have occurred once and only once at one source. In addition, if the requested revision were made it would seem only fair to apply this type of thinking to other similar situations as well. For example, if one were to purchase paper products from a paper manufacturer then one would have to calculate the amount of pollutants that were emitted in the manufacturing of that paper and then evaluate the emissions from this "new source" for New Source Review purposes.

In summary, it appears to DEP that the implementation of the suggested new method of evaluating and regulating source emissions would result in a dramatic change in the way that air emissions are presently regulated, would require a major change in the regulations themselves, and is beyond the scope of the revisions intended to be made to the State regulations at this time. DEP is willing to discuss further the new ideas presented by the commenters once the commenters have examined further these ideas and their implications, but because these ideas are so radically different than the way in which both the State and Federal permitting programs presently operate, DEP is not willing to make any commitment as to the implementation of these new ideas at this time.

NOTE: **The following revisions have been made by DEP to more clearly and succinctly carry out the intent of the State's New Source Review program, and not in response to any particular comments received by EPA or any other commenters.**

48. Revision - Deletion of quotation marks

Under the existing regulations all terms that are defined in section 22a-174-1, and which are then used throughout the remainder of the regulations, are enclosed in quotation marks. Since it can be somewhat cumbersome to read sentences where every other word is in quotation marks, the quotation marks around all defined terms in sections 22a-174-1 and 22a-174-3 have been deleted, except for where the terms are initially defined in section 22a-174-1.

49. Revision - Deletion of subdivision numbers in section 22a-174-1

Since all of the defined terms in section 22a-174-1 are in alphabetical order it seems unnecessary to number these terms as well. As such, the subdivision numbers preceding each of the defined terms in section 22a-174-1 have been deleted.

50. Revision - Definitions added: "CFR" and "non-attainment air pollutant"

The term "CFR" has been added to section 22a-174-1 to mean the Code of Federal Regulations. The term "non-attainment air pollutant" has been added to clarify that VOC and NOx are each non-attainment air pollutants for ozone.

51. Revision - Definition of "complete" replaced with definition of "sufficient"

In order to be consistent with terms defined in CT Statutes and used throughout DEP's air, waste and water programs, the term "complete" has been deleted and replaced with the term "sufficient"; the new definition for "sufficient" is the same as that used for "complete" in the existing regulations. In addition, the words "incomplete" and "completeness determination" used throughout section 22a-174-3 have been replaced with the words "insufficient" and "determination of sufficiency", respectively.

52. Revision - Definition of "dioxin emissions": EPA publication reference deleted

The initially proposed definition of "dioxin emissions" included a reference to an EPA publication for estimating risks associated with exposure to dioxin emissions. DEP feels that this reference is unnecessary and it has been deleted. If a source of dioxin emissions is to be permitted then prior to the issuance of such permit the appropriate method for estimating risks associated with exposure to dioxin emissions will be determined.

53. Revision - Definition of "heat input", "internal offset", "netting" and "non-attainment area": minor editorial revisions

For purposes of clarification, minor editorial revisions have been made to the above-referenced definitions as they appeared in the initially proposed regulations. No substantive changes have been made.

54. Revision - Definition of "nitrogen oxides"

The initially proposed definition of "nitrogen oxides" was defined as the sum of all oxides of nitrogen except nitrous oxide expressed as nitrogen dioxide, and as measured by test methods set forth in 40 CFR Part 60. DEP feels that it is not in its best interest to exclude nitrous oxide from the definition of "nitrogen oxides" or to state specifically the test methods to be used to measure nitrogen oxides, therefore the most recently proposed definition of "nitrogen oxides" does not exclude nitrous oxide nor does it make reference to any test methods.

55. Revision - Deletion of subsection 22a-174-1(b)

Upon further review of the definitions of "actual emissions" and "potential emissions", DEP feels that subsection 22a-174-1(b) is unnecessary, therefore, this subsection has been deleted.

56. Revision - Subdivisions 22a-174-3(c)(1) and (g)(8): typographical errors

The existing introductory paragraph of subdivision 22a-174-3(c)(1) makes reference to subparagraphs (A) through (K) of subdivision (c)(1). The initially proposed subdivision (c)(1) was changed to make reference to subparagraphs (A) through (L), however a new subparagraph (L) was not added. The most recently proposed subdivision (c)(1) now correctly makes reference to subparagraphs (A) through (K) of subdivision (c)(1).

The intent of subdivision (g)(8) is to exempt a source requiring a permit to operate from being subject to BACT (under subparagraph (g)(2)(H)) if it had already been reviewed for BACT under a permit to construct. However, the existing subdivision (g)(8) incorrectly makes reference to subparagraph (g)(2)(G) and not (g)(2)(H). The most recently proposed subdivision (g)(8) now correctly makes reference to subparagraph (g)(2)(H).

57. Revision - Subdivisions 22a-174-3(k)(5) and (k)(6); Table 3(k)-2; and subparagraph (l)(2)(B): minor editorial revisions

For purposes of clarification, minor editorial revisions have been made to the above-referenced parts of section 22a-174-3 as they appeared in the initially proposed regulations. No substantive changes have been made.

IV. FINAL RECOMMENDATION

Based upon the considerations in this Hearing Report, I recommend that the final amended regulations be adopted by the Commissioner of Environmental Protection and submitted for approval by the Attorney General and the Legislative Regulations Review Committee.

1/11/94
Date

Carmine DiBattista