EXHIBIT E

HEARING REPORT

Prepared Pursuant to Section 4-168(d) of the Connecticut General Statutes and Section 22a-3a-3(d)(5) of the Department of Environmental Protection Rules of Practice

Regarding the Amendment of Sections 22a-174-1(29) and (94); 22a-174-2a(e)(1); 22a-174-2a(e)(3); 22a-174-2a(f)(1); 22a-174-2a(f)(2); 22a-174-2a(f)(4); 22a-174-2a(j); 22a-174-3b(a), (b), (c), (d) and (f); 22a-174-3c(a) and (b); 22a-174-5(b), (e)(2) and (g); 22a-174-19a(a), (g) and (h)(5); 22a-174-20(m), (n), (o), (p), (q), (r), (s) and (v); 22a-174-22(a)(17), (c), (j) and (k); 22a-174-22a(f)(5); 22a-174-22b(c); 22a-174-22b(i)(6); 22a-174-23(h); 22a-174-24(b); and 22a-174-33(d)(3) of the Regulations of Connecticut State Agencies

Hearing Officer: Merrily A. Gere

Date of Hearing: March 1, 2005

On January 7, 2005, the Commissioner of the Department of Environmental Protection (Commissioner and Department, respectively) signed a notice of intent to amend the miscellaneous sections of the Regulations of Connecticut State Agencies (R.C.S.A.) indicated above, collectively known as the "new source review trailer package." Pursuant to such notice, a public hearing was held on March 1, 2005, with the public comment period for the proposed amendment closing on March 8, 2005, in response to a request submitted by the Connecticut Business and Industry Association for extension from the published date of March 4, 2005.

I. Hearing Report Content

As required by section 4-168(d) of the Connecticut General Statutes (C.G.S.), this report describes the amendment as proposed for hearing; the principal reasons in support of the proposed amendment; the principal considerations presented in oral and written comments in opposition to the proposed amendment; all comments made and responses thereto regarding the proposed amendment; and the final wording of the proposed amendment. Commenters are identified in Attachment 1.

This report also includes a statement in accordance with C.G.S. section 22a-6(h).

II. Federal Standards Analysis in Compliance with Section 22a-6(h) of the General Statutes

Pursuant to the provisions of C.G.S. section 22a-6(h), the Commissioner is authorized to adopt regulations pertaining to activities for which the federal government has adopted standards or

procedures. At the time of public notice, the Commissioner must distinguish clearly all provisions of a proposed regulation or amendment that differ from ***applicable*** federal standards or procedures (*i.e.*, federal standards and procedures that apply to ***the same persons*** under the proposed state regulation or amendment). The Commissioner must distinguish any such provisions either on the face of such proposed regulation or amendment or through supplemental documentation accompanying the proposed regulation or amendment. In addition, the Commissioner must provide an explanation for all such provisions in the regulation-making record required under Title 4, Chapter 54 of the C.G.S. and make such explanation publicly available at the time of the notice of public hearing required under C.G.S. section 4-168.

In accordance with the requirements of C.G.S. section 22a-6(h), the following statement was available at the time of the notice of the public hearing and was entered into the administrative record in the matter of the proposed regulatory revisions known collectively as the new source review trailer package:

With respect to R.C.S.A. sections 22a-174-5(b); 22a-174-19a(a)(1) and (7); 22a-174-20(m), (n), (o), (p), (q), (r), (s) and (v); 22a-174-22(a)(17); 22a-174-22a(f)(5); 22a-174-22b(c); 22a-174-22b(i)(6); 22a-174-23(h); 22a-174-24(b); and 22a-174-33(d)(3) there are no federal standards or procedures involved as the proposed changes only update citations in these regulatory provisions consistent with the adoption of section 22a-174-3a and the revision of section 22a-174-33 effective on March 15, 2002.

With respect to the revision of R.C.S.A. sections 22a-174-1(29); 22a-174-2a(e)(3); 22a-174-2a(f)(2); 22a-174-3b(c)(3)(D); and 22a-174-3b(d)(3)(B), there are no federal standards or procedures involved as the proposed changes only correct typographical errors in these regulatory provisions.

With respect to the revision of R.C.S.A. section 22a-174-1(94), there are no differences from federal standards or procedures as the proposed change replaces an outdated fuel specification consistent with definitions in 40 Code of Federal Regulations (CFR) Part 60.41b and 40 CFR 60.41c.

With respect to the revision of R.C.S.A. section 22a-174-2a(e)(1), there are no federal standards or procedures involved as the proposed changes clarify when an obligation to modify an existing permit arises under section 22a-174-2a.

With respect to the addition of new subsection (j) to R.C.S.A. section 22a-174-2a, the addition does not involve federal standards or procedures as the proposed subsection clarifies that a registration issued under former section 22a-174-2 of the R.C.S.A. is a license and remains in effect unless revoked in accordance with identified procedures.

With respect to the revision of R.C.S.A. section 22a-174-2a(f)(1), there are no federal standards or procedures involved as the proposed changes clarify the activities that do not require a permit.

With respect to the revision of R.C.S.A. section 22a-174-2a(f)(4), there are no federal standards or procedures involved as the proposed changes clarify when a permittee may make permit revisions after submitting a request so to do.

With respect to the revision of R.C.S.A. section 22a-174-3b, the proposed requirements clarify language pertaining to volatile organic compound (VOC) controls for automotive refinishing operations. The proposed action is consistent with federally adopted standards and procedures.

With respect to the revision of R.C.S.A. section 22a-174-3c, there are no federal standards or procedures involved as the proposed changes clarify that sources electing coverage under section 22a-174-3c may cap the emissions from multiple emission units at a premises.

With respect to the revision of R.C.S.A. section 22a-174-3c(b)(5), there are no federal standards or procedures involved, as the proposed changes correct a technical error in this regulatory provision.

With respect to the deletion of R.C.S.A. section 22a-174-5(e)(2) and (g), the deletion is consistent with federal standards and procedures. The deleted provisions are outdated requirements for municipal waste combustors that are now regulated according to R.C.S.A. section 22a-174-38, which is federally approved as consistent with federal guidelines and standards for municipal waste combustors. *See* 65 Federal Register (FR) 21354 and 66 FR 63311.

With respect to the revision of R.C.S.A. section 22a-174-19a(g), there are no federal standards or procedures involved, as the proposed changes clarify that the fuel emergency provisions of this section apply to sources that combust low sulfur solid fuel, consistent with the adoption of Connecticut Public Act 02-64.

With respect to the revision of R.C.S.A. section 22a-174-19a(h)(5), there are no federal standards or procedures involved, as the proposed changes clarify the baseline emission rate from which sulfur dioxide early reduction credits and discreet emission reduction credits (DERCs) may be created pursuant to section 22a-174-19a.

With respect to the revision of R.C.S.A. section 22a-174-22, there are applicable federal standards and guidelines pertaining to programs for the implementation of reasonably available control technology on major stationary sources of nitrogen oxide (NOx). The following provisions within section 22a-174-22 are consistent with such federal requirements:

- An exemption for mobile source and aircraft engine test cells and test stands;
- A five-year vintage restriction on the use of DERCs and NOx allowances for compliance with section 22a-174-22;
- An alternative means to demonstrate compliance with the emissions testing and monitoring requirements for certain sources; and
- An exemption from emissions testing requirements for sources that combust propane provided that emissions are less than 50% of the applicable emissions standard.

III. Summary and Text of the Amendment as Proposed

The proposed amendment primarily concerns adjustments to internal citations within the R.C.S.A. to reflect the adoption in March 2002 of sections 22a-174-2a and 22a-174-3a, and the amendment of sections 22a-174-1 and 22a-174-33, concerning respectively, the new source review and Title V operating permit programs. The proposed regulatory revisions to the R.C.S.A. also correct or improve the clarity of numerous regulatory provisions; correct miscellaneous typographical and formatting errors; and make technical corrections.

The text of the proposed amendment is located in Attachment 2 to this report.

IV. Principal Reasons in Support of the Proposed Amendment

In March 2002, the Department completed a substantial effort to streamline and improve the environmental permitting of air pollution sources within the State of Connecticut. As a result of the regulatory changes involved in that effort, many internal citations within the air quality regulations require adjustment. Opening such a large number of regulatory sections for hearing also provided the Department with the opportunity to correct or improve the clarity of numerous regulatory provisions that, taken alone, would not warrant individual rule making efforts. Together, the revisions made in this amendment improve overall regulatory consistency and clarity, thereby furthering the regulated community's understanding of and ability to comply with the air quality regulations.

V. Principal Considerations in Opposition to the Proposed Amendment

No comments opposed moving the amendment forward for approval and promulgation. Some comments suggested technical revision to certain portions of the proposed amendment. Other comments opposed certain provisions of the amendment, notably new R.C.S.A. section 22a-174-2a(j), regarding registrations and registration renewals, and new R.C.S.A. section 22a-174-22(j)(4), regarding life span limitations on NOx allowances and DERCs. Such comments are set out in Section VI of this report.

VI. Summary of Comments

All comments submitted are summarized below with the Department's responses. Commenters are identified by abbreviation in this section and are identified fully in Attachment 1 to this report. Comments are arranged in order of and identified by the section of the amendment addressed. When changes to the proposed text are indicated in response to comment, new text is in bold font and deleted text is in strikethrough font.

Section 3 -- R.C.S.A. Section 22a-174-2a(e)(1)

1. Comment: To clarify that "any change" in R.C.S.A. section 22a-174-2a(e)(1) does not include changes that require a non-minor permit modification, the U. S. Environmental Protection Agency (EPA) recommends the following revision:

> (1) The permittee of any source that is subject to a new source review permit issued by the commissioner [pursuant to section 22a-174-3a(a)(1)(D) or (E)] pursuant to

section 22a-174-3a or former section 22a-174-3 of the Regulations of Connecticut State Agencies shall apply for a new source review minor permit modification to [incorporate any modification of an emission unit with any increase in potential emissions, above allowable emissions**,** of less than fifteen (15) tons per year of any individual air pollutant, unless such modification is subject to the provisions of section 22a-174-3a(a)(1)(A), (B), (C) or (F) of the Regulations of Connecticut State Agencies] make any change to such permit, unless such change is allowed pursuant to subsection (f) of this section or unless the change is required **to receive a non-minor permit modification** pursuant to subsection (d)(3) of this section.

Response: The Department should clarify R.C.S.A. section 22a-174-2a(e)(1) with the insertion of the phrase "to receive a non-minor permit modification" as indicated in the comment.

Section 8 -- R.C.S.A. Section 22a-174-2a(j)

2. Comment: CBIA strongly opposes the adoption of section 22a-174-2a(j), as written. Contrary to the public notice for this rulemaking, the proposed section is not a "clarification," but rather appears retroactively to turn a simple registration form into a license that imposes current operational restrictions on existing sources. The purpose of the registration requirement, when it was in effect, was to identify sources that were grandfathered from permit requirements beginning in the early 1970's and to create an inventory of air pollution sources. For example, former R.C.S.A. section 22a-174-2(f) allowed the Commissioner to require a source to file a registration statement "if the Commissioner determines that such information is needed to develop or maintain a comprehensive inventory of air pollutant emissions . . . ." Therefore, contrary to proposed section 22a-174-2a(j)(2), the registration forms themselves did not impose any conditions with which a source must comply.

The instruction form for filling out the old Process (Manufacturing) Equipment Registration Application Form EPAC-6 is instructive in understanding the intent of the registrations. Part of that registration form required that applicants provide information about the types of fuels used. For sulfur and ash content, the instructions stated that "[i]f you do not know the average sulfur and ash contents of the fuel(s) used during the month of June, 1972, ask your fuel supplier." For "maximum firing rate," the instructions stated that "[i]f you do not know the maximum firing rate, ask your burner maintenance contractor, the manufacturer or your fuel supplier." The clear intent of the registration form was to request facilities to provide reasonably available information to describe existing sources. The instructions for the registration forms encouraged making reasonable guesses, where precise information was not available. As a result, registrations often contained best estimates of typical maximum firing rates and other operating conditions, rather than the actual physical source limitations of the equipment that were present when a registration application was submitted to the Department.

New section 22a-174-2a(j) appears to have the effect of changing the general information requested by the registration forms over three decades ago into legally binding permit conditions that specify current operational limits for sources. There is no need, however, to convert these

old registrations retroactively into something that they originally were not. The regulations require permits for certain defined "modifications." The Department and the owner or operator of an existing registered source should be able to review all of the applicable facts and circumstances in a particular case to determine whether the source has been physically changed or whether there has been a change in a method of operation that constitutes a modification for which a permit is required. Therefore, we respectfully request that the Department withdraw this proposed section of the regulation. This new section is not simply a technical amendment or clarification, but an effort to impose license conditions on existing sources retroactively.

If CBIA is misreading the intent and effect of this proposed new section, and it is simply intended by the Department to provide a process to terminate or revoke old, unnecessary registration statements, this can and should be done without language that suggests that the old registrations impose legally binding permit conditions in the form of operational limits for sources. One way to accomplish this would be to delete proposed sections 22a-174-2a(j)(1) and (2), renumbering sections 22a-174-2a(j)(3) and (4) as (j)(1) and (j)(2), and revising them as follows:

> (j)(1) Any registration issued pursuant to former section 22a-174-2 of the Regulations of Connecticut State Agencies is considered to be a license as defined by section 4-166(5) of the Connecticut General Statutes in that it is a registration that was required by law. The commissioner may terminate or revoke any registration issued pursuant to former section 22a-174-2 of the Regulations of Connecticut State Agencies on his own initiative or at the request of the registrant, in accordance with section~~s~~ 4-182(c) ~~and 22a-174c~~ of the Connecticut General Statutes, section 22a-3a-5(d) of the Regulations of Connecticut State Agencies and any other applicable law.
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> (j)(2) A registrant requesting the revocation of a registration issued pursuant to former section 22a-174-2 of the Regulations of Connecticut State Agencies shall make such a request to the commissioner in writing and shall include:
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> (A) Facts and reasons supporting the request;
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> (B) The requested date of revocation; and
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> (C) Evidence satisfactory to the commissioner to demonstrate that:
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> (i) The subject stationary source has been shut down, removed, dismantled or otherwise rendered inoperable,
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> (ii) A complete application for an individual permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies has been submitted to the commissioner for review and approval,
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> (iii) The subject stationary source is operated in accordance with

section 22a-174-3b or section 22a-174-3c of the Regulations of Connecticut State Agencies, or

(iv) The subject stationary source does not currently meet any provision requiring that an individual permit be obtained pursuant to section 22a-174-3a(a) of the Regulations of Connecticut State Agencies. (CBIA)

Response: CBIA is concerned that R.C.S.A. section 22a-174-2a(j) retroactively converts a registration submitted for information purposes, in some cases many years ago, into a set of operating restrictions carrying the legally laden label of "license." In proposing, R.C.S.A. section 22a-174-2a(j), the Department is not creating a new requirement. Registrations issued under R.C.S.A. section 22a-174-2 have been licenses since their date of issuance. The Department's Rules of Practice, codified in R.C.S.A. section 22a-3a-2 and the following sections, provide the basis for proposed R.C.S.A. section 22a-174-2a(j). The definition of license in R.C.S.A. section 22a-3a-2 determines the status of a registration issued under former R.C.S.A. section 22a-174-2 as a license. R.C.S.A. section 22a-3a-2(a) defines license by reference to C.G.S. section 4-166, that is as "the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes."

As suggested at the end of CBIA's comment, the intention of proposed R.C.S.A. section 22a-174-2a(j) is to provide a clear process to review the operation of sources subject to a registration, determine if changes in operation result in new source review (NSR) applicability and allow for revocation of a registration. Registrations issued under R.C.S.A. section 22a-174-2 have functioned as limitations and operational descriptions. Without such an approach, permitting under the Department's NSR permit requirements is the only option for sources that meet the NSR thresholds. However, the Department lacks a process to require a review of a registered source to determine if the NSR requirements of R.C.S.A. section 22a-174-3a apply. The proposed addition of subsection (j) addresses this procedural lack to the benefit of source operators and the Department.

Considering CBIA's suggested revisions to proposed subsection (j), the Department should revise proposed section 22a-174-2(j)(1) as follows:

(j) Registration and Registration Revocation.

(1) Any registration issued pursuant to former section 22a-174-2 of the Regulations of Connecticut State Agencies is a license ~~that~~ **as defined in section 4-166 of the Connecticut General Statutes in that it is a registration required by law. Such registration** shall remain in full force and effect, unless otherwise determined by the commissioner.

3. Comment: Cytec objects to the wording in proposed R.C.S.A. section 22a-174-2a(j)(1).

Cytec believes it would be sufficient to state that a registration issued under former R.C.S.A. section 22a-174-2 remains in effect, rather than to define it as a "license." The change may assign more meaning than a description of the equipment, which was the original intent of such registrations. Cytec suggests the following revised language:

> (1) Any registration issued pursuant to former section 22a-174-2 of the Regulations of Connecticut State Agencies ~~is a license that shall remain~~ **remains** in ~~full force and~~ effect, unless otherwise determined by the commissioner.

Response: The Department should not revise the amendment in response to this comment. As indicated in the response to the above comment, under the Department's Rules of Practice a registration issued under former R.C.S.A. section 22a-174-2 is considered a license when issued.

4. Comment: Proposed new R.C.S.A. section 22a-174-2a(j) states that any registration issued under section 22a-174-2 remains in effect until revoked by the Department. Proposed R.C.S.A. sections 22a-174-2a(j)(4)(C)(i) and (iv) further suggest that the registration remains in effect even if the particular equipment or facility is no longer required to be permitted.

NUSCO contends that R.C.S.A. sections 22a-174-2a(j)(4)(C)(i) and (iv) are both incorrect and unnecessary. For instance, as a matter of law, a regulatory change that exempts a facility or equipment from registration or permitting automatically renders a previously issued registration or permit moot. As such, it cannot be binding on the facility and need not be revoked.

NUSCO recognizes that, for bookkeeping purposes, the Department needs to know that a particular registration or permit is no longer applicable. For that reason, NUSCO suggests that the Department revise R.C.S.A. section 22a-174-2a(j) to require that a facility notify the Department that the formerly applicable registration or permit is no longer needed. (NUSCO)

Response: The Department should not revise the proposed amendment in response to this comment. As explained in the response to Comment 2, a registration issue under former R.C.S.A. section 22a-174-2 is a license when issued. As also indicated in the response to Comment 2, the Department's Rules of Practice define the procedure for creating, renewing and revoking a license. Under R.C.S.A. section 22a-3a-5, a license remains in effect unless it expires or is revoked or suspended. The Rules of Practice allow no mechanism by which the Department may automatically recognize a moot permit. Proposed section 22a-174-2a(j) fills this gap.

Section 9 -- R.C.S.A. Section 22a-174-3b(b) and (d)

5. Comment: The proposed revisions to section 9 of the amendment include some language changes that would help clarify the intent and application of the regulations. However, the way in which certain proposed changes are drafted could unintentionally detract from that goal and limit the scope and the usefulness of R.C.S.A. section 22a-174-3b. (CBIA)

In particular, in subsection (b)(2), the proposed language changes would eliminate certain uses of the term “emissions unit," in favor of using only the term “source." In R.C.S.A. section 22a-174-

3b(b)(1)(A), the phrase, "the source is an emissions unit with potential emissions of …" would be simplified to "the source has potential emissions of …" This change would seem to clarify the regulation and promote internal consistency. However, in R.C.S.A. section 22a-174-3b(b)(2)(A), the phrase "the source is a modification to an existing emissions unit which increases potential emissions … by fifteen (15) tons or more per year" would be changed to "the source has increased potential emissions … by no more than 15 tons or more per year."

This change, in shifting the focus from the particular modification in question to the source generally, would introduce uncertainty. Would the increases to be counted be those from the particular modification in question, or also any unrelated recent or past increases as well? The result would be confusion in a program whose goal is to simplify. The result would also be inconsistent with the permit trigger in R.C.S.A. section 22a-174-3a(a)(1)(E), which requires permitting for a "modification … which increases potential emissions" by 15 tons or more per year. The phrase in R.C.S.A. section 22a-174-3b(b)(2)(A) should therefore be revised to read likewise, "The modification has increased potential emissions …".

The proposed revised language in R.C.S.A. section 22a-174-3b(b)(2)(A) also includes the phrase "has increased potential emissions... by no more than 15 tons or more per year" (emphasis supplied). This phrasing is internally contradictory and confusing, as well as inconsistent with the permit trigger for modifications in R.C.S.A. section 22a-174-3a(a)(1)(E). R.C.S.A. section 22a-174-3b needs to be revised to be consistent with section 3a in order to achieve the intent of R.C.S.A. section 22a-174-3b, which is to provide a simple, standardized way to regulate certain sources and modifications thereto without the need for an individual permit under section 3a. Therefore, the phrase in R.C.S.A. section 22a-174-3b(b)(2)(A) should be corrected to "has increased potential emissions … by 15 tons or more per year".

Language to revise current R.C.S.A. section 22a-174-3b(b)(2)(A) in accordance with the above follows.

> (2) The owner or operator of an existing stationary source that is an external combustion unit, an automotive refinishing operation, a nonmetallic mineral processing equipment, an emergency engine or a surface coating operation may modify such source without obtaining a general permit for such source issued pursuant to section ~~22a-174(*l*)~~ 22a-174 of the Connecticut General Statutes or a permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies if:
>
> (A) The ~~source is a~~ modification ~~to an existing emission unit which increases~~ has increased potential emissions of any individual air pollutant from such ~~unit~~ source by fifteen (15) tons or more per year; (CBIA)

Response: The revisions to R.C.S.A. section 22a-174-3b(b)(1) and (2) replace the use of the term "emission unit" with the term "source" to clarify the applicability and provide flexibility to owners and operators of sources with multiple emissions units at a single source. As CBIA comments, the proposed revision to R.C.S.A. section 22a-174-3b(2)(A) is inconsistent with

respect to the permit requirements for modifications in R.C.S.A. section 22a-174-3a(a)(1)(E). To correct this inconsistency, the Department should revised proposed R.C.S.A. section 22a-174-3b(b)(2)(A) as follows:

> (2) The owner or operator of an existing stationary source that is an external combustion unit, an automotive refinishing operation, a nonmetallic mineral processing equipment, an emergency engine or a surface coating operation may modify such source without obtaining a general permit for such source issued pursuant to section [22a-174(*l*)] 22a-174 of the Connecticut General Statutes or a permit pursuant to section 22a-174-3a of the Regulations of Connecticut State Agencies if:
>
> > (A) The **[**~~source [is a]~~modification **[**~~to an existing emission unit which increases~~] has increased potential emissions of any individual air pollutant ~~[~~from such **[**unit] **source** by ~~no more than~~ fifteen (15) tons or more per year;

6. Comment: In September 2001 when Connecticut first proposed its automotive refinishing requirements in R.C.S.A. section 22a-174-3b(d), EPA submitted written comments recommending that Connecticut include in its regulation the pollution prevention and training measures in Section Env-Axxxx.02(h) of the OTC's "Model Rule for Mobile Equipment Repair and Refinishing." In the hearing report for that rulemaking, the Department indicated that it "should not make the suggested changes as the additional regulatory requirements would be contrary to the Department goal that proposed section 22a-174-3b provide a streamlined compliance mechanism for smaller sources. . . " EPA disagrees with the Department's position, particularly in the case of two of the four recommended requirements. Specifically, we consider it reasonable to add the following provisions to the automotive refinishing requirements of R.C.S.A. section 22a-174-3b. Similar requirements have been adopted by Maine, New Jersey, New York, Delaware and Pennsylvania. (EPA)

> The owner or operator of an automotive refinishing operation shall implement the following pollution prevention and training measures:
>
> (A) Fresh and used coatings, solvent and cleaning solvents shall be stored in nonabsorbent, nonleaking containers. The containers shall be kept closed at all times except when filling or emptying; and
>
> (B) Cloth and paper, or other absorbent applicators, moistened with coatings, solvents or cleaning solvents, shall be stored in closed, nonabsorbent, nonleaking containers.

Response: The Department should add provisions to R.C.S.A. section 22a-174-3b(d)(1) that reflect the rule improvements suggested by EPA. Such requirements are directionally correct with regard to achieving reductions in ozone precursors necessary for Connecticut to comply with the 8-hour ozone national ambient air quality standard (NAAQS). R.C.S.A. section 22a-

174-3b(d)(1) should be revised as follows:

(d) Automotive refinishing operation.

(1) [The] Except as provided in subsection (4) of this subsection, the owner or operator of an automotive refinishing operation shall properly maintain equipment and perform such operation in accordance with the following requirements:

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

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

(i) high volume low pressure spray equipment,

(ii) electrostatic application equipment, or

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

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

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

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

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

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

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

(E)] If a spray booth is [used] vented directly to the ambient air, such booth shall contain particulate control equipment that is operated and maintained in good working condition at all times the booth is in use**[.];**

(E) New and used coatings and solvents shall be stored in nonabsorbent, non-leaking containers. Such containers shall be kept closed at all times except when the container is being filled or emptied; and

(F) Absorbent applicators, such as cloth and paper, that are moistened with coatings or solvents shall be stored in a closed, nonabsorbent, non-leaking container.

7. Comment: On December 1, 2004, Connecticut submitted the existing version of R.C.S.A. section 22a-174-3b(d) to EPA as a State Implementation Plan (SIP) revision. Since the current proposal makes improvements upon existing R.C.S.A. section 22a-174-3b, EPA would prefer to act on the revised version of R.C.S.A. section 22a-174-3b that may be adopted as a result of this proceeding. Therefore, EPA encourages the Department to address Comment 6, adopt the revised rule and submit it to EPA as a SIP revision as soon as possible. In the SIP submittal letter, the Department should indicate that the new submittal supersedes the December 1, 2004 revision regarding the automotive refinishing requirements of R.C.S.A. section 22a-174-3b. (EPA)

Response: The Department should move the amendment towards adoption and submit it to EPA as a SIP revision as suggested in the comment.

Section 10 -- R.C.S.A. Section 22a-174-3c(a) and (b)

8. Comment: The proposed changes to R.C.S.A. section 22a-174-3c would seem to provide welcome flexibility, in allowing aggregation of multiple emissions units under the potential emissions limit and the section 22a-174-3c requirements. However, CBIA has found that some of the language proposed to achieve this goal inadvertently creates uncertainty. This uncertainty can be readily corrected, as follows:

(a) Limitations on potential to emit.

(1) For the purposes of this section, all terms are as defined in sections 22a-174-1 and 22a-174-3b of the Regulations of Connecticut State Agencies. Notwithstanding the definition of "potential emissions" or "potential to emit" in section 22a-174-1 of the Regulations of Connecticut State Agencies, the potential emissions or potential to emit of any individual air pollutant for [a stationary source] an emissions unit or group of emissions units identified in subdivision (2) of this subsection is less than fifteen tons per year, unless otherwise determined by a permit or order of the commissioner, if the owner or operator operates ~~***the source***~~ ***such emission unit or group of emissions units*** to comply with all applicable requirements of subsections (b) and (c) of this section.

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

(3) For the purposes of limiting potential emissions under this section, the applicable

operating requirements may apply to similar or identical types of emission units so that the aggregate potential emissions from such ~~***sources***~~ ***emission unit or group of emissions units*** remains below fifteen (15) tons per year of each criteria air pollutant and below ten (10) tons per year of each hazardous air pollutant as defined in section 22a-174-3a(m) of the Regulations of Connecticut State Agencies.

One final comment about this section: sections 22a-174-3c(b)(2)(A), (3)(A) and (4)(A) each appear to contain a typographical error when the subsection refers to fuel "purchase." The word "purchase" should probably be either "purchases" or "purchased." (CBIA)

Response: R.C.S.A. section 22a-174-3c is designed to limit the potential to emit of a stationary source. The proposed revisions are intended to clarify the term "stationary source," essentially by making changes consistent with the definition in R.C.S.A. section 22a-174-1. R.C.S.A. section 22a-174-1, by reference to 40 CFR 57.165, defines a "stationary source" as "all of the pollutant-emitting activities which belong to the same industrial group, are located on one or contiguous or adjacent properties and are under the control of the same person (or persons under common control)." Because the term "stationary source" is defined, some of the proposed revisions to subsection (a) are not necessary and may confuse rather than clarify. R.C.S.A. section 22a-174-3c is intended to apply to stationary sources, that is a group of the same category of emissions units at a premises. The current use of the term in the section is generally consistent with the general definition, the intent and its implementation. Therefore, the Department should not move forward to adopt all of the proposed revisions to R.C.S.A. section 22a-174-3c(a), and the final version should appear as follows:

(a) Limitations on potential to emit.

(1) For the purposes of this section, all terms are as defined in sections 22a-174-1 and 22a-174-3b of the Regulations of Connecticut State Agencies. Notwithstanding the definition of "potential emissions" or "potential to emit" in section 22a-174-1 of the Regulations of Connecticut State Agencies, the potential emissions or potential to emit of any individual air pollutant for ~~[~~a stationary source~~]~~ ~~an emissions unit or group of emissions units~~ identified in subdivision (2) of this subsection is less than fifteen tons per year, unless otherwise determined by a permit or order of the commissioner, if the owner or operator operates the source to comply with all applicable requirements of subsections (b) and (c) of this section.

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

~~(3) For the purposes of limiting potential emissions under this section, the applicable operating requirements may apply to similar or identical types of emission units so that~~

~~the aggregate potential emissions from such sources remains below fifteen (15) tons per year of each criteria air pollutant and below ten (10) tons per year of each hazardous air pollutant as defined in section 22a-174-3a(m) of the Regulations of Connecticut State Agencies.~~

In addition to the changes above, the word "purchase" in R.C.S.A. section 22a-174-3c(b)(1)(A), (2)(A), (3)(A) and (4)(A) should be replaced by the word "purchased," as follows:

(b) Operating requirements.

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

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

(B) [Maintain a maximum rated] Not exceed a heat input [less than] for each external combustion unit of 50 mmBTU/hr.

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

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

(B) [Maintain a maximum rated] Not exceed a heat input for each external combustion unit of [less than] 25 mmBTU/hr.

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

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

(B) [Maintain a maximum rated] Not exceed a heat input for [the] each external combustion unit of [less than] 15 mmBTU/hr.

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

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

Section 19 -- R.C.S.A. Section 22a-174-22(c)

9. Comment: The revision to R.C.S.A. section 22a-174-22(c) adds language to exempt aircraft and mobile source engine test cells and test stands from that regulation. In the current version of R.C.S.A. section 22a-174-22, these sources are subject to the rule and, while no reasonably available control technology (RACT) is identified for these sources, R.C.S.A section 22a-174-22(i) allows for schedule modifications through which the commissioner could require NOx reductions. R.C.S.A. section 22a-174-22(i) also allows for restrictions on the activity of these sources on days for which the commissioner forecasts high ozone levels. Such restrictions are appropriate for these sources. Removing such provisions from R.C.S.A. section 22a-174-22 provides for a less stringent rule and requires additional justification prior to approval as a SIP revision. (EPA)

Response: In response to EPA's comment, the Department should withdraw the proposed revision to R.C.S.A. section 22a-174-22(c). The Department should re-evaluate the need for such an exemption and its applicability as part of a future rulemaking to address general applicability and other clarifications to R.C.S.A. section 22a-174-22.

Proposed section 22a-174-22(c) should be withdrawn from the final text of the amendment, as follows:

~~**(c) [Exemption]** **Exemptions.**~~

~~[This section shall not apply to the owner or operator of a mobile source.]~~

~~(1) The following sources shall be exempt from the provisions of this section:~~

~~(A) Mobile sources;~~

~~(B) Mobile source engine test cells;~~

~~(C) Mobile source engine test stands;~~

~~(D) Aircraft engine test cells; and~~

~~(E) Aircraft engine test stands.~~

~~(2) For the purposes of this subsection:~~

~~(A) "Mobile source engine test cell or stand" means any equipment designed and operated to measure the performance of uninstalled mobile source engines or components thereof; and~~

~~(B) "Aircraft engine test cell or stand" means any equipment designed and operated to measure the performance of uninstalled aircraft engines or components thereof either at sea level or at a simulated altitude.~~

10. Comment: CBIA supports the clarification that mobile sources and mobile source engine and aircraft engine test cells and stands are exempt from the NOx RACT requirements. NOx emissions from mobile sources and their engines are effectively controlled by other provisions in the Clean Air Act.

Response: The Department notes CBIA's support for the proposed revision.

Section 20 -- R.C.S.A. Section 22a-174-22(j)(4)

11. Comment: The addition of new R.C.S.A. section 22a-174-22(j)(4) would limit the lifetime of NOx DERCs and allowances to five years from the year of generation or allocation. NUSCO objects to this provision, particularly the proposed retroactive application to existing DERCs and allowances. Even if applied only to new DERCs and allowances, this provision would create a hardship. The use and transfer of DERCs and allowances by a facility that owns them is often beyond the control of that facility. For instance, in the case of electrical generation, the ability of these entities to use DERCs and allowances is largely a function of demand and the availability of other generating units to meet that demand. Market conditions, such as the present oversupply, may prevent them from being sold at a reasonable price prior to expiration.

Application of the proposed vintage restrictions to existing DERCs and allowances is more troublesome. This may severely reduce their useful lives, or eliminate them altogether. This is tantamount to an uncompensated taking of property, and/or an unconstitutional impairment of a contract, in violation of Article I, Section 10 of the U.S. Constitution. DERCs and allowances have significant monetary value. As an example, Northeast Generation Services Company (NGS) is the owner/operator of two electric generating facilities in Connecticut. These two facilities lost a total of 234 previously unrestricted DERCs for the year 2004, due to similar vintage restrictions contained in the Department's trading orders. Based on market prices for DERCs, their loss amounted to more than $215,000.00 for 2004. The impact on other DERCs and allowances in Connecticut is certainly multiples of this amount.

Department personnel have suggested in State Implementation Plan Recommendation Advisory Committee meetings and other such forums that the solution to the problem is to sell or use the DERCs and allowances before their expiration. However, this is not a practical alternative. The same unpredictable electric demand and market conditions that may prevent the sale of new DERCs and allowances will make it more likely that existing ones will be lost.

Retroactive application of the vintage restriction will make the losses experienced by NGS and other companies more widespread. Imposing such economic hardships on a business community that is already experiencing competitiveness demands is unadvisable.

In summary, NUSCO requests that the Department remove the proposed R.C.S.A. section 22a-174-22(j)(4).

Response: The Department should move forward to adopt R.C.S.A. section 22a-174-22(j)(4). The proposed addition of subsection (j)(4) is consistent with EPA's 2001 guidance on ERC trading programs, "Improving Air Quality with Economic Incentive Programs," or the "EIP." Specifically, Section 16.1(d) of the EIP requires restrictions on the lifetime of banked emission credits in any area that does not meet a NAAQS, known as a "non-attainment area," for which the state does not have an approved attainment demonstration plan for that area. Ambient air quality data in Connecticut indicates that there are many days when the air quality exceeds the 8-hour ozone NAAQS. The Department will need to develop an attainment plan. Therefore, EPA would likely consider proposed section 22a-174-22(j)(4) to be consistent with the EIP requirements.

12. Comment: CBIA recognizes that as a practical matter, the Department has already imposed vintage restrictions for DERCs in 2003, when it renewed the existing NOx Trading Agreements, and therefore, is not attempting to reverse this policy at this time. However, we are concerned that the vintage restriction runs from the year of generation, rather than the year of approval. We suggest that the vintage restriction should run from the year that the Department approves any DERCs, since a source cannot apply for DERC approval until after the DERCs have been generated, and the Department does not always promptly approve DERCs. Thus, the effective lifetime of a DERC under this rule will likely be only four years, and perhaps only three or less years if the Department fails promptly to approve the DERCs. Such a short lifetime will adversely affect the market for DERCs in Connecticut and undermine this market-based program.

Response: The Department should not revise Section 22a-174-22(j) in response to this comment. The Department understands that delays in DERC approval issuance further limit the useful life of a DERC to less than five years. However, the Department plans to issue DERC approvals in a timely manner following submission. Timely approval, combined with the life span of a DERC beginning in the year, not on the day, of approval should result generally in a five-year life span.

Section 21 -- R.C.S.A. Section 22a-174-22(k)

13. Comment: The revision to R.C.S.A. section 22a-174-22(k)(1) adds language allowing the commissioner to approve compliance testing based on the average of four 15-minute tests, in lieu of three 1-hour tests, provided that conducting three 1-hour tests is not reasonable "given the location, configuration or operating conditions of a stationary source." Similarly, the revision to subsection (k)(2) adds language allowing the commissioner to approve compliance testing at an alternative maximum capacity if operating at or above 90 percent of maximum capacity is not reasonable "given the location, configuration or operating conditions of a stationary source." While conversations with Department staff indicate there may be justifiable reasons for implementing these provisions, such justification should be included in narrative documentation to support approval of the revised rule as a SIP revision. Alternatively, the Department should re-consider the need for these revisions given that R.C.S.A. section 22a-174-5(d) allows the commissioner to modify emissions testing methods in accordance with good engineering practice, judgment and experience. (EPA)

Response: The Department appreciates EPA's attention to this provision and offers the following explanation to justify the provision. For clarity, specificity and to support enforcement efforts, the Department's practice has been to maintain and enforce the provisions of R.C.S.A. section 22a-174-22(k), which address sources without CEM that are subject to NOx RACT, separate from the more general provisions of R.C.S.A. section 22a-174-5(d), which were adopted as general compliance procedures for multiple sources and programs regulated by the Department. Proposed R.C.S.A. section 22a-174-22(k) addresses the testing of uniquely situated fuel burning equipment, for which typical testing procedures are inapplicable and/or hazardous, while placing appropriate constraints on the scope of such flexibility. Examples of such equipment include: a hospital generator lacking a safe place to release excess steam during the first hour of testing; a dual-fueled system where insufficient start-up fuel is available to support testing for one hour while the system is operating in start-up mode; and certain units that are prevented from reaching capacity for the first hour of testing when the ambient temperature of the air is too warm, but are able to operate at full capacity for a shorter period of time.

As EPA suggests, the Department should include the information above in the submission of this amendment as a revision to the SIP.

14. Comment: CBIA supports the proposed revisions to R.C.S.A. section 22a-174-22(k)(1). However, it does not go far enough to provide the degree of flexibility that is sometimes required in testing certain sources. For example, due to the infrequent operation of some emissions units or units that are not able to operate when a stack test is due, the Department has in the past approved stack tests that would not meet the requirements of the proposed amended regulations. In addition, the Department's stack test group has adopted a policy that allows a single stack test for one of several identical units where the first test shows emissions of less than 80 percent of the RACT standard. Since it is difficult for the regulation to anticipate and address every possible source limitation or scenario, we strongly suggest that the Department retain some discretion to allow alternative compliance demonstrations. This can be accomplished by adding the underlined (or similar) language to the end of the new sentence as follows:

> "If the commissioner determines that three (3) one-hour tests are not reasonable given the location, configuration or operating conditions of a stationary source, the commissioner may approve testing where compliance with the emission limitations of this section shall be determined based on the average of four (4) fifteen-minute tests, each performed over a consecutive fifteen-minute period <u>or upon such other conditions or schedule as the commissioner may determine</u>. (CBIA)

Response: The Department should not revise the amendment in response to this comment. The proposed amendment to section 22a-174-22(k) provides increased discretion in the selection of testing methods to address technical restrictions of particular equipment in some circumstances. CBIA's suggested language, which greatly expands the testing options, is unnecessary.

Furthermore, the stack test policy for testing of multiple units that CBIA uses to justify its suggested revision has not been Department policy for many years, as it has been contradicted by

experience in the field. To test multiple units, the Department currently requires a source owner or operator to test **each** unit, even if the units are identical.

15. Comment: The revisions to R.C.S.A. section 22a-174-22(k) add new language precluding owners and operators of stationary sources from additional emissions testing provided that: (A) compliance was previously demonstrated with an emissions test, (B) the results from such emissions test indicate emissions are less than 50% of the applicable limit, and (C) the source burns only propane. Connecticut should further limit the application of this provision to sources that have not changed their operational characteristics since the previous emissions test. (EPA)

Response: In response to EPA's comment, the Department should withdraw proposed subdivisions (5) and (6) of R.C.S.A. section 22a-174-22(k) and, following additional evaluation by technical staff, consider including a revised version of such provisions in a future rulemaking to address the testing of equipment burning propane.

Proposed subdivisions (5) and (6) of section 22a-174-22(k) should be withdrawn from the final text of the amendment, as follows:

~~(5) Notwithstanding the emission testing schedule set forth in subdivision (1) of this subsection, no further emissions testing under this subsection shall be required of an owner or operator of a stationary source subject to this section provided that:~~

~~(A) Such owner or operator has demonstrated compliance previously by means of an emissions test conducted in accordance with this subsection;~~

~~(B) The results of the test identified in subparagraph (A) of this subdivision indicate the emissions from such source are less than fifty percent (50%) of the applicable emissions limitation; and~~

~~(C) The subject source burns only propane.~~

~~(6) The emission testing exclusion provided in subdivision (5) of this subsection shall not preclude the commissioner from requiring emission testing pursuant to section 22a-174-5 of the Regulations of Connecticut State Agencies.~~

Additional comments

16. Comment: There are several instances in the proposed regulation [Section 9: R.C.S.A. sections 22a-174-3b(c)(1)(C) and 22a-174-3b(f)(1); Section 15: R.C.S.A. section 22a-174-19a(g)(1)] where the maximum sulfur content of liquid fuel for internal combustion engines and other combustion units is specified. In accordance with its past comments, NUSCO suggests tying the sulfur content to federal motor vehicle fuel sulfur limits. This would eliminate supply problems that could result from the creation of single-state market for a particular fuel. Further, it would facilitate and streamline the state regulatory process by obviating modifications to Connecticut regulations to keep abreast of federal or regional sulfur limits. (NUSCO)

Response: The Department should not revise the proposal in response to this comment. The fuel sulfur content requirements in the amendment vary because each was developed for a particular purpose and for a specific source category. For example, R.C.S.A. section 22a-174-3b(f)(1) specifies fuel sulfur content limits for nonmetallic mineral processing equipment to limit emissions in the context of the exemption from permitting provided by section 22a-174-3b(f). In contrast, the fuel sulfur content of R.C.S.A. section 22a-174-19a(g)(1) includes a definition of low-sulfur fuel with respect to the commissioner's ability to suspend the fuel sulfur standards of that section, which apply to the NOx Budget units, in the case of a fuel emergency. That being said, it is true that as of September 1, 2006, motor vehicle fuel available at retail in Connecticut will generally comply with the federal limit of 15 ppm. The owner or operator of a source using fuel that complies with the federal limit would comply with any of the fuel sulfur standards in the amendment.

17. Comment: CBIA requests that the Department revise the language for R.C.S.A. section 22a-174-3b(g) for inclusion in the "trailer package." These revisions have been discussed with the Department and appear to have been inadvertently overlooked for inclusion.

Subparagraph (1)(B) limits the hazardous air pollutant (HAP) content to 6.3 pounds per gallon of coating. The basis for this limit was explained in Attachment 2, pages 2-9, of the November 14, 2001 Hearing Report. Summarizing from the report, the content limit in conjunction with the subparagraph (1)(C) 3,000 gallons per year usage limit equates to 9.45 tons per year HAP emissions and thereby ensures the source will not be major for Federal HAP.

Subparagraph (1)(D) addresses particulate material coating processes. The subparagraph requires 90 percent collection efficiency. This collection efficiency in conjunction with the subparagraph (1)(B) and (1)(C) limits equates to an annual HAP emission of 0.945 tons. This is not consistent with the original purpose of the section. Instead, based on the objective to maintain annual emissions at 9.45 tons per year and taking the control efficiency into account, the equivalent coating particulate matter HAP content should be 63.0 pounds per gallon. Because they are solids rather than liquids, plasma and other thermal spray process powders typically contain particulate matter HAP at contents well in excess of 6.3 pounds per gallon. Conventional powder coatings too may have particulate matter HAP contents in excess of 6.3 pounds per gallon. Therefore, as currently written, subparagraph (1)(D) is of no practical applicability.

Alternatively, since the 6.3 pounds per gallon limit seems to be a carryover from volatile organic carbon (VOC) paint content the Department could add the word "volatile" to the term hazardous air pollutant. This would have the same effect as the above suggestion and recognizes the origin of the 6.3 pounds per gallon limit.

CBIA also recommends that subsection (1)(D) be revised to substitute "thermal" for "plasma". Plasma spray is one type of thermal spray process. Other thermal spray processes, which are operated within Connecticut, include flame spray and high velocity oxygen fuel. The types of materials sprayed and emission controls used are all very similar. They are all intended to

perform metal coating using dry metal powders and heat. Therefore, substituting "thermal" appropriately broadens the applicability.

A mark-up of the recommended language and an alternative for your consideration are included below:

(g) Surface coating operation.

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

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

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

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

(D) Any electrostatic dry powder coating operation or [plasma] <u>thermal</u> spray operation shall be operated only with particulate control equipment that meets the following requirements:

(i) includes a minimum collection efficiency of 90%,

(ii) is operated and maintained in good working condition, and.

(iii) notwithstanding subparagraph (1)(A), and provided that the operation is in compliance with the minimum collection efficiency of 90%, the particulate matter hazardous air pollutant content of any coating used shall not exceed 63.0 pounds per gallon, as applied;

Alternative:

(g) Surface coating operation.

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

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

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

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

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

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

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

Response: CBIA's request addresses a section of the regulations and subject matter that is not within the noticed scope of this proceeding. The Department should consider addressing CBIA's request in a subsequent regulatory proceeding to address additional minor revisions to various sections of the regulations.

18. Comment: CBIA requests that the Department revise the language for R.C.S.A. section 22a-174- 22(l) for inclusion in the "trailer package." These revisions have been discussed with staff of the Air Bureau and appear to have been inadvertently overlooked for inclusion.

We believe that during a previous revision there was an administrative error since not all sources have the 25/50 ton per year limit for which subsection (l)(1)(C) is intended to verify. Subdivision (1) should be revised, as follows:

(l) Reporting and record keeping.
(1) The owner or operator of any source subject to this section, shall keep the following records:

(A) For an emergency engine, daily records of operating hours of such engine, identifying the operating hours of emergency and non-emergency use;

(B) For any premises for which subsections (b)(2) or (b)(3) of this section applies, records (e.g. fuel use, continuous emissions monitoring, operating hours) to determine whether the NOx emissions from such premises on any day from May 1 through September 30, inclusive, are in excess of one hundred thirty-seven (137) pounds for premises located in a severe nonattainment area for ozone or two hundred seventy-four (274) pounds for premises located in a serious nonattainment area for ozone.

(C) **For any premises for which subsections (b)(2) or (b)(3) of this section**

applies, monthly and annual records (e.g. fuel use, continuous emissions monitoring, operating hours) to determine whether NOx emissions from such premises in any calendar year are in excess of twenty-five (25) tons for premises located in a severe nonattainment area for ozone or fifty (50) tons for premises located in a serious nonattainment area for ozone;

CBIA also suggests an alternative to the language above:

(l) Reporting and record keeping.
(1) The owner or operator of any source subject to this section, shall keep the following records:

(A) For an emergency engine, daily records of operating hours of such engine, identifying the operating hours of emergency and non-emergency use;

(B) For any premises for which subsections (b)(2) or (b)(3) of this section applies, records (e.g. fuel use, continuous emissions monitoring, operating hours) to determine whether the NOx emissions from such premises on any day from May 1 through September 30, inclusive, are in excess of one hundred thirty-seven (137) pounds for premises located in a severe nonattainment area for ozone or two hundred seventy-four (274) pounds for premises located in a serious nonattainment area for ozone. Monthly and annual records (e.g. fuel use, continuous emissions monitoring, operating hours) to determine whether NOx emissions from such premises in any calendar year are in excess of twenty-five (25) tons for premises located in a severe nonattainment area for ozone or fifty (50) tons for premises located in a serious nonattainment area for ozone;

As it currently reads R.C.S.A. section 22a-174-22(l) imposes a record keeping requirement on sources that are not "synthetic minors" for a limit that does no apply to them.

Response: CBIA's request addresses a section and subject of the regulations that is not within the noticed subject matter of this proceeding. The Department should reconsider the NOx emissions trading program in the near future. The Department should consider CBIA's request at such time.

VII. Additional Comment by the Hearing Officer

In addition to the above-recommended revisions, the Department should make the following technical corrections and clarifications as Section 28 of the final version of the proposed amendment:

- **Section 22a-174-29(b), (d) and (e):** As stated in the published notice of hearing for this amendment, the Department intended to revise internal citations in the R.C.S.A. to reflect the adoption in March 2002 of new R.C.S.A. sections 22a-174-2a and 22a-174-3a, and

the amendment of R.C.S.A. sections 22a-174-1 and 22a-174-33. The Department inadvertently omitted the citations in R.C.S.A. section 22a-174-29(b), (d) and (e). The Department should update these citations and clarify the application of the section to individuals required to obtain a permit under section 22a-174-3a or the former section 22a-174-3. In addition, text and internal reference format should be revised to be consistent with current Department practices, as follows:

(b) ["]Maximum Allowable Stack Concentrations["].

[(b)](1) On or after October 1, 1986, no ["]person["] shall cause or permit the ["]emission["] of any ["]hazardous air pollutant["] listed in Table 29-1 from any ["]stationary source["] at a concentration at the ["]discharge point["] in excess of the ["]maximum allowable stack concentration["], unless the ["]stationary source["] is operating in accordance with the terms of an order or permit of the ["Commissioner"] commissioner specifically allowing the continued operation of the ["]stationary source["] in violation of this subdivision while coming into compliance or the ["]source["] is in compliance with the provisions of [subdivision 22a-174-29(d)(3)] subsection (d)(3) of this section.

[(b)](2) [No person shall cause or permit the emission of any "hazardous air pollutant" from any "resources recovery facility", or "incinerator" or from any "stationary source" or "modification" for which the person applies for and obtains a permit under section 22a-174-3 on or after July 1, 1986 at a concentration at the "discharge point" in excess of the "maximum allowable stack concentration" unless the source is in compliance with the provisions of subdivision (d)(3) of this section.] No person, who is required to obtain a permit under section 22a-174-3a of the Regulations of Connecticut State Agencies or, who, between July 1, 1986 and March 15, 2002, should have applied for and obtained a permit under former section 22a-174-3 of the Regulations of Connecticut State Agencies, shall cause or permit the emission of any hazardous air pollutant from any stationary source or modification at a concentration at the discharge point in excess of the maximum allowable stack concentration unless such source is in compliance with the provisions of subsection (d)(3) of this section. The ["Commissioner"] commissioner shall not apply the provisions of this subdivision to the owner or ["]operator["] of any ["]stationary source["] who applied for a ["]permit to construct["] under former section 22a-174-3 of the Regulations of Connecticut State Agencies prior to March 1, 1986 and who received a notice of a complete application prior to July 1, 1986 or to any other owner or ["]operator["] who received a ["]permit to construct[" under these regulations] prior to July 1, 1986. Notwithstanding the foregoing, all ["]resources recovery facilities["] and all ["]incinerators["] shall meet the standards of this subdivision for all ["]hazardous air pollutants["].

[(b)](3) If the owner or ["]operator["] of a ["]stationary source[" which] that emits or may emit a ["]hazardous air pollutant["] is in compliance with the ["]MASC["] at the ["]discharge point["] of that source, but the ["Commissioner"] commissioner determines,

through ambient monitoring, that the ["]HLV["] is exceeded, then the ["Commissioner"] commissioner may require that the concentration of the ["]hazardous air pollutant["] at the ["]discharge point["] be further reduced.

[(b)](4) The owner or ["]operator["] of any ["]stationary source["] or ["]modification["] not subject to the provisions of subdivision [22a-174-29(b)](2) of this subsection [which] that emits or may emit a ["]hazardous air pollutant["] shall comply with the requirements of subdivision [22a-174-29(b)](2) of this subsection if the ["Commissioner"] commissioner determines, through ambient monitoring, that the ["]HLV["] is exceeded as a result of the ["emission"] emissions from that ["]stationary source["].

[(b)](5) For the purposes of subdivisions [22a-174-29(b)](3) and [22a-174-29(b)](4) of this subsection, any person who performs ambient air monitoring shall use methods and procedures approved by the ["Commissioner"] commissioner.

****

(d) ["]Ambient Air Quality Standards["].

[(d)](1) The provisions of this subsection apply to any ["]stationary source[" which] that emits an ["]air pollutant for which there is an ["]ambient air quality standard["] ("AAQS") found in section 22a-174-24 of the Regulations of Connecticut State Agencies except for any ["]criteria air pollutant["] other than lead.

[(d)](2) If the ["]source["] complies with the ["]MASC["] and there is an applicable ["]AAQS["], then the owner or ["]operator["] shall not cause or exacerbate a violation of the applicable ["]AAQS["] unless the impact of the source is less than significant as [determined in subsection 22a-174-3(c)] listed in Table 3a(i)-1 set forth in section 22a-174-3a(i) of the Regulations of Connecticut State Agencies.

[(d)](3) If the ["]source["] does not comply with the ["]MASC["] and there is an applicable ["]AAQS["], then the owner or ["]operator["] shall:

(A) [install] Install and use ["]Best Available Control Technology["] for the applicable ["]hazardous air pollutant["]; and

(B) [not] Not cause an impact in excess of the applicable ["]AAQS["] if such impact is significant as [determined in subsection 22a-174-3(c)] listed in Table 3a(i)-1 set forth in section 22a-174-3a(i) of the Regulations of Connecticut State Agencies.

[(d)](4) Upon the request of the ["Commissioner"] commissioner, the owner or ["]operator["] of any ["]stationary source["] shall make and submit to the ["Commissioner"] commissioner, for his approval, a ["]BACT["] determination for each

["]hazardous air pollutant["] for which an ["]AAQS["] has been set, as required by the ["Commissioner"] commissioner, including costs estimates of all control options as may be specified by the ["Commissioner"] commissioner.

[(d)](5) For the purposes of this subsection, the ["Commissioner"] commissioner shall allow the use of only air quality models, data bases or other requirements approved by the ["Commissioner"] commissioner prior to the determination of compliance with the ["]AAQS["].

(e) Sampling for ["]Hazardous Air Pollutants["].

[(e)](1) Testing to determine concentrations of ["]hazardous air pollutants["] in the ["]ambient air["] contiguous to a ["]source["] may be required if the ["Commissioner"] commissioner determines that the operation of a ["]source["] might reasonably be expected to cause an exceedance of an applicable ["]HLV["] or ["]AAQS.["]

[(e)](2) In addition to any testing required by [subdivision (e)(2) of section 22a-174-5] section 22a-174-5(e)(2) of the Regulations of Connecticut State Agencies, testing to determine concentrations of ["]hazardous air pollutants["] at ["]discharge points["] of ["]sources["] may be required by the ["Commissioner"] commissioner if:

(A) [an] An exceedance of a ["]HLV["] with an 8-hour averaging time is observed; [or]

(B) [two] Two (2) or more exceedances of a ["]HLV["] with a 30-minute averaging time are observed within two (2) non-overlapping 8-hour periods within any seven (7)-day period; [or]

(C) [the] The ["]source["] is required to meet the requirements of subdivision (b)(2) of this section; [or]

(D) [the] The emissions from a ["]source are suspected of causing a violation of an ["]AAQS["]; [or]

(E) [there] There is an enforcement action for violation of section 22a-174-20 or 22a-174-23 of the Regulations of Connecticut State Agencies; or

(F) [the] The ["]source["] is suspected of emitting a ["]hazardous air pollutant["] listed in Table 29-1.

[(e)](3) Testing to determine concentrations of ["]hazardous air pollutants["] at either ["]discharge points["] of ["]stationary sources["] or in the ["]ambient air["] shall be conducted by the ["Commissioner"] commissioner, the ["Commissioner's"] commissioner's authorized representative or by persons qualified by training or

experience in the field of sampling emissions from air pollution sources or in the ["]ambient air["]. All sampling, emissions testing and laboratory analyses shall be done using procedures and techniques approved by the ["Commissioner"] commissioner prior to the commencement of such testing.

[(e)](4) In addition to the provisions of subdivision [22a-174-29(e)](1) of this subsection, the [department] commissioner shall perform testing for dioxin emissions in the ambient air in accordance with the requirements of this subdivision. The [department] commissioner shall perform the following tests in the area of any resources recovery facility. The tests shall be representative of conditions existing prior to the commencement of operation and representative of conditions existing after the issuance of the permit to operate.

(A) For tests representative of conditions existing prior to the commencement of operation for each subject resources recovery facility the [Commissioner] commissioner shall analyze at a minimum a total of eight (8) samples. At a minimum, such tests shall consist of the collection of samples at four locations deemed representative by the [Commissioner] commissioner during four distinct time periods and the analysis of two samples for each time period for a total of eight samples. The [Commissioner] commissioner shall make every effort to perform such testing once per calendar quarter prior to the commencement of operation.

(B) For tests representative of conditions existing after the issuance of [the permit to operate under subsection 22a-174-3(f)] a permit under section 22a-174-3a of the Regulations of Connecticut State Agencies for each subject resources recovery facility the [Commissioner] commissioner shall analyze at a minimum a total of eight (8) samples. At a minimum, such tests shall consist of the collection of samples at four locations deemed representative by the [Commissioner] commissioner during four distinct time periods and the analysis of two representative samples per calendar quarter for the first year following issuance of [the] a permit [to operate] under [subsection 22a-174-3(f)] section 22a-174-3a of the Regulations of Connecticut State Agencies. Based upon an analysis of the ambient data, results of stack tests, data from the continuous emission monitors and other pertinent information, the [Commissioner] commissioner shall determine a representative ambient sampling program for subsequent years. The [Commissioner] commissioner shall provide notice of this determination to the chief elected official of each town participating in the subject resources recovery facility.

VIII. Final Text of Proposed Amendment

The final text of the proposed amendment, inclusive of the changes recommended in this report, is located at Attachment 3 to this report.

IX. Conclusion

Based upon the comments submitted by interested parties and addressed in this Hearing Report, I recommend the final amendment, as contained in Attachment 3 to this report, be submitted by the Commissioner for approval by the Attorney General and the Legislative Regulations Review Committee. Based upon the same considerations, I also recommend that upon promulgation this amendment, excluding the proposed revisions to R.C.S.A. section 22a-174-29, be submitted to EPA as a revision to the State Implementation Plan.

December 19, 2005

/s/ Merrily A. Gere
Hearing Officer

Date

Attachment 1
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Attachment 2

Text of Proposed Amendment

Attachment 3

Final Text of Amendment