



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



NEW SOURCE REVIEW REGULATIONS
SUMMARY OF COMMENTS AND RESPONSE
OF
HEARING EXAMINER

This set of regulations represents a comprehensive revision to the Department of Environmental Protection's (DEP's) program for the review of new or modified sources of air pollution. There are nine parts to the final package which amends eight sections or subsections and adds one new subsection to the Regulations of Connecticut State Agencies concerning Abatement of Air Pollution. This package was developed to comply with the requirements of the U. S. Environmental Protection Agency (EPA) for the preconstruction review of the impacts on air quality from new or modified stationary sources. The DEP provided for public input through many meetings of the State Implementation Plan Revision Advisory Committee, by conducting a public hearing and by allowing an extended comment period for submission of written comments. In addition to the public comments the EPA also provided a detail list of comments and changes which were necessary of this package to be approved as part of the State Implementation Plan for air quality. Most of the changes which were made were required by the EPA. This summary provides a description of comments received and changes made.

1) Section 22a-174-1 Definitions.

In this final package, 20 definitions are modified, 13 new ones added and 10 were deleted. The purpose of these definitions is to provide a clear meaning to the terms used throughout the regulations for the abatement of air pollution. The following is a list of only those definitions for which comments were received.

Actual Emissions - EPA asked that the time period used to determine the rate of emissions be set.

Response. The time period was set in accordance with federal requirements and the parts of the regulations affected by this change were listed.

Allowable Emissions - EPA expressed concern about federal enforcement of the conditions which limit the maximum rated capacity or operating hours, thereby lowering the allowable emissions.

Response. A requirement for federal enforcement was added along with a list of those parts of the regulation where it is needed.

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Best Available Control Technology (BACT) and Lowest Achievable Emission Rate (LAER) - The proposed amendments to these definitions differ from EPA's in that information from permits granted in other locations and from stack tests may be used to determine BACT and LAER while also allowing for the exclusion of stack tests performed on pilot plants or prototype equipment.

United Technologies was concerned that the new language made BACT identical to the definition of Lowest Achievable Emission Rate (LAER).

Response. There are two differences. First, LAER does not allow economics to be taken into consideration while setting a limitation; while BACT requires that economic impact be taken into consideration. The second is that LAER requires that the most stringent emission limitation be used, while the change in BACT would require that the information only be taken into consideration and allows a less stringent standard to be set as BACT.

Northeast Utilities asked that the exclusion for stack tests from a pilot plant or prototype equipment be made mandatory rather than discretionary.

Response. The requested change was not made. The purpose of the amendment is to allow the use of the information. It does not require the imposition of the demonstrated emission limitation. In addition, only those tests which are acceptable to the Commissioner may be used.

Frito-Lay suggested using a definition that is identical to EPA's rather than language which has not yet been tested by the courts.

Response. The purpose of the amendment is to place into the regulations an accurate description of how BACT reviews will be performed under EPA Guidance and to provide applicants with prior notice of these requirements.

Commence, Complete, Federally Enforceable, Good Engineering Practice Stack Height, Indian Governing Body and Indian Reservation - EPA asked that all these definitions be adopted or modified.

Response. All these terms were either adopted or modified in accordance with EPA's comments.

Major Modification - EPA, Frito-Lay and United Technologies suggested the elimination of the words "combine emissions from modifications which are contemporaneous".

Response. In order to avoid confusion that term has been removed.

EPA suggested language which ties a modification with changes in potential emissions to the levels found in federal regulations.

Response. That language has been added, along with a requirement that the rate of potential emissions be federally enforceable.

Major Stationary Source - United Technologies and Frito-Lay discussed the differences between the DEP's definition and EPA's and the disallowance of netting by these regulations.

Response. In general, EPA uses a base of two hundred and fifty (250) tons per year in attainment areas and one hundred (100) tons per year in non-attainment areas. In addition, EPA goes by individual stationary sources, combining emissions only when the sources have the same first two-digit SIC code. Under the DEP's program, all air pollutant emitting activities at the same locations are grouped together. The purpose of aggregating pollutants is to ensure that the total environmental impact of a facility is used as a basis for the review of that source. The purpose of using a standard of one hundred tons per year is to allow the DEP to properly manage our ambient air resource. Also, the regulations do allow for some netting of emissions, particularly when the ambient impact is determined. In addition, use of the EPA definition would mean that very few sources in Connecticut would be required to undergo a review of their impact on air quality and a determination of the amount of the available increment that would be consumed.

EPA suggested language to clarify the fact that a physical change, which in and of itself has potential emissions, is a major stationary source.

Response. That language has been added along with a requirement that the rate of potential emission be federally enforceable.

Maximum Uncontrolled Emissions - This definition was adopted earlier this year as part of the regulations for resources recovery facilities. But Frito-Lay was concerned that this term would trigger a requirement for BACT or LAER.

Response. For the purposes of these regulations, the term is used to determine what types of sources must apply for a permit.

Modification - Language was suggested by EPA dealing with the increase of potential emissions of federally regulated air pollutants.

Response. Suggested language was added.

Frito-Lay was concerned that changes in the maximum rated capacity of a source without any increase in emissions would require a source to obtain a permit.

Response. Only when there is an increase in emissions above the limits is a permit required.

Netting - EPA suggested language clarifying the fact that netting of actual emissions is not allowed.

Response. The wording was added.

Total Suspended Particulate - EPA requested that this term be defined for use in Table 3(k)(2) in subsection 22a-174-3(k).

Response. This definition, which is consistent with the federal definition, was added.

2) Section 22a-174-2 Registration Requirements.

Changes were required in this section to keep the internal cross references to section 22a-174-3 correct. In addition, the authority of the Commissioner to require updated registration by permit or order was clarified. No comments were received on this part.

3) Subsections (a) through (j) of section 22a-174-3 Permits to Construct and Permits to Operate.

The subsections in this part describe the types of sources which must apply for a permit, the types of permits which may be required, the standards for granting those permits and a description of the administrative process for acting on the permit including public notice requirements. There were several comments which were specific to changes in wording in certain locations in the regulations and are listed below. There were also three topics which deal with policy issues for which a response is provided. Those topics are the limitations on the use of netting to avoid New Source Review requirements, the requirements for an operation and maintenance plan for a facility and continuous emission monitoring.

Netting - Northeast Utilities, United Technologies and Frito-Lay provided comments concerning the issue of netting and suggested that DEP change the regulations to allow sources in the State to use netting.

Response. Netting is a procedure sometimes used at the federal level whereby a source can avoid some of the Clean Air Act requirements. These requirements are normally triggered by increased emissions from modifications in stationary sources. Under netting, credit is given for reductions of emissions from other points within the source and they thereby net out of the requirements. The comments suggested that the DEP should allow the use of a federal type program in as much as netting is allowed under the Prevention of Significant Deterioration program. There were some arguments that netting is a cost effective program which will permit industry to modernize older equipment with newer and cleaner operating facilities. Additional comments were that by allowing the use of netting sources could avoid a costly and time consuming new source review and permitting requirements.

It should be noted that the regulation will allow for some limited use of netting consistent with the current DEP policy of not letting a source net out of a review . Because of the change in the definition of major stationary source some emission increase and decreases which are contemporaneous will allow a source to net out of becoming a major stationary source. This is consistent with the policies and practices of the DEP since the first new source review regulations were adopted in June of 1972. Additional reasons for not adopting a new policy which would allow increased netting are:

- 1) Equity. An existing source with a lot of emissions could net out of a requirement for a new process. Whereas a new company coming into the state would not be able to net out of a requirement for an identical process.
- 2) Impact on air quality. Even with reduced emissions, a source netting out of a requirement could have a more significant impact on air quality due to a physical or chemical change or a change in the location of that impact. It should be noted that under current procedures reductions in emissions are considered in determining the final ambient impact.
- 3) Level of review. The use of netting would require a detailed analysis along with enforceable orders to ensure that emissions used in the trade were correct. This would require almost the same review as a permit.
- 4) Correcting existing problems. Most sources in the state have not been modeled to determine their individual impact on air quality. Instead they are reviewed when a modification occurs. If they net out of a review these problems are not corrected.
- 5) Paper trades. In some instances netting is done on the basis of allowable emissions which may in fact be greater than actual emissions. These paper trades would not result in any air quality benefit.
- 6) Toxic air pollutants. Most chemical solvents are considered volatile organic compounds. To allow netting would mean that a known carcinogen could be substituted for a less hazardous chemical without any review or public notice.

Operation and Maintenance Plan - Subparagraph 22a-174-3(g)(2)(J) required a "comprehensive operation and maintenance plan for the premise including, but not limited to, the pollution control equipment". Comments were provided by Frito-Lay, United Technologies and United Illuminating. There were two areas about which they all were concerned. First, was that the requirement was for the entire facility and not just for the individual piece of air pollution control equipment. The second concerned the content of the plan and the degree of information which would be required.

Response. In response to the first, the regulations were changed with the term "premise" deleted. In its place the phrase "air pollutant emitting activities" was added. Information about other activities will not be required. No changes were made for the second comment. Because of the wide variation in the types of facilities, it is not possible to list the contents of a plan in a regulatory format.

Continuous Emission Monitoring - Subparagraph 22a-174-3(c)(1)(H) required "real time" remote telemetry access to continuous emission monitoring equipment located at the source. United Illuminating, United Technologies and Frito-Lay provided comments regarding the cost, what the meaning of real time access was and raised questions on how the data would be used in an enforcement action.

Response. No actual cost information was provided so a factual determination can not be made. In order to clarify the issue the term "real time" was removed and a reference to section 22a-174-4 was inserted. This section of the regulations deals with reporting requirements and standards for CEM will be adopted into that section which will provide the regulated community an opportunity to comment on the specific provisions of this program. In general the access will be consistent with the required emission limitations of the regulations, permits or orders and any data gathered by this method will be taken into consideration to determine the appropriate enforcement response. It should also be noted that due to comments prior to the commencement of the formal rulemaking process that the size of the sources affected by this regulation was increased from earlier proposals.

Subsection 22a-174-3(a) - EPA's requested that the term "solvent" in subparagraph 3(a)(1)(A) to be changed to "organic compounds" and to add a new subdivision 3(a)(3) to deal with the requirements for permits for sources with potential emissions of less than 5 tons per year for pollutants that are federally regulated under the Clean Air Act.

Response. The changes were made.

Subsection 22a-174-3(b) - EPA asked for a reference to SIC codes to be added

Response. The change was made

Subsection 22a-174-3(c) - In subdivision 3(c)(3), EPA expressed concern regarding the requirements for using federally approved modeling procedures for all sources included in the review of a new major stationary source or major modification.

Response. Additional language was included to meet federal requirements.

Subsection 22a-174-3(d) - Frito-Lay suggested including time limits for acting on permits to operate as well as permits to construct.

Response. There is a large variation in the time periods required to issue a permit to operate. This is due to the ability of the applicant to provide information to the DEP. Since this is outside of the DEP's control, the requested time limits can not be placed in the regulation.

Subsection 22a-174-3(f) - Northeast Utilities was concerned about the impact of subdivision 3(f)(1) on possible delays in groundwater clean ups if a permit was required.

Response. The way the regulation is structured the proposed requirements will not delay a remedial action taken in accordance with a DEP order. Clean ups under order from the DEP are exempt from these permit requirements if the clean up order includes the use of air pollution controls when needed.

Subsection 22a-174-3(g) - Mark Sussman representing the Connecticut Resources Recovery Authority was concerned that subdivision 3(g)(4) mandates renewal of a permit to operate for Resources Recovery Facilities.

Response. Renewal is not mandatory. In order to clarify the requirement a change was made to require the Commissioner to issue an order for a source to to renew the permit to operate.

Subsection 22a-174-3(j) - EPA explained the requirements for public notice and hearings for new major stationary sources, major modifications and sources which exceed Good Engineering Practice Stack Height.

Response. A new subdivision 3(j)(6) was added

4) Subsection 22a-174-3(k) Prevention of Significant Deterioration.

This part adopts regulations consistent with the federal program for the Prevention of Significant Deterioration of air quality (PSD).

Subdivisions 22a-174-3(k)(5) & (6) - EPA suggested language concerning the federal enforcement of the allowable emissions used in these subdivisions.

Response. The language was included.

Subdivision 22a-174-3(k)(7) - EPA provided guidance on the requirements for preconstruction and post construction monitoring.

Response. This subdivision was rewritten to be consistent with the guidance document provide by EPA.

Table 3(k)-2 - EPA asked that the term "particulate matter" be changed to "total suspended particulate".

Response. Because of the adoption of the new definition a change was made to fulfill EPA's requirements.

5) Subsection 22a-174-3(1) Non-attainment areas.

This part amends the regulations dealing with construction of sources in areas where there are violations of the National Ambient Air Quality Standards. There are requirements in this subsection for an analysis of alternatives, control technology review (LAER), possible offsets of emissions and additional public notice.

Offsets - Mark Sussman representing the Connecticut Resources Recovery Authority asked that exemption from offsets for resources recovery facilities be continued.

Response. The exemption is no longer available under federal regulations.

Additional language was suggested by EPA for preapplication shutdowns for offsets and offsets provide by the State.

Response. Requirements were included.

6) Section 22a-174-26 Permit Fees.

This section lists a schedule for the fees required for sources which obtain permits. Changes were required because of the change in the definition of actual emissions and to ensure that any fees paid to the Department are returned if a permit is not required.

Ronald Mills of Malcolm Pirnie had a question regarding a proposed addition to the regulations.

Response. As a result of changes which were made the proposed addition was eliminated.

7) Subsection 22a-174-4(d) Approved Monitors.

This subsection adopts by reference, standards for opacity monitors required by EPA.

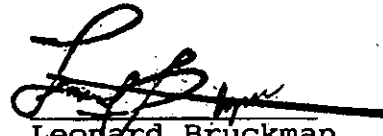
Additional language was provided by EPA concerning reporting requirements and calibration of monitors.

Response. The additional language was incorporated.

FINAL RECOMMENDATION

Based on a review of the proposed regulations and the comments received regarding the regulations, I recommend that the final regulation be submitted for adoption in accordance with the requirements of the Uniform Administrative Procedures Act.

October 24, 1988
Date


Leonard Bruckman
Hearing Officer