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HEARING REPORT

Amendments to the Regulations of Connecticut State Agencies Sections 22a-174-20(s), 22a-174-20(v), 22a-174-20(ee) Concerning the Abatement of Air Pollution

September, 1993

On December 8, 1992, the Commissioner of Environmental Protection gave notice in the Connecticut Law Journal of his intent to amend the Department of Environmental Protection's Regulations Concerning Abatement of Air Pollution: sections 22a-174-20(s), 22a-174-20(v) and 22a-174-20(ee). The proposed amendments to 22a-174-20(ee) included the creation of a new section 22a-174-32.

As required by 4-168 of the Connecticut General Statutes (CGS) and the Department's Rules of Practice, this Hearing Report contains: 1) the final wording of the proposed regulation as appendicies 1, 2, and 3; 2) a statement of the principal reasons in support of the Department's intended action; and 3) a statement of the principal considerations raised in opposition to the Department's intended action in written and oral comments on the proposed regulation and reasons for rejecting such considerations.

In order to consider fully all written and oral submissions respecting the proposed regulation, this report summarizes the issues raised during the public hearings. And, after each issue provides a response from the Department which describes the actions taken in response to the submissions.

PRINCIPAL REASONS IN SUPPORT OF THE AMENDMENTS

The Clean Air Act Amendments of 1990 require states to revise the threshold emission levels for major stationary sources in nonattainment areas. (See the Clean Air Act, as amended, section 182, 42 USC 7511a, (Pub. L. 101-549)) In addition, section 182 requires that states apply reasonably available control technology (RACT) to major stationary sources of volatile organic compounds (VOCs).

According to the Regulations of Connecticut State Agencies, section 22a-174-1(a)(70), reasonably available control technology (RACT) means "the lowest emission limitation that a particular facility is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. It may require technology that has been

applied to similar but not necessarily identical source categories."

A major stationary source of volatile organic compounds (VOCs) is defined under Connecticut's existing regulations as a premise with the potential to emit 100 tons per year or more of VOCs. Under the proposed amendments to the regulations, a premise with the potential to emit 50 tons per year or more of VOCs in an area classified as serious nonattainment for ozone will become a major source. Also, a premise with the potential to emit 25 tons per year or more of VOCs in an area classified as severe nonattainment for ozone will become a major source.

In Connecticut, the severe nonattainment area for ozone includes all towns within Fairfield County excluding Shelton. The towns of New Milford and Bridgewater in Litchfield County are also part of this severe nonattainment area. The serious nonattainment area for ozone encompasses the remainder of the State.

The following text highlights the other proposed changes to the regulations.

1. Revisions to 22a-174-20(v):

Subsection 20(v) of the regulations applies to graphic arts rotogravures and flexography. The proposed change to this regulation appears in paragraph 20(v)(4) concerning applicability. Currently, subsection 20(v) applies to any printing line with actual emissions of 40 pounds or more per day or to a premise with potential emissions of 100 tons or more per year from all printing operations.

The proposed revision to subsection 20(v) maintains the applicability of this subsection to any printing line with actual emissions of 40 pounds or more per day. In addition, the proposed revisions make 20(v) applicable to any premise with potential emissions from all printing operations of 50 tons or more per year in an area designated as a serious nonattainment area for ozone or 25 tons or more per year in an area designated as a severe nonattainment area for ozone.

The owner or operator of any piece of equipment that did not have to comply with subsection 20(v) prior to November 15, 1992 , but is now required to meet its control requirements, shall comply with the proposed regulation no later than May 31, 1995.

In lieu of requiring the use of Reasonable Available Control Technology, as described in 20(v) of the regulation, the Commissioner may, by permit or order, accept restrictions on emissions of volatile organic compounds. In order to qualify for such a permit or order the owner or operator must demonstrate to the Commissioner that its actual emissions from the sources

regulated under 20(v) for each calendar year since December 31, 1989 do not exceed either: 1) fifty (50) tons or more in an area designated as a serious non-attainment area for ozone or 2) twenty-five (25) tons or more in an area designated as a severe nonattainment area for ozone.

2. Revisions to 22a-174-20(s):

Subsection 20(s) applies to miscellaneous metal parts and products. The purpose of these proposed amendments is to give industry more flexibility by allowing the use of certain coatings. The owner or operator of a premise, which uses miscellaneous metal parts or products coatings that exceed the emission standards specified in 20(s)(3)(A) through 20(s)(3)(D) inclusive, may consume such coatings at such premise provided they not to exceed 55 gallons in the aggregate for any consecutive 12 month period. The Environmental Protection Agency (EPA) believes that an aggregate plant wide cutoff of 55 gallons per rolling 12 month period for all such coatings used at a premise is reasonable.

To ensure compliance with the regulation source owners or operators shall maintain purchase records, keep a daily log, and record the type and quantity of coatings used daily. These procedures are set forth in subsection 20(aa) of the regulations entitled "record keeping requirements and test methods."

3. Revisions to 22a-174-20(ee):

Most of subsection 22a-174-20(ee) of the regulations has been deleted and replaced with a reference to a new section 32 titled "Reasonably Available Control Technology for volatile organic compounds." For clarity and enforcement purposes, subsection 20(ee) is maintained and directs the reader to the new section 22a-174-32.

4. New Section 22a-174-32:

Section 32 seeks to establish RACT for VOC sources that were not regulated prior to the 1990 Amendments. It applies only to the unregulated portion of a premise as defined by this proposed regulation within its applicability section.

Any facility (premise) with potential emissions of 50 tons per year or more of VOC in an area designated as a serious nonattainment area for ozone or 25 tons or more of VOC per year in an area designated as a severe nonattainment area for ozone may be subject to the proposed regulation. Thus, an owner or operator of a source that emits VOCs must check the applicability section (22a-174-32(b)) of the final wording of the proposed regulation to determine if the substantive portion of this regulation applies.

The owner or operator of a source of VOC emissions that is subject to this proposed regulation must submit to the Commissioner by May 1, 1994, a VOC compliance plan that explains how he or she will comply with the proposed regulation.

Subsection 32(e) establishes four RACT methods. Two of the methods are RACT determinations that will not require additional EPA approval. The other two methods will require individual case by case revisions to Connecticut's State Implementation Plan (SIP). The following text describes the four methods.

Method 1 - Capture and Control of VOCs

The first RACT method, subparagraph 32(e)(1)(A), requires, by May 31, 1995, the installation and operation of a system to capture and control VOC emissions. Such a system must achieve continuous overall VOC emission reductions of at least 85% of uncontrolled VOC emissions.

Method 2 - Reduction of VOC Use and VOC Emissions

The second RACT method, subparagraph 32(e)(1)(B), requires, by May 31, 1995 a reduction in VOC use and VOC emissions. This method requires the owner or operator to achieve, on a daily basis for each coating used, an 80% reduction in VOC emissions from the weighted arithmetic mean during calendar year 1990 calculated pursuant to subparagraph (d)(3)(B).

Method 3 - Alternative Emission Reductions and Emission Reduction Credits

The third RACT method, subparagraph 32(e)(1)(C), allows the Commissioner, by permit or order, to approve alternative emission reductions or to approve the use of emission reduction credits. An owner or operator who uses this method must achieve equivalent emission reductions as required by either subparagraph 32(e)(1)(A) (Method 3) or 32(e)(1)(B) (Method 4).

Method 4 - Alternative Compliance Plans

The final RACT method, subparagraph 32(e)(1)(D), allows the Commissioner, by permit or order, to approve an alternative compliance plan to reduce VOC emissions. A variety of options are available under this method. Subdivision 32(d)(5) gives an indication of some of the types of strategies that may be used under Method 4. In order to use Method 4 the owner or operator must demonstrate that Methods 1, 2, and 3 are neither technically nor economically feasible.

5. EPA Approval:

Once the regulation is approved by the Administrator, individual SIP revisions for Methods 1 and 2 will not be required. Methods 3 and 4 require approval by the Administrator either by an individual revision to Connecticut's State Implementation Plan (SIP) or by another method that would make the permit or order federally enforceable.

SUMMARY OF COMMENTS

James T. Owens III, Chief, Air Planning and Implementation Branch, United States Environmental Protection Agency - Region I, submitted a letter to Joseph A. Belanger, Director, Planning and Standards, Bureau of Air Management, Connecticut Department of Environmental Protection, dated January 6, 1993. This letter contained EPA's comments on Connecticut's State Implementation Plan (SIP) revisions and Connecticut's proposed amendments to its existing regulations and adoption of new regulations, all of which were the subject of public hearings that were held in January of 1993. Throughout this Hearing Report reference to "EPA's Comment(s)" is a citation to this letter and enclosures. Also, individuals who submitted comments are identified under the heading "Public Comment."

Comments to the Proposed Changes to Section 22a-174-20(v) for Graphic Arts Rotogravures and Flexography.

1. EPA Comment:

"1. 20(v)(3) - The second half of the second sentence reads, 'and shall be required to provide...' In order for this clause to impose an enforceable requirement on the source owner or operator, the clause should be changed to, 'and shall provide...'"

Response:

The Department agrees with EPA's comment for the reasons stated above. Thus, the Department has amended the final wording of the the proposed regulation to incorporate EPA's suggestion. Also, the Department now sets out, in the final wording of the proposed regulation subparagraphs 20(v)(5)-(8), the methodology that the owner or operator of a source regulated under 20(v) must follow in order to obtain an order in lieu of requiring such owner or operator to implement Reasonably Available Control Technology pursuant to 20(v). The Department added this language to assist the regulated community in understanding the process that they must follow in order to use this compliance option.

Comments to the Proposed Changes to Section 22a-174-20(S) for Miscellaneous Metal Parts and Products.

1. EPA Comment:

[A.] "2. 20(S)(10) - It is unclear that the exemption is designed to apply to one or more low-use coatings, provided that the plantwide consumption in the aggregate is less than or equal to 55 gallons for the previous 12 months. Therefore, at the end of the first paragraph, the clause, 'in the aggregate', should be inserted between, 'low-use coatings' and, 'during any twelve (12) consecutive months.' [B.] Also, since the exemption may apply to more than one coating, all references to the term, 'coating', in the second and third paragraphs of this subdivision should be changed to, 'coating(s).' [C.] Additionally, in the last paragraph, it is unclear from what date the owner or operator must record low-use coating usage and until what date such records must be maintained. EPA suggests that the first sentence be replaced with the following:

> 'The owner or operator shall maintain purchase records and keep a daily log of such low-use coatings at the facility for at least ten years from the date any such coating(s) is used.'"

Response:

A. The Department has dropped the term "low-use coating" from the final wording of the proposed regulations because it was confusing to re-define a set of coatings already defined in the regulations. Subdivision 20(s)(10) now states "Notwithstanding the requirements of this subsection, an owner or operator may use, in the aggregate, up to fifty-five (55) gallons of coatings that exceed the emission limitations set forth in subparagraph (3)(A) through (3)(D), inclusive, of this section at such premise for any twelve (12) consecutive months . . ."

B. The Department agrees with EPA's comment regarding the term coating and has made all references to the term coating plural.

C. The Department has amended the final wording of the proposed regulations to specify how and when the owner or operator of a premise using 55 gallons of coatings that exceed the regulatory emission limitations of 20(s)(3)(A)-(D) must report his/her use of such coatings. However, the Department is not utilizing EPA's suggested time period for maintaining records. The Department would like to maintain consistency with its existing recordkeeping requirements. Thus, the Department has amended the final wording of the proposed regulations to require maintenance of records for two years in conformity with existing subsection 20(aa).

2. Public Comment: (Leslie Carothers, V.P. Environment, Health & Safety, United Technologies, letter dated 1/11/93, pg. 3)

[A.] "It is commendable that DEP has recognized a need to exempt low-use compliant coatings from the emission standards described in 20(s)(3); however, the 55 gallon annual limit should be increased to a 660 gallon annual limit, equivalent to 55 gallons per month.

Proposed section 20(s)(10) uses the term 'low use coatings'; however, the definition is for 'low use coating'. As a drafting matter, we question whether the word 'not' should appear in line one of the exemption of 55 gallons per coating or whether this is an aggregate limit. As an aggregate, this limit is too low to provide relief to users of small quantities of multiple low-use coatings.

As an example, some of UTC's aerospace facilities may use as many as ten different specialty coatings, and additional adhesives, composite fillers and conductive epoxies. Since the rules presently allow coatings of 3.5 lb. VOC/gallon, changing these processes from a 6 lb./gal. coating to the allowed 3.5 lb./gal. for 660 gallons per year decreases emissions by 1650 pounds per year. The cost for 'qualifying' each coating to DoD or FAA specifications for flight safety ranges from $250,000 to $500,000.

[B.] As the banking and emission reduction credit program is developed and implemented it may become simple to purchase credits to allow for these excess emissions. However, until that program is fully implemented, a 660 gallon annual limit should be allowed. The 660 gallon limit would be approached [only] by a . . . small number of large facilities."

Response:

A. As indicated in the response to EPA's comments, the Department has made the reference to coating plural (i.e. the term is now coatings).

However, the increase from 55 gallons per year to 660 gallons per year for coatings that exceed the emission limitations set forth in subparagraph (3)(A) through (3)(D), inclusive, is unreasonable. An exemption of 660 gallons/year of such coatings would essentially leave many small miscellaneous metal parts and products coaters unregulated which would negatively impact air quality.

In fact, David Conroy, of EPA Region I's Planning and Technical Evaluation Section, in a letter dated 10/15/92 to Steve Peplau, Director of DEP's Air Engineering and Enforcement Division, stated that:

"EPA believes that a low-use exemption for specialty or other coatings may be reasonable for a source that uses small quantities for intermittent or specialty/type operations. EPA believes that a plantwide cutoff of 55 gallons per rolling 12-month period for all low-use coatings in the aggregate used at a facility is reasonable."

Additionally, it is estimated that raising the limit from 55 gallons per 12 consecutive months to 660 gallons per 12 consecutive months would increase VOC emissions statewide by 108.9 tons. (Based on 100 premises using 660 gallons per year of coatings with a VOC content of 7 pounds per gallon versus 55 gallons per year of coating with a VOC content of 3.5 pounds per gallon.)

Also, some miscellaneous metal parts and products coaters emit nuisance odors. To allow the yearly use of 660 gallons of non-compliant coatings would hamper DEP's ability to reduce or resolve odor complaints.

B. The banking and trading rule is currently being developed by the Department. However, until the program is finalized, reasonable limitations (assuming no trading) must be maintained in order to achieve state-wide reductions in VOCs necessary to meet the NAAQS for ozone.

Comments to the Proposed Changes to Section 22a-174-20(ee) and New Section 22a-174-32

1. EPA Comment:

EPA proposes a revision to Section 20(ee) to clarify that sources covered by an EPA-approved State Order issued prior to November 15, 1992 would remain covered by such an order, rather than by Section 32.

Response:

The Department agrees with EPA's comments and has amended the proposed regulation. (See 22a-174-20(ee)(3)). The sources that EPA is referring to in this comment are sources for which the Department has already made individual RACT determinations. Thus, these sources need not be included in the current proposed rule change. However, the Department may amend this rule at a later date to incorporate these sources if Connecticut is unable to solve it ozone nonattainment problem.

2. EPA Comment:

In section 32(a)(1) "[t]he definition of affected facility is not clear as to what is meant by, 'that portion of a premise which has potential emissions.' EPA suggests that this clause be replaced by 'a facility which has potential emissions as calculated in subsection (b) below."

Response:

The Department agrees with EPA that the term "affected facility" was not clear. However, EPA's suggested language change is not consistent with Connecticut's regulations. Connecticut uses the term premise rather than facility. Thus, "affected portion" or "affected portion of a premise" is now defined as "any source or combination of sources at a premise the emissions of which are included as potential emissions of volatile organic compounds in accordance with subsection (b) of this section (22a-174-32)."

3. EPA Comment:

[A.] "4. 32(b)(2) - Subdivisions (B) and (C) characterize the VOC-emitting equipment as being BACT or LAER, and RACT respectively. This is incorrect, the VOC-emitting equipment is subject to the requirements of these programs but are not themselves BACT, LAER, or RACT. Therefore, EPA suggests replacing (b)(2)(B) and (b)(2)(C) with the following:

> '(B) VOC-emitting equipment that is subject to Best Available Control Technology or Lowest Achievable Emission Rate for VOC and is required pursuant to a federally enforceable permit which contains specific emission limitations and/or work practice standards for all-affected VOC-emitting equipment.
>
> (C) VOC-emitting equipment that is subject to Reasonably Available Control Technology pursuant to Section 22a-174-20; or pursuant to a federally enforceable permit or order issued on or before to February 15, 1993.'

[B.] Also, subdivision (b)[(2)](E) does not describe a type of VOC equipment as is specifically referenced in (b)(2). Therefore, EPA suggests changing the first part of (E) to, 'Equipment which causes emissions of VOC from...'

[C.] Additionally, EPA suggests adding a subparagraph (F) to (b)(2) to also exclude from these regulations sources already subject to federal hazardous waste regulations. EPA suggests the following language:

> '(F) Process vents and equipment leaks which emit VOCs and are subject to control under 40 CFR Part 264, subparts AA and BB, and 40 CFR Part 265, subparts AA and BB.'"

Response:

A. The Department agrees with EPA's subtle distinction between "being subject to BACT, LAER and RACT" versus the equipment actually being BACT, LAER or RACT. In order to correct this distinction the Department has amended subdivision (b)(3) to read:

"In calculating potential emissions of an affected portion of a premise, the owner or operator of such premise shall include all potential emissions of volatile organic compounds occurring at the premise. However, such owner or operator of a premise may, when calculating potential emissions from the affected portion of a premise, exclude any source of potential VOCs which is: . . .

(B) subject to Best Available Control Technology or Lowest Achievable Emission Rate for VOCs required pursuant to a federally enforceable order or permit which contains specific VOC emission limitations; . . .

(G) subject to Reasonably Available Control Technology required pursuant to: . . . "

B. EPA's concern here is that the regulation did not state that equipment which emitted VOCs from the incomplete combustion of any material was excluded from the calculation of the affected portion. The Department agrees with EPA that this terminology was not clear, and it has replaced (b)(3)(E) with the term "fuel burning equipment." Fuel burning equipment is defined in section 22a-174-1 of the Regulations of Connecticut State Agencies as "any furnace, boiler, apparatus; stack, and appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power." Fuel burning equipment is now excluded from the affected portion pursuant to section (b)(3)(E).

C. The Department agrees with EPA's comment regarding the exclusion of sources already subject to federal hazardous waste regulations. Thus, the Department has added EPA's suggested hazardous waste language. (See 22a-174-32(b)(3)(D)).

4. EPA Comment:

[A.] "5. 32(b)(3) - This paragraph does not address how to ensure that actual emissions remain below exemption applicability levels after January 1, 1990. EPA suggests replacing (b)(3) with the following:

'(A) Each affected facility that since January 1, 1990 has not had actual emissions of 50 tons or more of VOC per year in a serious nonattainment area for ozone, or 25 tons or more per year in a severe nonattainment area for ozone, shall be exempt from the requirements of subsections (c),(d), and (e) of this section provided the owner or operator submits to the State, by June 15, 1993, a report that:

(i) documents the actual amount of VOC emitted from each affected VOC-emitting equipment in each calendar year beginning January 1, 1990, inclusive;

(ii) describes the design and operation of the affected VOC-emitting equipment; and

(iii) certifies that actual emissions will be maintained at levels below the applicability levels referenced above.

[B.] (B) Except for Treatment, Storage, and Disposal Facilities of Hazardous Waste covered by the Resource Conservation and Recovery Act (RCRA) or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Commissioner shall by permit or order require that the potential emissions of volatile organic compounds for each consecutive 12 month period do not exceed either:

(i) Fifty tons or more in an area designated as a serious nonattainment area for ozone or

(ii) Twenty-five tons or more in an area designated as a severe nonattainment area for ozone."

Response:

A. In response to EPA's comment, the Department has clarified the requirements which an owner or operator of an affected portion of a premise must satisfy in order to remain below the 25 and 50 ton thresholds. These requirements are contained in the final wording of the regulation in subsection 32(c) entitled "orders to limit VOC emissions."

B. The applicability section of the proposed regulation allows an owner or operator of an affected portion of a premise to exclude certain types of potential emissions: See 22a-174-32(b)(3) which reads, "D. regulated under 40 CFR Part 264, subparts AA or BB or 40 CFR Part 265, subparts AA or BB." Subparagraph 32(b)(3)(D) describes Treatment Storage and Disposal Facilities as defined under RCRA and CERCLA.

The Department has elected to exclude these sources of potential emissions because they will best be dealt with through the appropriate federal programs.

5. EPA Comment:

"6. 32(c)(1) - The regulations contain conflicting dates by which an affected facility must comply with one of the options to meet the emission standard and VOC emission reduction. Currently, (c)(1) requires compliance with options (2), (3), or (4) by

February 15, 1994, yet option (4) requires complete implementation, 'no later than May 31, 1995.' Since option (4) contains unique dates and requirements, it should be separated from the requirements of (c)(1). . ."

Response:

Under the final wording of the proposed regulation owners or operators of an affected portion must submit compliance plans by May 1, 1994 and achieve compliance by May 31, 1995. The final compliance date is set out in the Clean Air Act.

The Department realizes that all sources regulated under section 22a-174-32 will need time to come into compliance with the regulation. Rather than setting out more than one date for submission of a compliance plan, the Department has standardized the compliance plan submission date as May 1, 1994.

The Department believes that the May 1, 1994 and the May 31, 1995 dates represent reasonable amounts of time for all parties subject to this regulation to submit compliance plans and then come into compliance with the regulation.

6. EPA Comment:

In subsection 32(c)(2)(A) EPA suggested the following language change:

"Such system shall reduce overall VOC emissions to the atmosphere to not more than 15% of the VOC emissions that would be released from the affected facility if such emissions were not controlled, calculated on a daily basis."

Response:

EPA's concern in this comment is the clarity of the regulation regarding the amount of VOCs that must be reduced under each of the compliance options. In response to this concern, The Department has added EPA's language, slightly modified, to improve its clarity. The final wording of subdivision (e)(2) now reads:

"When the owner or operator of an affected portion of a premise installs and operates a system to capture and control, then:

(A) such system shall reduce VOC emissions to the atmosphere from such affected portion by at least eighty-five percent (85%) of uncontrolled emissions;"

7. EPA Comment:

EPA's comment here relates to the required submissions in a compliance plan. EPA is requesting that Connecticut's compliance

plans include "the actual amount of VOC emitted each day from all VOC-emitting equipment at the affected facility."

Response:

The Department requires a submission of historic actual data for the "reduction of VOC use and VOC emissions" method (subparagraph (e)(1)(B)), but the Department does not require actual (historic) emissions information under the VOC capture and control method (subparagraph (e)(1)(A)).

The compliance plans are designed to inform the agency of the methods a premise owner or operator will use to achieve compliance. A technical review by the Department of the capture and control system which an owner or operator will install under (e)(1)(A) is sufficient to determine if actual emissions, when the system is operating, will meet the necessary compliance levels (e.g. an 85% reduction in VOC emissions). Thus, the Department does not require daily historic VOC emissions from the owners or operators using compliance Method 1. .

8. EPA Comment:

"9. 32(c)(3)(A) - This subsection does not specify that actual emissions must be calculated on a daily average basis. EPA suggests that this part be replaced by the following:

> 'A) the owner or operator of an affected facility shall implement a program to reduce VOC use and VOC emissions such that actual VOC emissions do not exceed 20% of the VOC emissions in calendar year 1990, calculated on either a daily mass of VOC per mass of solids applied basis if the affected VOC-emitting equipment applies surface coatings, or a daily mass of VOC per unit of production basis."

Response:

The Department requires the calculation of a weighted arithmetic mean for the base year 1990 under the reduction of VOC use and VOC emissions method of compliance (subparagraph (e)(1)(B)).

The weighted arithmetic mean, required to be calculated under subsection (d)(3)(B), requires data from all coatings used at the affected portion of the premise during calendar year 1990. The weighted arithmetic mean, when multiplied by .2, becomes the daily maximum pounds of VOCs per gallon of solids for each coating used. (See subdivision (e)(4)). Thus, the weighted arithmetic mean sets the daily rate of VOC emissions that the affected portion cannot exceed for each coating used at the affected portion.

Thus, the final wording of subdivision (e)(4), when examined in conjunction with subdivision (d)(3), should address EPA's concerns

about daily calculations because daily emission rates are set using a weighted arithmetic mean calculation.

9. EPA Comment:

"10. 32(c)(3)(B) - It is unreasonable to require that the owner or operator of an affected facility submit a VOC emission reduction plan by January 15, 1993. EPA suggests that this date be changed to, 'June 15, 1993.'"

Response:

The Department agrees with EPA that the January 15, 1993 submission date is unreasonable. Thus, the final wording of the proposed regulation provides that compliance plans must be submitted to the Commissioner by May 1, 1994. Owners or operators must also make certain that their affected portions are in compliance by May 31, 1995.

10. EPA Comment:

"11. 32(c)(4)(B)(viii) - The paragraph lacks a base year from which the required level of control is to be taken. EPA suggests replacing the first part of subparagraph with the following:

> '(viii) the compliance options selected to achieve equivalent levels of control from the base year chosen in (iv) above required by the less stringent of either...'"

Response:

In order to address EPA's comments, the final wording of the proposed regulation includes subdivision (d)(3) which defines the base year for calculation of the arithmetic mean as 1990. However, subdivision (e)(5) states "the Commissioner may consider the VOC emissions and the VOC emission reductions made at the affected portion of the premise after 1986."

In order for an owner or operator to use section (e)(5) she/he must demonstrate that the other compliance methods, (e)(1)(A)-(C) are neither technically nor economically feasible. Upon such a showing, the owner or operator may request a base year, other than calendar year 1990, be used as the year from which to calculate the affected portion's weighted arithmetic mean. The Commissioner then has the authority to determine which year, after 1986, is the most representative of such affected portion's typical emissions.

11. EPA Comment:

"12. 32(c)(4)(C) - [A.] It is unclear what is required in the second sentence. It appears that these provisions were meant to

address those facilities that were subject to, but inadvertently not covered by the requirements of the current 22-a174-20(ee). First, EPA suggests that, 'Any premise', be changed to, 'Any affected facility.' [B.] Secondly, this sentence should be changed to clarify that the original effective date of 20(ee) of January 1, 1983, still applies to these sources. Furthermore, EPA suggests that Connecticut add a sentence stating that the Commissioner or EPA reserves the right to initiate an enforcement action against any person who has failed to meet the earlier requirements of 20(ee)."

Response:

A. The Department has deleted 32(c)(4)(C) from the final wording of the regulation because the sources of VOC emissions that were subject to 20(ee), prior to the amendments considered in this hearing report, had to be in compliance with 20(ee) no later than December 31, 1987. There is no need to extend that compliance deadline, and the Department did not intend to grant additional time for those sources to comply.

With respect to the Commissioner's right to initiate enforcement action against a source who was subject to the 1987 compliance date, the Department declines EPA's suggestion to reserve, in this regulation, such a right. The Commissioner already possesses the authorithy to take appropriate action against those sources that were required to comply with the 1987 date under 20(ee). (See Conn. Gen. Stat. Secs. 1-1(t)-(u), 22a-2,-2a,-6,-174 et. seq.)

12. EPA Comment:

"13. 32(c)(4)(E) - In order to be federally enforceable, this regulation must state clearly that the State must submit to EPA a revision to its State Implementation Plan (SIP). In addition the State must change the Clean Air Act citation at the end of the paragraph. EPA suggests the following changes:

> "(E) The Commissioner shall issue the order requiring the installation and use of reasonably available control technology in accordance with the approved alternative VOC emission reduction plan and submit any such order to EPA for approval in accordance with the provisions of 42 U.S.C. 7401-7671q."

Response:

The Department realizes that it must make RACT determinations federally enforceable. RACT methods (e)(1)(C) and (e)(1)(D) require that the "Commissioner shall submit such permit or order to the Administrator for approval in accordance with the provisions of 42 U.S.C. 7401-7671q." (See 32(e)(4) and (5)).

With respect to RACT methods (e)(1)(A) and (e)(1)(B), these compliance options should become federally enforceable upon approval by the Administrator of section 32 as a revision to Connecticut's State Implementation Plan (SIP).

13. EPA Comment:

"14. 32(d) Test Methods - Paragraph (2) does not allow for "other methods or procedures as approved by the Administrator." The State should add a subparagraph (C) to do so.

Response:

The Department agrees with EPA's comments concerning the Administrator's approved methods or procedures. The final wording of the proposed regulation includes the clause "using other methods or procedures as approved in writing by the Administrator." (See 32(f)(3)(C)).

14. EPA Comment:

"15. 32(d)(3) - The Commissioner may require the owner or operator to demonstrate the effectiveness of a capture system without issuing a permit or order. Therefore, EPA suggests that the clause, "by permit or order," be removed.

Response:

The Department agrees with EPA's comment and has deleted the reference to permit or order in subsection 32(f) "Test Methods."

15. EPA Comment:

"16. 32(d) - A subsection requiring the owner [or operator] to conduct emission tests and submit the results [of such testing] to the Commissioner is needed. EPA suggests adding the following paragraph:

> "(4) Within 60 days of receipt of written notification by the State, the owner or operator shall conduct emission tests to demonstrate compliance with this regulation. Within 30 days of the completion of such tests, the owner or operator shall submit the results of such testing."

Response:

Connecticut already has section 22a-174-5 which provides for methods for sampling, emission testing, sample analysis, and reporting. The Department has made explicit reference to this section in subdivision 32(f)(1). This addition to the final wording of the proposed regulation should address EPA's concerns

regarding emission testing and submission of the results of such testing to the Commissioner.

1. Public Comment: (Leslie Carothers, Vice President Environment, Health & Safety, United Technologies, letter dated Jan. 11, 1993)

"Under subsection (a), applicability, paragraph (6) should be amended to specifically include the aerospace Control Technique Guideline (CTG) which is required under [subsection] 183(b)(3) of the statute and is presently being drafted by EPA. As written, paragraph (6) cites a list in the April 28, 1992 Federal Register; however, the aerospace CTG is not included in that list. The aerospace CTG is described in the discussion preceding the list."

Response:

Appendix E of the April 20, 1992 Federal Register acknowledges EPA's responsibility for developing CTGs for aerospace coatings and shipbuilding by November 15, 1993. However, these two catagories are not included in the list of 11 CTGs referred to in the final wording of Connecticut's proposed regulation for VOC RACT. Thus, the aerospace industry, like any other industry lacking a CTG, must comply with section 22a-174-32 of the Regulations of Connecticut State Agencies concerning emissions of VOCs.

It is important to note the distinction that EPA has made with respect to aerospace coatings and shipbuilding CTGs versus the list of eleven CTGs contained in the April 20, 1992 Federal Register. EPA interpretes section 182(b)(2) of the Clean Air Act to mean that "States must adopt RACT rules for three general catagories of sources: (A) [t]hose covered by a post-enactment CTG; ([B]) those covered by a pre-enactment CTG document; [and] ([C]) 'all other major stationary sources of VOCs.'"

In the April 20, 1992 Federal Register, EPA describes the proposed Appendix E to 40 CFR Part 52 as a specific type of CTG. According to EPA, Appendix E "is not a technical CTG, but rather a second type of CTG document--a document that lists the eleven CTGs EPA anticipates publishing in accordance with section 183(a) and establishes time tables for submittal of RACT rules for sources that are not ultimately covered by a CTG issued by November 15, 1993." Notably excluded from this list are the CTGs for aerospace coatings and shipbuilding.

However, EPA's analysis continues, "EPA believes that it is necessary to issue this document [Appendix E] at this time [4/28/92] so that States will be able to determine which sources and which source catagories fit within the RACT rule submittal requirement for sources that EPA expects to be covered by a post-enactment CTG."

EPA then concludes that, "For sources covered by a post-enactment CTG document [which, according to EPA, includes Appendix E], the State must submit RACT rules within the period established within the relevant CTG document. For the other two groups [which includes areospace coatings and shipbuilding because they are not covered by a post-enactment CTG and are therefore 'other major stationary sources of VOCs'], the Act provides specific dates for submittal, November 15, 1992, and implementation, no later than May 31, 1995."

EPA then sets out the time frame for the states to adopt the eleven CTG catagories excluded from the calculation of affected facility in subsection 32(b) of Connecticut's VOC RACT rule.

As a result of EPA's analysis, the Department does not believe it can achieve EPA approval of its VOC RACT rule if aerospace coatings and shipbuilding source catagories are excluded from the calculation of potential emissions under the applicability subsection 32(b) of the final wording of the proposed regulation. Thus, the Department has excluded the eleven source catagories listed in Appendix E of the April 20, 1992 Federal Register, but the Department has not excluded aerospace coatings or shipbuilding catagories from those applicability calculations.

2. Public Comment: (Richard A. Miller, Esq., Director, Environmental Policies Council, letter dated Jan. 7, 1993)

"DEP's proposed VOC capture and control provisions would require 95% efficiency for incineration controls, 90% efficiency for other types of control equipment and an 85% overall reduction in VOC emissions from a facility by February 15, 1994. Does this 85% overall reduction imply that fugitive emissions would also be calculated? If so, for many companies it is difficult or impracticable to control and measure fugitive emissions to this level of specificity. Instead DEP should promote best management practices, such as proper maintenance and leak detection, without establishing specific numeric goals that may not be economically or technically feasible."

Response:

Fugitive emissions are included when determining potential emissions from an affected portion of a premise in the applicability (see the definition of VOC-emitting equipment and subsection (a)) of the final wording of the proposed regulation. Fugitive emissions can be estimated by using a mass balance procedure or by EPA estimate methods.

Historically, individual RACT determinations often included requirements for a leak detection program within specific facilities. Under the proposed regulation, a case-by-case determination can be made as part of the individual RACT order

under the alternative compliance plan method under subparagraph (e)(1)(D), or emission reduction credits can be purchased pursuant to (e)(1)(C). These methods should help industry comply with the regulation as well as help Connecticut achieve its goal of complying with the National Ambient Air Quality Standards (NAAQS) for ozone.

3. Public Comment: (Gerald J. Bender, Vice President, Environmental Affairs, R.R. Donnelley & Sons Company, written comments dated Jan. 11, 1993)

"Section 22a-174-32(b)1(A) disallows the use of emission reductions that the facility has achieved unless such reductions were mandated by a federally-enforceable document prior to January 1, 1990.

There is no good reason why all emission reductions, whether achieved voluntarily or mandated by a federally-enforceable document, should not be usable when calculating a facility's potential emissions. It is basically and patently unfair to penalize a facility that has reduced its VOCs voluntarily by installing capture and/or control devices."

Response:

The Department believes that it has no way to ascertain whether control equipment, voluntarily installed, would continue to be used unless such control equipment is required by an order or permit from the Commissioner. Also, to maintain consistency within our State Implementation Plan, these permits or orders should be federally enforceable.

The proposed regulation allows an owner or operator to obtain an order, in lieu of RACT, if his/ her historic emissions are below the applicable thresholds. Also, "the Commissioner may consider the VOC emissions and the VOC emission reductions made at the affected portion of the premise after 1986" under compliance Method 4 (e)(1)(D). Method 4 requires an individual revision to the SIP.

4. Public Comment: (Gerald J. Bender, Vice President, Environmental Affairs, R.R. Donnelley & Sons Company, written comments dated Jan. 11, 1993)

R.R. Donnelly & Sons Company submitted a letter that stated its position on capture efficiency tests for offset lithography printing operations.

Response:

The Department takes notice of R.R. Donnelley & Sons' position, but it does not apply to the proposed regulation because offset

lithographers are on EPA's schedule to develop a Control Techniques Guideline for offset lithography. Thus, such emissions need not be included in the calculation of the affected portion of a premise. (See 32(b)(3)(C)).

5. Public Comment: (Joseph M. Pattok, Director, Regulatory & Compliance Assistance, The Society of the Plastics Industry, Inc., letter dated Jan. 11, 1993)

The Society of the Plastics Industry, Inc. believes that "a source's 'potential to emit' should be based on realistic emission data, calculated by using actual physical and operating conditions and engineering analysis and not on theoretically projected emissions that assume continuous operations."

Response:

Potential emissions are used in order to determine applicability under the proposed regulation. However, should a source's actual emissions be less than the applicable thresholds, the source has two compliance options. 1) The source can obtain an order or permit, in lieu of RACT, to limit emissions to less than the applicable thresholds; or 2) the source can achieve RACT by complying with one of the four RACT methods all of which require reductions of actual emissions (See 32(e)(1)(A)-(D)).

6. Public Comment: (Joseph M. Pattok, Director, Regulatory & Compliance Assistance, The Society of the Plastics Industry, Inc., letter dated Jan. 11, 1993)

"All controls implemented by a plant should be considered in determining a source's "potential to emit." This will ensure that the permit regulations provide real benefit in protecting human health and the environment. To regulate based on some assumed unrealistic "potential to emit," would result in unnecessary costs without any assured benefit to the health or the environment.

The actual statutory language as cited in Section 112(a)(1) of the Clean Air Act Amendments of 1990 defines a "major source" to mean:

"... any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per or more of any combination of hazardous air pollutants." (emphasis added.)

The legislative history accompanying the Clean Air Act further supports and clarifies the statutory language that existing sources are to be classified according to calculations based on actual operating conditions, as well as emissions reductions achieved through controls:

'The determination as to whether a source is a major source as defined in Section 112(a)(1) is based on the emissions of hazardous air pollutants from the source after application of installed control and reflecting the actual operating conditions of the particular source.' (emphasis added.)

(Report of Senate Committee on Environment and Public Works on S. 1630, S. Rept. 101-228, 1st Session, 151 (1989).)

It seems obvious that Congress intended that regulation should be based on actual emissions and not on an artificially high level of theoretical potential emissions. The State should follow the federal lead when implementing the Act to insure uniformity throughout the country."

Response:

The Department has researched the citation of the Clean Air Act given by Mr. Pattok. The changes being made to Connecticut's regulations are not based on section 112 of the Act which deals with hazardous air pollutants. (See 42 USC 7412). Rather, the amendments to Connecticut's regulations, relating to RACT for major sources, are required by sections 182(b)(2)(C), 182(c), and 182(d). (See 42 USC 7511a)

The final wording of the proposed regulation only uses potential emissions to determine applicability under subsection 32(b). This is clearly required by the Act, section 182(b)(2)(C), which states, "[t]he State shall submit a revision to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology under section 7502(c)(1) [nonattainment plan provisions] of this title with respect to . . . (C) All other major stationary sources of VOCs that are located in the area."

Because of Connecticut's status under the Act, as both serious and severe nonattainment areas for ozone, the definitions of major sources are modified. Under section 182(c) serious areas, "the terms 'major source' or 'major stationary source' include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds." (emphasis added.) Similarly, under section 182(d) severe areas, major sources are defined with reference to potential to emit, but in this case the threshold is 25 tons per year. Thus, the Department is bound, by the plain language of the Act, to consider potential to emit when determining applicability for purposes of Connecticut's State Implementation Plan.

7. Public Comment: (Joseph M. Pattok, Director, Regulatory & Compliance Assistance, The Society of the Plastics Industry, Inc., letter dated Jan. 11, 1993)

"SPI is extremely concerned with Section 1(c)(2) (page 3). It would require an owner or operator of a facility that is a major source of VOCs in a non-attainment area to 'reduce overall emissions to the atmosphere [to] not more than 15%' of the rate of uncontrolled emissions in effect, an 85% VOC reduction requirement.

The proposal goes well beyond the requirements of the U.S. Clean Air Act. As explained in the attached 'Principles for State Implementation of the 1990 Federal Clean Air Act Amendments,' SPI believes states should maintain consistency with minimum federal clean air requirements to insure uniform regulations for industry.

An 85% reduction requirement would subject plastics processors in Connecticut to the most stringent limits in the country. By way of contrast, Southern California's South Coast Air Quality Management District's (SCAQMD) Rule 1175, which governs the control of VOC emissions from polymeric cellular (foam) products, requires a 90% emissions collection rate by weight coupled with an efficiency rate of 95% for the air pollution control device used. This translates to a reduction requirement of 86%, which is consistent with SCAQMD's reputation for stringency. However, recognizing the difficulty in achieving 'real world' reductions that high, the rule approves alternative system if they are constructed and operated in accordance with guidelines published in the 20th edition of the 'Industrial Ventilation Manual' of the American Conference of Governmental Industrial Hygienists. SPI urges this language as an amendment to proposed Section 1(c)(2). We would also urge the Department to adopt language allowing a source-by-source approach to reducing emissions, since potential reductions can vary so much between different facilities. Also, the application of the unrealistic assumption contained in Section 1(b)(1)(B) that equipment operates 8,760 hours per year, will result in unachievable VOC reduction requirement. Permitees should give good faith estimates of actual production hours."

Response:

The Department is sensitive to the concerns of industry as expressed in Mr. Pattok's comments. Thus, Connecticut's VOC RACT regulations (section 32) offer a number of compliance options. If an owner or operator can demonstrate that the requirements of subparagraphs (e)(1)(A) through (e)(1)(C) are neither technically nor economically feasible then an alternative compliance plan may be approved, by permit or order, by the Commissioner. This gives industry in Connecticut greater flexibility than is indicated by Mr. Pattok's comments and still helps Connecticut towords achieving it goal of attaining the NAAQS for ozone.

8. Public Comment: (Victoria Brind'Amour, Manager, Environmental Affairs, Tuscarora Incorporated, letter dated Jan. 8, 1993)

The definition of "affected facility" should include only those sources meeting the emission criteria as of the Federal cutoff date of November 15, 1992, or those sources undergoing a major modification of equal to or greater emissions than those specified, after November 15, 1992.

Response:

One of the requirements of the Clean Air Act Amendments is to change the thresholds for "major stationary sources." Since these thresholds were reduced, to 25 or 50 tons, a new group of premises is now subject to regulation as major stationary sources. These premises have never been regulated before and, according to federal law, must now be regulated.

With respect to the November 15, 1992 cutoff date the effective date of this regulation will be upon adoption which is after November 15, 1992. If the affected portion of a premise has potential emissions of VOCs on that date of greater than 25 or 50 tons (depending upon the nonattainment designation) per calendar year, then this regulation applies to it.

9. Public Comment: (Victoria Brind'Amour, Manager, Environmental Affairs, Tuscarora Incorporated, letter dated Jan. 8, 1993)

"The cutoff date of January 1, 1990, referenced in paragraphs (A) and (B) of this subsection, [32(b)(1)] appears to be arbitrary and unjustified. It represents a retroactive extension in applicability of the new RACT requirements substantially beyond what was required or intended by the federal Clean Air Act Amendments of 1990. The January 1, 1990 date should be changed to "the effective date of this regulation".

Response:

The January 1, 1990 cutoff date under the final wording of the proposed regulation only applies to orders to limit VOC emissions under subsection (c). An owner or operator would not need to use this subsection if section 32 did not apply to it. (e.g. if it did not have potential emissions from the affected portion of greater than 25 or 50 tons on the effective date of the regulation.) However, if a premise had actual emissions from its affected portion of greater than 25 or 50 tons after January 1, 1990, then the cut-off date applies. In this case the owner or operator of such a premise may not obtain an order in lieu of RACT and must comply with one of the RACT methods under 32(e)(1)(A)-(D). As indicated earlier in this report section 32(e)(1)(D) offers a great deal of flexibility for the owner or operator of an affected

portion upon a showing that the other three compliance methods are neither technically nor economically feasible.

Connecticut is required to use 1990 as the base year of its inventory for SIP planning purposes. Thus, if a source ever actually emitting VOCs from its affected portion in amounts greater than 25 or 50 tons, it would be a major source under the Act. Connecticut would want to make certain that such an affected portion was using Reasonably Available Control Technology. Thus, the Department believes that the 1990 cut-off date for these premises is consistent with the inventory from which the State must achieve reductions to further the State's goal of achieving the NAAQS for ozone.

10. Public Comment: (Victoria Brind'Amour, Manager, Environmental Affairs, Tuscarora Incorporated, letter dated Jan. 8, 1993)

"The exemption for equipment referenced in paragraphs (B) and (C) of this subsection [32(b)(2)] should be extended to any equipment deemed to meet BACT, LAER or RACT as of the effective date of the regulations. No date is specified in paragraph (B), and the February 15, 1993 date in paragraph (C) will likely precede the effective date of the regulation. "

Response:

Under subdivision 32(b)(3) of the final wording of the proposed regulation an owner or operator may, "when calculating potential emissions from the affected portion of a premise, exclude any source of potential emissions of VOCs which is: . . .

> (B) subject to Best Available Control Technology or Lowest Achievable Emission Rate for VOCs required pursuant to a federally enforceable order or permit which contains specific VOC emission limitations; . . . or
>
> (G) subject to Reasonably Available Control Technology required pursuant to:. . .
>
> > (iii) an order or permit to implement Reasonably Available Control Technology issued by the Commissioner prior to November 15, 1992 and approved by the Administrator prior to May 31, 1995."

These dates reflect the fact that owners and operators of an affected portion of a premise previously regulated under 20(ee) were on notice via the CAAA that they must obtain RACT orders by November 15, 1992. The later May 1995 date allows additional time to obtain the Administrator's approval.

11. Public Comment: (Victoria Brind'Amour, Manager, Environmental Affairs, Tuscarora Incorporated, letter dated Jan. 8, 1993)

"These two subsections [32(c)(2)-(3)] apply extremely stringent emission reduction criteria to the "affected facility", and do not allow for a review and demonstration of technological and economic feasibility for individual sources within each facility.

We believe these subsections should be revised such that the reduction criteria should be applied to only those sources within the affected facility for which such reduction is technologically and economically feasible. If this change is made, it may eliminate the need for subsection 22a-174-32(c)(4).

Response:

The Department understands Ms. Brind'Amour's concerns and has included subparagraph (e)(1)(D) in the final wording of the proposed regulation. This subparagraph allows the Commissioner to implement an alternative compliance plan if the owner or operator can demonstrate that subparagraphs (e)(1)(A) through (e)(1)(C) inclusive are neither technically nor economically feasible. The burden is on the applicant to demonstrate that methods 1-3 are neither technically nor economically feasible. One method of making such a showing would be to demonstrate that certain sources within a facility were already achieving RACT and to submit them to additional control would not be technically nor economically feasible. However, given the variety of potential combinations of sources within the regulated community, the Department must maintain the ability to review these affected portions on a case-by-case basis as provided for in 32(e)(1)(D).

In addition, subparagraph (e)(1)(C) allows for the use of alternative emission reductions or emission reduction credits. This method may also be a way for sources like those described by Ms. Brind'Amour to achieve compliance with the proposed regulation.

12. Public Comment: (Victoria Brind'Amour, Manager, Environmental Affairs, Tuscarora Incorporated, letter dated Jan. 8, 1993)

"Although this subsection [32(c)(4)] at the first appears to acknowledge that the extremely stringent emission reduction criteria contained in subsection 22a-174-32(c)(2) and (3) may not be technologically and/or economically feasible for all affected facilities, it does not appear to allow for any compliance option which does not achieve reductions equivalent to those referenced subsections, as evidenced by subparagraph (viii). Such an allowance must be more clearly established, in order to remain consistent with the RACT definition contained in section 22a-174-1."

We are also seriously concerned as to the lack of availability of, and mechanism for identifying and obtaining, the VOC emission reduction credits referenced in subparagraph (vii)."

Response:

As indicated in the previous comment, subparagraph (e)(1)(d) allows the Commissioner to implement an alternative compliance plan if the owner or operator can demonstrate that subparagraphs (e)(1)(A) through (e)(1)(C) inclusive are neither technically nor economically feasible. If this method is used there is no requirement that the affected portion achieve equivalent reductions to any of the other methods. However, subparagraph (e)(1)(C) allows for the use of alternative emission reductions or emission reduction credits provided "such owner or operator shall achieve equivalent reductions to those required by either subparagraph (e)(1)(A) or (e)(1)(B)."

Existing section 22a-174-32(cc) sets out the methodology for alternative emission reductions and the Department is studying this and other sections of the existing regulations to determine better ways to safely improve the availability of emission reduction credits.

13. Public Comment: (Arthur E. Slesinger, Director of Environmental Affairs and Safety, Boehringer Ingelheim Pharmaceuticals, Inc. letter dated Jan. 7, 1993)

"The definition of VOC emitting sources has no "de minimis" element. As such, even the smallest source could be aggregated at the major source and require a substantial evaluation. The user of laboratory hoods at BIPI is the most obvious example. The daily emission rate from each hood is extremely low. Projecting a "potential" emission is very speculative. On an annual basis, it is highly unlikely that the emission would exceed 500 pounds per year. Yet the RACT requirements can be applied to such a source, as can the BACT rules, because DEP has not provided any means for eliminating very small sources. It is not clear if R&D facilities, and their laboratory hoods, are part of 22a-174-20; if they are regulated under 22a-174-20 then they are exempt from RACT. Still the major source and modification elements of 22a-174-3 would require a new source review for this type of source which has minimal environmental impact. BIPI suggests that DEP consider adopting a definition which would exclude from consideration sources with emission rates below 0.5 tons/year of VOC's.

Response:

Research and development laboratory hoods are regulated under the Department's existing regulations. However, since R & D lab hoods are not regulated under subsections a, b, or 1 through y inclusive

of section 20, they would be included in the calculation of an affected portion of a premise.

The Department currently calculates the potential to emit from R & D hoods on a case-by-case basis. This method would continue after the effective date of the proposed regulation.

The Department realizes that R & D lab hoods may not, as individual sources, emit significant amounts of VOCs. However, the cumulative effect of a number of lab hoods at a premise may cause such a premise to go beyond the applicable threshold amounts of potential to emit and cause the premise to be classified as an affected portion. The Department believes such a result is justified because of the flexible options that an owner or operator has to comply with the regulation.

In the case of R & D lab hoods, the best compliance strategy may be to take an order to limit potential emissions of VOCs. However, if actual emissions from the lab hoods cause a premise to exceed the thresholds, then one of the four RACT compliance methods must be performed.

CONCLUSION

The Hearing Officers recommend that the amendments of the duly Noticed Intent to Amend Regulations in final form as prepared for the Notice of Availability of September 14, 1993 (Sections 22a-174-20(s), 22a-174-20(v), 22a-174-(20)(ee), and 22a-174-32) be adopted.

Joseph A. Belanger

Dated: 9/15/93

Carmine DiBattista

Dated: 9/15/93