STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

July 31, 2000

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

Re: R.C.S.A. section 22a-174-3(n), Stationary source modifications for the installation and operation of air pollution control equipment and process changes to control air pollution.

Ladies and Gentlemen:

Pursuant to section 4-170 of the Connecticut General Statutes, I submit for your consideration and approval the enclosed amendment to the Regulations of Connecticut State Agencies ("RCSA"). This amendment concerns the adoption of RCSA section 22a-174-3(n), Abatement of Air Pollution, Stationary source modifications for the installation and operation of air pollution control equipment and process changes to control air pollution.

To encourage the installation of air pollution control equipment, a new subsection is being proposed for inclusion into the Department's new source review regulation. This proposal will limit the scope of air pollutants for which an applicant for a permit modification must perform an analysis that demonstrates to the Department that the proposed source of air pollution will control emissions using the best available control technology (BACT). BACT is a case-by-case determination by the Department as to what level of emissions controls constitutes an appropriate level of air pollution control taking into consideration the existing state of control technology and cost. The proposed amendment will limit the required BACT analysis to those pollutants for which there will be an increase of potential emissions equal to or greater than five (5) tons or more from previously permitted limitations. In addition, a BACT analysis will not be required of a source that subject to a federally enforceable limit on potential emissions of five (5) tons or less per year. As a result of this proposed amendment, a permit modification to install pollution control equipment that will reduce emissions of air pollutants would not be subject to a BACT review. The Department will continue to maintain oversight of the installation and operation of the air pollution control equipment.

If there are any questions regarding this proposal, please contact Tom Tyler, The Department's Legislative Liaison, at 424-3001. Thank you for your assistance with this matter.

Sincerely,

Arthur J. Rocque, Jr.
Commissioner

AJR/PEF

STATE OF CONNECTICUT

REGULATION

OF

NAME OF AGENCY

Environmental Protection

Concerning

SUBJECT MATTER OF REGULATION

Air Pollution Control Equipment

Section: 1

The regulations of Connecticut State Agencies are amended by adding new subsection (n) to section 22a-174-3, as follows:

(NEW)

(n) Stationary source modifications for the installation and operation of air pollution control equipment and process changes to control air pollution.

(1) For purposes of this subsection:

(A) "air pollution control equipment" means any equipment, which is designed, installed and operated, for the primary purpose of reducing emissions of air pollutants from a stationary source; and

(B) "process changes to control air pollution" means any modification that alters or implements production processes or available methods, including fuel switching, systems, techniques, work practice standards, operational standards or a combination thereof which is designed and implemented for the primary purpose of reducing emissions of air pollutants from a stationary source.

(2) Notwithstanding the provisions of subsection (b)(2)(B) of this section, the owner or operator of a proposed modification to an existing stationary source shall:

(A) not be required to perform a determination of the Best Available Control Technology pursuant to this section for any proposed modification to an existing stationary source for the installation and operation of air pollution control equipment, or the implementation of process changes to control air pollution, provided that such modification does not result in an increase of potential emissions of equal to or greater than five (5) tons per year for any individual air pollutant;

(B) to the extent that a proposed modification to an existing stationary source for the installation and operation of air pollution control equipment, or implementation of process changes to control air pollution, would result in an increase of potential emissions of equal to or greater than five (5) tons per year for any individual air pollutant, perform a determination of the Best Available Control Technology pursuant to this section only for each air pollutant for which potential emissions will be increased by at least five (5) tons per year; and

(C) to the extent that a term or condition of a federally enforceable permit or order will limit potential emissions from the proposed modification to levels below five (5) tons per year for each individual air pollutant, be exempt from the requirement to perform a determination of Best Available Control Technology pursuant to this section.

(3) Notwithstanding the provisions of subsection (c)(1)(G) of this section, the commissioner shall not grant a permit for a modification to an existing stationary source for the installation and operation of air pollution control equipment, or the implementation of process changes to control air pollution, under this section unless the owner or operator of such source incorporates Best Available Control Technology in accordance with subdivision (2)(B) of this subsection or demonstrates, to the commissioner's satisfaction, that the installation of Best Available Control Technology is not required by subdivisions (2)(A) or (2)(C) of this subsection.

(4) The owner or operator who proposes to install air pollution control equipment, or implement process changes to control air pollution, pursuant to this subsection shall, not later than fourteen calendar days after receipt of a request from the commissioner, provide any documentation the commissioner may require in order to determine the amount of actual and potential emissions from the proposed modification.

(5) Nothing in this subsection shall preclude the commissioner from determining what air pollution control equipment or process represents the Best Available Control Technology for any individual air pollutant for which the potential to emit may increase by five (5) tons or more per year.

(6) Nothing in this subsection shall relieve an owner or operator from the responsibility to comply fully with the applicable provisions of subsection (k) or (*l*) of this section.

(7) This subsection shall apply to the owner or operator who files a permit application under this section prior to or after the effective date of this subsection, and for which a permit has yet to be issued or denied.

Statement of purpose: To encourage the installation of air pollution control equipment and the implementation of processes to control air pollution by limiting the scope of the analysis to comply with the applicable provisions of BACT to only those potential emissions increases of five or more tons resulting from the proposed modification.

CERTIFICATION

R-39 REV. 1/77

Be it known that the foregoing:

☒ Regulations ☐ Emergency Regulations

Are:

☐ Adopted ☒ Amended as hereinabove stated ☐ Repealed

By the aforesaid agency pursuant to:

☒ Section 22a-6 and 22a-174 of the General Statutes.

☐ Section _____ of the General Statutes, as amended by Public Act No. _____ of the ___ Public Acts.

☐ Public Act No. _____ of the Public Acts.

After publication in the Connecticut Law Journal on February 22 20 00 , of the notice of the proposal to:

☐ Adopt ☒ Amend ☐ Repeal such regulations

(If applicable): ☒ And the holding of a public hearing on 28th day of March 20 00

WHEREFORE, the foregoing regulations are hereby:

☐ Adopted ☒ Amended as hereinabove stated ☐ Repealed

Effective:

☒ When filed with the Secretary of State.
(OR)

☐ The _____ day of _____ 19 ____.

In Witness Whereof:	DATE 7/6/00	SIGNED *(Head of Board, Agency or Commission)*	OFFICIAL TITLE, DULY AUTHORIZED Deputy Commissioner
Approved by the Attorney General as to legal sufficiency in accordance with Sec. 4-169, as amended, C.G.S.:		SIGNED	OFFICIAL TITLE, DULY AUTHORIZED Assoc. Atty. General

7/21/00

☐ Approved

☐ Disapproved

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

☐ Rejected without prejudice.

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

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

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

INSTRUCTIONS

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

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

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

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

EXHIBIT C

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AGENCY FISCAL ESTIMATE OF PROPOSED REGULATION

AGENCY SUBMITTING REGULATION Environmental Protection DATE September 22, 1999

SUBJECT MATTER OF REGULATION Review of new sources of air pollution/ special exemption for air pollution control equipment.

REGULATION SECTION NO. 22a-174-3(n) STATUTORY AUTHORITY 22a-6 and 22a-174

OTHER AGENCIES AFFECTED None EFFECTIVE DATE USED IN COST ESTIMATE Jan. 1, 2000

ESTIMATE PREPARED BY Paul E. Farrell TELEPHONE 424-3389

SUMMARY OF STATE COST AND REVENUE IMPACT OF PROPOSED REGULATION

Agency Environmental Protection Fund Affected None

	First Year FY 2000-01	Second Year FY 2001-02	Third Year FY 2002-03
Number of Positions	0	0	0
Personal Services	0	0	0
Other Expenses	0	0	0
Equipment	0	0	0
Grants	-	-	-
Total State Cost (Savings)	-	-	-
Estimated Revenue Gain (Loss)	-	-	-
Total Net State Cost (Savings)	-	-	-

EXPLANATION OF STATE IMPACT OF REGULATION:

This amendment proposes to provide an exemption from the current regulatory framework for the construction of air pollution control equipment. Such exemption will limit the amount of pre-construction analysis (an analysis required before issuance of a permit, commonly referred to as a "BACT analysis") that must be performed in order to comply with the Department's interpretation of federal new source review program requirements set forth in section 22a-174-3 of the R.C.S.A. It is reasonably anticipated that limiting the scope of such analysis will reduce the costs born by those permit applicants who must obtain air pollution control permits prior to the lawful construction and operation of air pollution control equipment. To the extent that the State or a municipality applies for a permit modification to install air pollution control equipment, the applicant could realize savings of $2,000 - $4,000 for each such application.

EXPLANATION OF MUNICIPAL IMPACT OF REGULATION:

See above.

EXHIBIT A

ADMINISTRATIVE REGULATIONS

Regulations and notices published herein, pursuant to General Statutes Sections 4-168 and 4-173, are printed exactly as submitted by the forwarding agencies. These, being official documents submitted by the responsible agencies, are consequently not subject to editing by the Commission on Official Legal Publications.

A cumulative list of effective amendments to the Regulations of Connecticut State Agencies may be found in the Connecticut Law Journal dated February 1, 2000.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

The Commissioner of Environmental Protection hereby gives notice of a public hearing as part of a rulemaking proceeding. The purpose of this proceeding is to amend the Regulations of Connecticut State Agencies (R.C.S.A.) concerning the abatement of air pollution. These amendments will be submitted to the U.S. Environmental Protection Agency (EPA) for their review and approval as a revision to the State Implementation Plan (SIP) for air quality as required by the Clean Air Act Amendments of 1990 (CAA). This public hearing will cover a proposed amendment to the R.C.S.A. The proposed amendment concerns a proposed revision to R.C.S.A section 22a-174-3, Permits to construct and permits to operate stationary sources or modifications. The Department is proposing to adopt a new subsection (n), Stationary source modifications for the installation and operation of air pollution control equipment and process changes to control air pollution. This proposed amendment are more fully described below.

All interested persons are invited to comment on the proposed SIP revision and regulation. Comments should be directed to the attention of Ellen Walton of the Department of Environmental Protection, Bureau of Air Management, Planning and Standards Division, 79 Elm Street, Hartford, Connecticut 06106-5127. In addition to submitting comments at the public hearing described below, comments may be submitted by facsimile to (860) 424-4063 or by electronic mail to ellen.walton@po.state.ct.us.
All comments must be received by 5:00 PM, March 31, 2000.

R.C.S.A. section 22a-174-3(n) – Stationary source modifications for the installation and operation of air pollution control equipment and process changes to control air pollution: To encourage the installation of air pollution control equipment, a new subsection is being proposed to limit the scope of air pollutants for which an applicant for a permit modification must perform a BACT analysis pursuant subsection (b)(2)(B) of section 22a-174-3 of the R.C.S.A. The proposed amendment will limit the required BACT analysis to those pollutants for which there will be an increase of potential emissions equal to or greater than five (5) tons or more from previously permitted limitations. In addition, a BACT analysis will not be required of a source that assumes a federally enforceable limit on potential emissions of five (5) tons or less per year. As a result of this proposed amendment, a permit modification to install pollution control equipment that will reduce emissions

of air pollutants would not be subject to a BACT review. The Department will continue to maintain oversight of the installation and operation of the air pollution control equipment.

In addition to accepting written comments, the Department of Environmental Protection will also hold a public hearing as described below. Persons appearing at this public hearing are requested to submit a written copy of their statement. However, oral comments will also be made a part of the hearing record and are welcome.

PUBLIC HEARING
Tuesday March 28, 2000 at 2:00 PM
Department of Environmental Protection
Holcombe Conference Room, 5th Floor
79 Elm Street, Hartford, CT

Copies of the amendments described above are available for public inspection during normal business hours and may be obtained from Ellen Walton at the Bureau of Air Management, Planning and Standards Division, 5th Floor, 79 Elm Street, Hartford, CT. Additional copies are also available for review at the Law Reference Desk of the Connecticut State Library, the Torrington Public Library, the New London Public Library and the Bridgeport Public Library. For further information, contact Ellen Walton of the Bureau of Air Management at (860) 424-3027.

The Department of Environmental Protection supports the goals of the Americans with Disabilities Act of 1990. Any individual who needs auxiliary aids for effective communication during this public hearing or in submitting public comments should contact Betty Lirot, ADA Coordinator at (860) 424-3035 or TDD (860) 424-3333 at least one week before the public hearing.

The authority to adopt this amendment is granted by sections 22a-6 and 22a-174 of the Connecticut General Statutes (C.G.S.). This notice is required pursuant to C.G.S. sections 22a-6, 4-168 and 40 Code of Federal Regulations Part 51.102.

Arthur J. Rocque, Jr.
Commissioner

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notice of Intent to Amend Regulations of Connecticut State Agencies and to Revise the State Plan to Implement the Municipal Waste Combustor Emission Guidelines and New Source Performance Standards

The Commissioner of Environmental Protection hereby gives notice of a public hearing as part of a rulemaking proceeding. The purpose of this proceeding is to amend the Regulations of Connecticut State Agencies (R.C.S.A.) concerning the abatement of air pollution. The public hearing will address proposed revisions to R.C.S.A. section 22a-174-38 concerning municipal waste combustors. This amendment will be submitted to the U.S. Environmental Protection Agency (EPA) for review and approval as a revision to the state plan to implement and enforce federal requirements for municipal waste combustors as required pursuant to the Clean Air Act Amendments of 1990.

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

HEARING REPORT

Prepared Pursuant to § 4-168(d) of the Connecticut General Statutes and § 22a-3a-3(d)(5) of the Department of Environmental Protection Rules of Practice Regarding Amendment of the Regulations of Connecticut State Agencies (R.C.S.A.) § 22a-174-3(n): Stationary source modifications for the installation and operation of air pollution control equipment and process changes to control air pollution

Hearing Officer: Paul E. Farrell

Date of Public Hearing: March 28, 2000

I. Introduction

On February 22, 2000, the Commissioner of the Department of Environmental Protection (Department) published a notice of intent to revise the State Implementation Plan (SIP) for air quality and amend Regulations of Connecticut State Agencies (R.C.S.A.) § 22a-174-3(n) (§ 3(n)) concerning stationary source modifications for the installation and operation of air pollution control equipment and process changes to control air pollution. Pursuant to such notice, a public hearing was held on March 28, 2000. The public comment period for this proposed amendment closed on March 31, 2000.

II. Administrative Requirements

A. Hearing Report Content

As required by Connecticut General Statutes (C.G.S.) § 4-168(d), this report describes the amendments to the R.C.S.A. as proposed for hearing; the final wording of the proposed amendments to the R.C.S.A.; a statement of the principal reasons in support of the Department's proposed action; a statement of the principal reasons in opposition of the Department's proposed action and the reasons for rejecting such comments; and a summary of all comments and responses thereto on the proposed action. Those who provided comments are identified in Attachment 1.

B. Adoption of Regulations Pertaining to Activities for which the Federal Government has Adopted Standards or Procedures

In accordance with C.G.S. § 22a-6(h), the Commissioner must clearly distinguish, at the time of the public hearing, all provisions of a proposed regulation that differ from adopted federal standards and procedures, provided: (1) such proposed regulation pertains to activities addressed by adopted federal standards and procedures; and (2) such adopted federal standards and procedures apply to persons subject to the provisions of such proposed regulation. In addition,

EXHIBIT E

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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.

In accordance with the requirements of C.G.S. § 22a-6(h), the Hearing Officer made a statement at the public hearing, which is incorporated into the administrative record for the proposed amendments to § 3(n). Such statement indicated that the requirements of C.G.S. § 22a-6(h) are not applicable to the proposed amendments to § 3(n) because the federal government has not adopted standards or procedures that are applicable to any person potentially subject to the proposed amendments to § 3(n).

III. Summary and Text of the Proposed Amendment

The State of Connecticut is required to adopt and implement a program requiring air pollution control permits for the construction and operation of new sources pursuant to §§ 172(c) and 173 of the 1990 Clean Air Act Amendments (CAA) and 40 Code of Federal Regulations (CFR) Part 51, Subpart I. The two fundamental goals of issuing construction and operating permits for new or modified sources of air pollution are: (1) to ensure that air quality which meets federal standards is protected; and (2) to ensure that air quality which does not meet federal standards is improved. To accomplish these goals, a permit applicant must perform an analysis that demonstrates to the Department that the proposed source of air pollution will control emissions using the best available control technology (BACT). BACT is a case-by-case determination of what constitutes an appropriate level of air pollution control taking into consideration the existing state of control technology and cost. This analysis can be somewhat time consuming and expensive, but in the context of a completely new or modified source (for example a new power plant) this analysis is necessary to determine that the source will not emit pollution at levels which may exceed or contribute to the exceedance of federal or state air quality standards.

The Department is constantly challenged to adopt new federally mandated emission limitations and standards by the United States Environmental Protection Agency. As a result of this state regulation adoption activity, a situation has arisen where a new regulatory requirement has lead several owners of affected sources to choose to install environmentally beneficial emissions control equipment to meet a regulatory standard. However, this action would also require these sources to obtain a permit and perform a BACT analysis before such equipment could lawfully be constructed or operated. The existing regulatory approach has created an illogical situation where the environmental benefits gained by compliance with a mandatory emissions limit outweighs any benefits gained by requiring these applicants to perform the aforementioned BACT analysis. It should be the position of the Department that the construction and operation of air pollution control equipment is to be encouraged and that the regulated community should be provided a reasonable degree of certainty as to the level of emission controls expected of them. Additionally, the proposed amendment removes the existing regulatory disincentive faced by anyone who voluntarily seeks to install air pollution control equipment.

Based on the considerations noted above, the Department is proposing to amend R.C.S.A. § 22a-174-3 by the adoption of new subsection (n) – Stationary source modifications for the installation and operation of air pollution control equipment and process changes to control air

pollution. The proposed amendment is intended to encourage the installation of air pollution control equipment by adopting a new subsection to limit the scope of air pollutants for which an applicant for a permit modification must perform a BACT analysis pursuant to § 22a-174-3(b)(2)(B) of the R.C.S.A. The proposed amendment will limit the required BACT analysis to those pollutants for which there will be an increase of potential emissions equal to or greater than five (5) tons or more from previously permitted limitations. In addition, a BACT analysis will not be required of a source that assumes a federally enforceable limit on potential emissions of five (5) tons or less per year. As a result of this proposed amendment, in most instances a proposed change at an existing source for the installation of pollution control equipment or a process change to control air pollution will not subject the proposed change to a BACT review. The Department will continue to maintain oversight of the installation and operation of the air pollution control equipment.

Text of the proposed amendment:

The Regulations of Connecticut State Agencies are amended by adding a new section 22a-174-3(n) as follows:

(NEW)

(n) Stationary source modifications for the installation and operation of air pollution control equipment and process changes to control air pollution.

(1) For purposes of this subsection:

(A) "air pollution control equipment" means any equipment, which is designed, installed and operated, for the primary purpose of reducing emissions of air pollutants from a stationary source; and

(B) "process changes to control air pollution" means any modification that alters or implements production processes or available methods, including fuel switching, systems, techniques, work practice standards, operational standards or a combination thereof which is designed and implemented for the primary purpose of reducing emissions of air pollutants from a stationary source.

(2) Notwithstanding the provisions of subsection (b)(2)(B) of this section, including, but not limited to, the requirement that an owner or operator of any stationary source include within a permit application a determination of Best Available Control Technology for each individual air pollutant with potential emissions equal to or greater than five (5) tons per year; the owner or operator of a proposed modification to an existing stationary source shall:

(A) not be required to perform a determination of the Best Available Control Technology pursuant to this section for any proposed modification to an existing stationary source for the installation and operation of air pollution control equipment, or the implementation of process changes to control air pollution, provided that such

five (5) tons or more per year). CRRA also indicated that the Department should further revise its regulations to no longer require permit applications for air pollution control projects. In addition, CRRA offered the following comments on specific portions of the proposed regulation:

1. CRRA suggested the Department incorporate the following language to eliminate the need to delay implementation of air pollution controls during the permitting process:

> (n)(2) Notwithstanding any other provision of this section 22a-174-3, the installation and use of air pollution control equipment or process changes to control air pollution shall not be considered a modification or a new stationary source requiring a construction or operating permit; provided, however, that the Commissioner may revise the construction or operating permit for a stationary source which is installing air pollution control equipment or making process changes to control air pollution to impose reasonable and necessary conditions on the operations of such equipment or process changes. No change or addition authorized pursuant to this section may be made if such change or addition would violate the federal Clean Air Act.

2. The phrase "increase of potential emissions" in the third line of § 3(n)(2)(B) should be qualified to state: "***net*** increase of potential emissions." Consistent with U.S. EPA rules, the state regulation should focus on net emission increases. If an air pollution control-related change increases a specific pollutant by more than five tons per year, but contemporaneous changes reduce the same air pollutant, so that the net increase is less than five tons, the pollution control changes should not be subject to BACT.

3. Subsection (n)(2)(C) should be revised by adding the word "individual" in the following phrase: ". . . five (5) tons per year for each **individual** air pollutant. . . ." This would make this subdivision consistent with the language in § 3(n)(2)(B). In addition, federally enforceable orders, as well as permits should allow sources to limit emission increases to less than five tons per year to avoid BACT requirements.

4. Subsection (n)(3) is confusing because it is worded in the negative. It seems to be drafted with the intent to supercede § 3(c)(1)(G), which requires BACT for each individual air pollutant with: (a) potential emissions equal to or greater than five tons per year, (b) maximum uncontrolled emissions in excess of 100 tons per year, or (c) hazardous air pollutants to the extent required by R.C.S.A. § 22a-174-29 (state hazardous air pollutant regulations). CRRA suggests revising § 3(n)(3) as follows:

> Notwithstanding the provisions of subsection (c)(1)(G) of this section, the commissioner shall ~~not~~ grant a permit for a modification to an existing stationary source for the installation and operation of air pollution control equipment. . . ~~unless~~ so long as the owner or operator of such source incorporates Best Available Control Technology in accordance with subdivision (2)(B) of this subsection or demonstrates, to the commissioner's satisfaction, that the

installation of Best Available Control Technology is not required by subdivisions (2)(A) or (2)(C) of this subsection.

In the alternative, CRRA suggests deleting § 3(n)(3) and inserting a reference to § 3(c)(1)(G) in § 3(n)(2), as follows: "Notwithstanding the provisions of subsection (b)(2)(B) and (c)(1)(G) of this section. . . "

5. Subsection (n)(5) should be deleted. It is ambiguous and potentially creates disincentives to the installation and use of new air pollution control equipment and processes. The subdivision seems to provide that the Department may deny a permit application for air pollution control equipment if it decides that the equipment does not represent BACT for an existing source. CRRA does not understand what the Department is trying to accomplish. BACT is not required for existing sources, unless the source was previously permitted. CRRA then discussed the following three scenarios in an attempt to discern the intent of § 3(n)(5):

   (A) If the source has a permit, then the Department previously concluded that its control technology was BACT. If this subsection is an effort to revisit the BACT analysis for the source, this goal would be inconsistent with the stated purpose of the proposed regulation.

   (B) If the intent of this subdivision is to authorize the Department to prevent an existing source from installing pollution control equipment or make process changes, where the Department believes that alternative equipment representing BACT should be installed, it is clearly contrary to the stated goal of the proposed regulation.

   (C) If the intent is to make clear that the Department has the authority to determine BACT for any individual air pollutant that increases by more than five tons per year, then this subdivision is unnecessary since § 3(n)(2)(B) requires BACT for such pollutant increases. However, if the Department believes that it needs more express authority to determine when BACT is necessary, CRRA suggests amending § 3(n)(5) as follows:

      (5) The commissioner may determine BACT for any individual air pollutant which increases by more than five (5) tons as a result of air pollution control equipment or process changes to control air pollution installed and operated under this subdivision.

Response:

1. The Department has historically drafted its air regulations to be more stringent than required by the federal government because of the unique nature of the air quality problem in our state and the desire to enhance protection of public health and the environment. I recommend that the Department not adopt the proposed language suggested by CRRA that would no longer require permit applications for air pollution control projects. The effect of the CRRA proposed language would be that the Department would no longer have oversight of such

activity through the permit process unless the proposed activity triggered federal air quality permit requirements.

2. I recommend the Department not adopt the CRRA suggestion that would limit applicability of the proposed regulation to ***net*** increases of potential emissions of five tons per year or more. This recommendation is based on two factors. First, the concept of "netting" is not allowed in the regulation that the Department is now seeking to amend. The proposed regulation should be consistent with the remainder of § 3 of the R.C.S.A. Second, the Department bases the applicability of its new source permitting regulation on potential emissions whereas EPA uses actual emissions. It is nearly impossible to "net" potential emissions because potential emissions, by their nature, are theoretical constructs.

   The Department intends to propose significant revisions to § 3 of the R.C.S.A. in the near future. Such revisions may base applicability on actual emissions rather than potential emissions. If the Department shifts the focus of new source review from potential to actual emissions, I recommend the Department reconsider the EPA policy on "netting."

3. In accordance with CRRA's comment, I recommend the Department adopt the following substitute language and revise § 3(n)(2)(C) to include: (i) the term "individual" in the third line; and (ii) a reference to federally enforceable orders in the first line. However, it should be noted that the Department's policy with respect to the use of administrative orders is to limit the use of such orders as a means to compel compliance with applicable requirements rather than as a substitute for the permit process.

   > (C) to the extent that a term or condition of a federally enforceable permit or order will limit potential emissions from the proposed modification to levels below five (5) tons per year for each individual air pollutant, be exempt from the requirement to perform a determination of Best Available Control Technology pursuant to this section.

4. While § 3(n)(3) could be more clearly drafted if not worded in the negative, I recommend the Department not adopt the suggested revised language. In order to effectuate the Department's intent in adopting § 3(n), this subsection must affect the applicability of portions § 3(b) and (c). Section 3(b) requires that certain persons (in this case owners or operators of sources that have potential emissions greater than five tons per year) obtain permits and perform a BACT analysis, if necessary. Section 3(c) constrains the Department to the extent that a permit shall ***not*** be issued unless the permit applicant meets certain requirements (in this case install and operate BACT). Therefore, the wording proposed in § 3(n) maintains the approach taken in § 3(c) in that the commissioner shall not issue a permit unless the permit applicant demonstrates compliance with the provisions of § 3(n) (i.e., an ability to cap emissions below five tons or applying BACT to those emissions over five tons).

5. The concerns raised by CRRA and others regarding § 3(n)(5) are valid. The commissioner is authorized under, and in fact constrained by, the provisions of § 3(c)(1)(G) to deny a permit application that does not incorporate BACT as determined by the Department. Additionally, if a source undertook a course of illegal construction and operation (e.g., a source that was

constructed and operated without first obtaining a permit under § 3 of the R.C.S.A.), the Commissioner is similarly constrained to determine BACT, even though such determination may differ from that actually constructed by the source.

As such, I recommend the Department revise § 3(n)(5) as follows:

(5) Nothing in this subsection shall preclude the commissioner from determining what air pollution control equipment or process represents the Best Available Control Technology for any individual air pollutant for which the potential to emit may increase by five (5) tons per year or more.

Oral Comments: A representative of CRRA offered the following oral comments at the public hearing: CRRA believes that no permit application for the installation and operation of air pollution control equipment should be required if there is no net increase in any air pollutants emitted by the source as a result of such installation and operation.

Response: As stated above, the Department has historically drafted its air regulations to be more stringent than required by the federal government because of the unique nature of the air quality problem in our state and the desire to enhance protection of public health and the environment. I recommend that the Department not adopt the proposed language suggested by CRRA that would no longer require permit applications for air pollution control projects. The effect of the CRRA proposed language would be that the Department would no longer have oversight of such activity through the permit process unless the proposed activity triggered federal air quality permit requirements. Further, without this oversight, there would be no way to ensure the proper implementation of BACT, where necessary, so that pollution control equipment or process changes to control pollution will truly accomplish pollution control.

Comments Submitted by Wisvest-Connecticut, LLC (Wisvest)

Comment: Wisvest indicated their strong support for the Department's stated intent of the proposed revisions. Wisvest also indicated their belief that it makes great sense to remove any regulatory disincentives that act to discourage sources from adding environmentally beneficial emissions control equipment or from making equally beneficial process changes (including fuel switching) in order to reduce air pollutant emissions. Wisvest offered the following specific comments on the proposed regulatory text:

1. The phrase "increase of potential emissions" in the third line of § 3(n)(2)(B) should be qualified to state: "***net*** increase of potential emissions." Consistent with U.S. EPA rules, the state regulation should focus on net emission increases.

2. Subdivision (n)(2)(C) should be revised by adding the word "individual" in the following phrase: ". . . five (5) tons per year for each ***individual*** air pollutant. . . ." This would make this subdivision consistent with the language in § 3(n)(2)(B). In addition, federally

enforceable orders, as well as permits should allow sources to limit emission increases to less than five tons per year to avoid BACT requirements.

3. Subsection (n)(5) should be deleted. It is ambiguous and potentially creates disincentives to the installation and use of new air pollution control equipment and processes. The subdivision seems to provide that the Department may deny a permit application for air pollution control equipment if it decides that the equipment does not represent BACT for an existing source. If the intent of this subdivision is to authorize the Department to prevent an existing source from installing pollution control equipment or make process changes, where the Department believes that alternative equipment representing BACT should be installed, this would provide a disincentive to the pollution control projects. If the intent is to make clear that the Department has the authority to determine BACT for any individual air pollutant that increases by more than five tons per year, then this subdivision is unnecessary since § 3(n)(2)(B) requires BACT for such pollutant increases.

4. Wisvest also recommends that the Department consider eliminating additional regulatory disincentives by further amending the regulations to exempt certain air pollution control projects and process changes from the requirement to apply for and obtain a permit. Wisvest suggests the Department incorporate the following language to eliminate the need to delay implementation of air pollution controls during the permitting process:

> (n)(2) Notwithstanding any other provision of this section 22a-174-3, the installation and use of air pollution control equipment or process changes to control air pollution shall not be considered a modification or a new stationary source requiring a construction or operating permit; provided, however, that the Commissioner may revise the construction or operating permit for a stationary source which is installing air pollution control equipment or making process changes to control air pollution to impose reasonable and necessary conditions on the operations of such equipment or process changes. No change or addition authorized pursuant to this section may be made if such change or addition would violate the federal Clean Air Act.

Response:

1. As stated in response to CRRA, I recommend the Department not adopt the Wisvest suggestion that would limit applicability of the proposed regulation to ***net*** increases of potential emissions of five tons per year or more. This recommendation is based on two factors. First, the concept of "netting" is not allowed in the regulation that the Department is now seeking to amend. The proposed regulation should be consistent with the remainder of § 3 of the R.C.S.A. Second, the Department bases the applicability of its new source permitting regulation on potential emissions whereas EPA uses actual emissions. It is nearly impossible to "net" potential emissions because potential emissions, by their nature, are theoretical constructs.

   The Department intends to propose significant revisions to §3 of the R.C.S.A. in the near

future. Such revisions may base applicability on actual emissions rather than potential emissions. If the Department shifts the focus of new source review from potential to actual emissions, I recommend the Department consider adopting the EPA policy on "netting."

2. As stated in response to CRRA, I recommend the Department revise § 3(n)(2)(C) as follows:

   (C) to the extent that a term or condition of a federally enforceable permit or order will limit potential emissions from the proposed modification to levels below five (5) tons per year for each individual air pollutant, be exempt from the requirement to perform a determination of Best Available Control Technology pursuant to this section.

3. The concerns raised by Wisvest and others regarding § 3(n)(5) are valid. The commissioner is authorized under, and in fact constrained by, the provisions of R.C.S.A. § 3(c)(1)(G) to deny a permit application that does not incorporate BACT as determined by the Department. Additionally, if a source undertook a course of illegal construction and operation (e.g., a source that was constructed and operated without first obtaining a permit under R.C.S.A. § 3), the Commissioner is similarly constrained to determine BACT, even though such determination may differ from that actually constructed by the source.

   As such, I recommend the Department revise § 3(n)(5) as follows:

   (5) Nothing in this subsection shall preclude the commissioner from determining what air pollution control equipment or process represents the Best Available Control Technology for any individual air pollutant for which the potential to emit may increase by five (5) tons per year or more.

4. As stated in response to CRRA comment on the provisions of § 3(n)(2), the Department has historically drafted its air regulations to be more stringent than required by the federal government because of the unique nature of the air quality problem in our state and the desire to enhance protection of public health and the environment. I recommend that the Department not adopt the proposed language suggested by Wisvest that would no longer require permit applications for air pollution control projects. The effect of the Wisvest proposed language would be that the Department would no longer have oversight of such activity through the permit process unless the proposed activity triggered federal air quality permit requirements.

Comments Submitted by the Connecticut Business & Industry Association (CBIA)

Comment: CBIA supports the Department's efforts to remove regulatory disincentives to installing environmentally beneficial emission controls and agrees that the addition of air pollution equipment to existing facilities should not trigger a requirement to conduct a BACT review for any pollutant that does not increase by five (5) tons or more per year. CBIA offered the follow specific comments on the proposed regulatory text:

1. The phrase "increase of potential emissions" in the third line of § 3(n)(2)(B) should be qualified to state: "***net*** increase of potential emissions." Consistent with U.S. EPA rules, the state regulation should focus on net emission increases. If an air-pollution-control-related change increases a specific pollutant by more than five tons per year, but contemporaneous changes reduce the same air pollutant, so that the net increase is less than five tons, the pollution control changes should not be subject to BACT.

2. Subdivision (n)(2)(C) should be revised by adding the word "individual" in the following phrase: ". . . five (5) tons per year for each **individual** air pollutant. . . ." This would make this subdivision consistent with the language in § 3(n)(2)(B). In addition, federally enforceable orders, as well as permits should allow sources to limit emission increases to less than five tons per year to avoid BACT requirements.

3. Subsection (n)(3) is confusing because it is worded in the negative. It seems to be drafted with the intent to supercede R.C.S.A. § 3(c)(1)(G), which requires BACT for each individual air pollutant with: (a) potential emissions equal to or greater than five tons per year, (b) maximum uncontrolled emissions in excess of 100 tons per year, or (c) hazardous air pollutants to the extent required by R.C.S.A. § 22a-174-29 (state hazardous air pollutant regulations). CBIA suggests revising § 3(n)(3) as follows:

> Notwithstanding the provisions of subsection (c)(1)(G) of this section, the commissioner shall ~~not~~ grant a permit for a modification to an existing stationary source for the installation and operation of air pollution control equipment. . . ~~unless~~ so long as the owner or operator of such source incorporates Best Available Control Technology in accordance with subdivision (2)(B) of this subsection or demonstrates, to the commissioner's satisfaction, that the installation of Best Available Control Technology is not required by subdivisions (2)(A) or (2)(C) of this subsection.

In the alternative, CBIA suggests deleting § 3(n)(3) and inserting a reference to § 3(c)(1)(G) in § 3(n)(2), as follows: "Notwithstanding the provisions of subsection (b)(2)(B) and (c)(1)(G) of this section. . . "

4. Subsection (n)(5) should be deleted. It is ambiguous and potentially creates disincentives to the installation and use of new air pollution control equipment and processes. The subdivision seems to provide that the Department may deny a permit application for air pollution control equipment if it decides that the equipment does not represent BACT for an existing source. CBIA does not understand what the Department is trying to accomplish. BACT is not required for existing sources, unless the source was previously permitted. CBIA then discussed the following three scenarios in an attempt to discern the intent of § 3(n)(5):

   (A) If the source has a permit, then the Department previously concluded that its control technology was BACT. If this subsection is an effort to revisit the BACT analysis for

the source, this goal would be inconsistent with the stated purpose of the proposed regulation.

(B) If the intent of this subdivision is to authorize the Department to prevent an existing source from installing pollution control equipment or make process changes, where the Department believes that alternative equipment representing BACT should be installed, it is clearly contrary to the state goal of the proposed regulation.

(C) If the intent is to make clear that the Department has the authority to determine BACT for any individual air pollutant that increases by more than five tons per year, then this subdivision is unnecessary since § 3(n)(2)(B) requires BACT for such pollutant increases. However, if the Department believes that it needs more express authority to determine when BACT is necessary, CBIA suggests amending § 3(n)(5) as follows:

> (5) The commissioner may determine BACT for any individual air pollutant which increases by more than five (5) tons as a result of air pollution control equipment or process changes to control air pollution installed and operated under this subdivision.

Response:

1. As stated in response to CRRA and Wisvest, I recommend the Department not adopt the CBIA suggestion that would limit applicability of the proposed regulation to ***net*** increases of potential emissions of five tons per year or more. This recommendation is based on two factors. First, the concept of "netting" is not allowed in the regulation that the Department is now seeking to amend. The proposed regulation should be consistent with the remainder of R.C.S.A. §3. Second, the Department bases the applicability of its new source permitting regulation on potential emissions whereas EPA uses actual emissions. It is nearly impossible to "net" potential emissions because potential emissions, by their nature, are theoretical constructs.

   The Department intends to propose significant revisions to R.C.S.A. § 3 in the near future. Such revisions may base applicability on actual emissions rather than potential emissions. If the Department shifts the focus of new source review from potential to actual emissions, I recommend the Department consider adopting the EPA policy on "netting."

2. As stated in response to CRRA and Wisvest, I recommend the Department revise § 3(n)(2)(C) as follows:

   (C) to the extent that a term or condition of a federally enforceable permit or order will limit potential emissions from the proposed modification to levels below five (5) tons per year for each individual air pollutant, be exempt from the requirement to perform a determination of Best Available Control Technology pursuant to this section.

3. As stated in the response to CRRA, § 3(n)(3) could be more clearly drafted if not worded in the negative. However, I recommend the Department not adopt the suggested revised language. The proposed regulation must amend certain aspects of R.C.S.A. § 3 in order to effectuate the Department's intent. The two provisions of R.C.S.A. §3 that must be amended are § 3(b) and (c). Section 3(b) requires that certain persons (in this case owners or operators of sources that have potential emissions greater than five tons per year) obtain permits and perform a BACT analysis, if necessary. Section 3(c) constrains the Department to the extent that a permit shall ***not*** be issued unless the permit applicant meets certain requirements (in this case install and operate BACT). Therefore, the wording proposed in § 3(n) maintains the approach taken in § 3(c) in that the commissioner shall not issue a permit unless the permit applicant demonstrates compliance with the provisions of § 3(n) (i.e., an ability to either cap emissions below five tons or apply BACT to those individual air pollutants where the potential emissions of such pollutants exceed five tons).

4. The concerns raised by CBIA and others regarding § 3(n)(5) are valid. The commissioner is authorized under, and in fact constrained by, the provisions of § 3(c)(1)(G) to deny a permit application that does not incorporate BACT as determined by the Department. Additionally, if a source undertook a course of illegal construction and operation (e.g., a source that was constructed and operated without first obtaining a permit under R.C.S.A. § 3), the Commissioner is similarly constrained to determine BACT, even though such determination may differ from that actually constructed by the source.

   As such, I recommend the Department revise § 3(n)(5) as follows:

   (5) Nothing in this subsection shall preclude the commissioner from determining what air pollution control equipment or process represents the Best Available Control Technology for any individual air pollutant for which the potential to emit may increase by five (5) tons per year or more.

Comments Submitted by Robinson & Cole LLP (Robinson & Cole)

Comments: Robinson & Cole indicated their support of the Department's stated intent as articulated in the Notice of Intent to Amend Regulations (i.e., to focus the scope of the required BACT analysis, with respect to the installation of air pollution control equipment or process changes to control air pollution, to those air pollutants whose potential emissions would increase by 5 tons per year or more as a result of such installation or process change). Robinson & Cole expressed concern that certain provisions of the proposed regulation seemed inconsistent with the Department's stated intent. In particular:

1. The meaning of, and need for, proposed § 3(n)(5) is unclear. This provision is also susceptible to numerous interpretations, some consistent with the Department's stated intent, others not. With respect to this provision, Robinson & Cole raises four points:

(A) Section 3(n)(5) seems to authorize the Department to deny a permit application for air pollution control equipment or process changes to control air pollution if such equipment or process change is not BACT. This provision effectively negates the progress achieved by § 3(n)(2) and discourages installation of air pollution control equipment or emission limiting process changes.

(B) Even if § 3(n)(5) is interpreted more narrowly as stating only that the Department ultimately determines what constitutes BACT for any pollutant whose potential to emit is increased by five tons per year or more, there remains no need to state this principle. The Department's air permitting regulations at § 3(c)(1)(G) and elsewhere already establish the principle that the Department is the determiner of BACT. Restating this principle in § 3(n) could create the impression of a difference where none is intended. Accordingly, § 3(n)(5) should be deleted as unnecessary and potentially confusing.

(C) If the Department retains the existing language of § 3(n)(5), the hearing officer's report should clearly state that the language is intended only to reiterate the Department's decision-making authority with respect to BACT determinations for pollutants which would increase by five tons per year or more as a result of the installation of air pollution control equipment or the implementation of emissions-limiting process changes.

(D) Section 3(n)(5) also seems inconsistent with the stated intent of the proposed regulation and § 3(n)(C)(2) with respect to federally enforceable limits to bring potential emissions of the "collateral" pollutant below five tons per year. The Department stated in its notice of intent that a BACT analysis would not be required of a source that assumes a federally enforceable limit on potential emissions of five (5) tons or less per year. However, § 3(n)(5) provides that the Department may deny a request under §3(n)(2)(C) [authorizing federally enforceable limit to cap emissions below five tons] where the Department finds that the proposed air pollution control equipment or process change is not BACT. This inherent conflict seems to undermine both the stated intent of the regulation and the principle established in § 3(n)(C)(2). Accordingly, if §3(n)(5) remains in the proposed regulation, the reference to "a request under subdivision (2)(C)" should be deleted.

2. Miscellaneous comments:

(A.) Proposed § 3(n)(2)(C) refers to a "federally enforceable permit term or condition [that] will limit potential emissions." For consistency with the Department's definition of "potential emissions" in § 22a-174-1 of the R.C.S.A. and the Department and EPA policy, in general, § 3(n)(2)(C) should be revised as follows:

> (C) to the extent that a term or condition of a federally enforceable permit or order ~~term or condition~~ will limit potential emissions from the proposed modification . . .

(B.) A typographical error in § 3(n)(2): a semicolon should be changed to a comma in that "greater than five (5) tons per year;" should be "greater than five (5) tons per year,".

Response:

1. As indicated earlier in this report, the concerns raised by Robinson & Cole and others regarding § 3(n)(5) are valid. The commissioner is authorized under, and in fact constrained by, the provisions of § 3(c)(1)(G) of the R.C.S.A. to deny a permit application that does not incorporate BACT as determined by the Department. Additionally, if a source undertook a course of illegal construction and operation (e.g., a source that was constructed and operated without first obtaining a permit under R.C.S.A. § 3), the Commissioner is similarly constrained to determine BACT, even though such determination may differ from that actually constructed by the source.

   As such, I recommend the Department revise § 3(n)(5) as follows:

   (5) Nothing in this subsection shall preclude the commissioner from determining what air pollution control equipment or process represents the Best Available Control Technology for any individual air pollutant for which the potential to emit may increase by five (5) tons per year or more.

2A. With respect to the comment that the Department should revise proposed § 3(n)(2)(C) to include federally enforceable orders limiting potential emissions, I recommend that the Department adopt the suggested language as follows:

   "(C) to the extent that a term or condition of a federally enforceable permit or order will limit potential emissions. . . ."

2B. With respect to the typographical error identified in § 3(n)(2), I recommend the Department revise the proposed rule consistent with the comment of Robinson & Cole.

Comments Submitted by NRG Energy, Inc. (NRG)

Comment: NRG supports the concept proposed by the Department in § 3(n). However, NRG also stated that the proposed revision does not go far enough to encourage pollution control projects. NRG suggested that the Department adopt the federal new source review (NSR) exclusion for utility control projects, known as the WEPCO Rule, and revise and modify R.C.S.A. § 22a-174-3, in total. In support of their suggestion, NRG also submitted a 1994 EPA policy memo concerning the exclusion from major NSR of pollution control projects at existing sources. NRG also submitted the following comments on the proposed revision:

(A.) The reference contained in § 3(n)(2) to subsection (b)(2)(B) should be changed to reference only subsection (b)(2).

(B.) The phrase in § 3(n)(3), "notwithstanding the provisions of subsection (c)(1)(G) of this section. . . " is confusing. NRG stated that R.C.S.A. § 3(c)(1)(G) requires a BACT analysis for any individual pollutant with potential emissions equal to or greater than five tons per year.

(C.) Subsection (n)(5) should be deleted because it is subject to multiple interpretations, all of which are inconsistent with the Department's stated intentions under the proposed revision to §3(n).

Response: Although NRG's comment, indicating that the Department should adopt EPA's ruling under the WEPCO decision, is beyond the scope of the proposed action, this response should address NRG's comment. First, EPA's WEPCO rule is intended to address "major" NSR whereas the proposed amendment to § 3(n) addresses the state's "minor" NSR program (i.e., permitting activity required of the state under the CAA that occurs at air pollution levels that fall below federal PSD applicability levels). The provisions of the proposed regulation clearly indicate that nothing in the proposal is intended to relieve a permit applicant from the duty to comply with the applicable provisions of R.C.S.A. § 3(k) [PSD requirements]. *See* proposed § 3(n)(6). Second, as stated in the EPA memorandum attached in support of NRG's position, "[t]his guidance document does not supercede existing Federal or State regulations or approved [State Implementation Plans] SIPs." The existing state NSR regulations, as incorporated into the Connecticut SIP, do not implement the WEPCO decision. Third, it is the existing policy of the Department that all those subject to the provisions of § 3(k) and (*l*) comply with the applicable provisions of such subsections. Based on the fact that NRG's WEPCO proposal conflicts with R.C.S.A. § 3 as currently drafted and EPA policy does not supercede the existing provisions of R.C.S.A. § 3, I recommend the Department not adopt NRG's WEPCO proposal.

With respect to NRG's remaining comments:

(A.) As stated above, the proposed amendment concerns the state minor NSR program. As such, the internal reference contained in §3(n)(2) to §3(b)(2)(B) is intended and does not need to be expanded. Therefore, I recommend the Department not make the suggested revision.

(B.) While § 3(n)(3) could be more clearly drafted if not worded in the negative, I recommend the Department not revise this language. The proposed regulation must amend certain aspects of §3 in order to effectuate the Department's intent. The two provisions of §3 that must be amended are §3(b) and (c). Section 3(b) requires that certain persons (in this case owners or operators of sources that have potential emissions greater than five tons per year) obtain permits and perform a BACT analysis, if necessary. Section 3(c) constrains the Department to the extent that a permit shall ***not*** be issued unless the permit applicant meets certain requirements (in this case install and operate BACT). Therefore, the wording proposed in § 3(n) maintains the approach taken in § 3(c) in that the commissioner shall not issue a permit unless the permit applicant demonstrates compliance with the provisions of § 3(n) (i.e., an ability to cap emissions below five tons or applying BACT to those emissions over five tons).

(C.) The concerns raised by NRG and others regarding § 3(n)(5) are valid. The commissioner is authorized under, and in fact constrained by, the provisions of R.C.S.A. § 3(c)(1)(G) to deny a permit application that does not incorporate BACT as determined by the Department. Additionally, if a source undertook a course of illegal construction and operation (e.g., a source that was constructed and operated without first obtaining a permit under R.C.S.A. § 3), the Commissioner is similarly constrained to determine BACT, even though such determination may differ from that actually constructed by the source.

As such, I recommend the Department revise § 3(n)(5) as follows:

(5) Nothing in this subsection shall preclude the commissioner from determining what air pollution control equipment or process represents the Best Available Control Technology for any individual air pollutant for which the potential to emit may increase by five (5) tons per year or more.

Additional Comments of the Hearing Officer

Although it is unlikely that the installation or operation of air pollution control equipment (or process changes to control air pollution) would result in a major modification subject to the provisions of § 3(*l*) [permit requirements for nonattainment areas], §3(n)(6) should reference §3(k) ***and (l)***. The Department intended, as indicated in proposed §3(n)(6), that the proposed revision not affect otherwise applicable requirements of the major NSR program. NRG's comment above brought this oversight to the Department's attention. Therefore, the proposed revision clarifies the Department's intent and is consistent with public comment received on this issue.

In addition, I recommend that subdivision (2) of the proposed regulation be clarified as follows:

(2) Notwithstanding the provisions of subsection (b)(2)(B) of this section~~, including, but not limited to, the requirement that an owner or operator of any stationary source include within a permit application a determination of Best Available Control Technology for each individual air pollutant with potential emissions equal to or greater than five (5) tons per year~~, the owner or operator of a proposed modification to an existing stationary source shall:

(A) not be required to perform a determination of the Best Available Control Technology pursuant to this section for any proposed modification to an existing stationary source for the installation and operation of air pollution control equipment, or the implementation of process changes to control air pollution, provided that such modification does not result in an increase of potential emissions ~~of five (5) or more~~ **equal to or greater than five (5)** tons per year for any individual air pollutant;

(B) to the extent that a proposed modification to an existing stationary source for the installation and operation of air pollution control equipment, or implementation of process changes to control air pollution, would result in an increase of potential

(C.) The concerns raised by NRG and others regarding § 3(n)(5) are valid. The commissioner is authorized under, and in fact constrained by, the provisions of R.C.S.A. § 3(c)(1)(G) to deny a permit application that does not incorporate BACT as determined by the Department. Additionally, if a source undertook a course of illegal construction and operation (e.g., a source that was constructed and operated without first obtaining a permit under R.C.S.A. § 3), the Commissioner is similarly constrained to determine BACT, even though such determination may differ from that actually constructed by the source.

As such, I recommend the Department revise § 3(n)(5) as follows:

(5) Nothing in this subsection shall preclude the commissioner from determining what air pollution control equipment or process represents the Best Available Control Technology for any individual air pollutant for which the potential to emit may increase by five (5) tons per year or more.

Additional Comments of the Hearing Officer

Although it is unlikely that the installation or operation of air pollution control equipment (or process changes to control air pollution) would result in a major modification subject to the provisions of § 3(*l*) [permit requirements for nonattainment areas], §3(n)(6) should reference §3(k) ***and (l)***. The Department intended, as indicated in proposed §3(n)(6), that the proposed revision not affect otherwise applicable requirements of the major NSR program. NRG's comment above brought this oversight to the Department's attention. Therefore, the proposed revision clarifies the Department's intent and is consistent with public comment received on this issue.

In addition, I recommend that subdivision (2) of the proposed regulation be clarified as follows:

(2) Notwithstanding the provisions of subsection (b)(2)(B) of this section~~, including, but not limited to, the requirement that an owner or operator of any stationary source include within a permit application a determination of Best Available Control Technology for each individual air pollutant with potential emissions equal to or greater than five (5) tons per year~~, the owner or operator of a proposed modification to an existing stationary source shall:

(A) not be required to perform a determination of the Best Available Control Technology pursuant to this section for any proposed modification to an existing stationary source for the installation and operation of air pollution control equipment, or the implementation of process changes to control air pollution, provided that such modification does not result in an increase of potential emissions ~~of five (5) or more~~ **equal to or greater than five (5)** tons per year for any individual air pollutant;

(B) to the extent that a proposed modification to an existing stationary source for the installation and operation of air pollution control equipment, or implementation of process changes to control air pollution, would result in an increase of potential

emissions ~~of five (5) or more~~ **equal to or greater than five (5)** tons of five (5) or more tons per year for any individual air pollutant, perform a determination of the Best Available Control Technology pursuant to this section only for ~~those~~ **each** air ~~pollutants~~ **pollutant** for which potential emissions will be increased by at least five (5) tons per year; and

(C) to the extent that a term or condition of a federally enforceable permit or order will limit potential emissions from the proposed modification to levels below five (5) tons per year for each individual air pollutant, be exempt from the requirement to perform a determination of Best Available Control Technology pursuant to this section.

VII. Final Wording of the Proposed Regulation

The Regulations of Connecticut State Agencies are amended by adding a new subsection (n) to section 22a-174-3 as follows:

(NEW)

(n) Stationary source modifications for the installation and operation of air pollution control equipment and process changes to control air pollution.

(1) For purposes of this subsection:

(A) "air pollution control equipment" means any equipment, which is designed, installed and operated, for the primary purpose of reducing emissions of air pollutants from a stationary source; and

(B) "process changes to control air pollution" means any modification that alters or implements production processes or available methods, including fuel switching, systems, techniques, work practice standards, operational standards or a combination thereof which is designed and implemented for the primary purpose of reducing emissions of air pollutants from a stationary source.

(2) Notwithstanding the provisions of subsection (b)(2)(B) of this section, the owner or operator of a proposed modification to an existing stationary source shall:

(A) not be required to perform a determination of the Best Available Control Technology pursuant to this section for any proposed modification to an existing stationary source for the installation and operation of air pollution control equipment, or the implementation of process changes to control air pollution, provided that such modification does not result in an increase of potential emissions equal to or greater than five (5) tons per year for any individual air pollutant;

(B) to the extent that a proposed modification to an existing stationary source for the installation and operation of air pollution control equipment, or implementation of process changes to control air pollution, would result in an increase of potential

emissions equal to or greater than five (5) tons per year for any individual air pollutant, perform a determination of the Best Available Control Technology pursuant to this section only for each air pollutant for which potential emissions will be increased by at least five (5) tons per year; and

(C) to the extent that a term or condition of a federally enforceable permit or order will limit potential emissions from the proposed modification to levels below five (5) tons per year for each individual air pollutant, be exempt from the requirement to perform a determination of Best Available Control Technology pursuant to this section.

(3) Notwithstanding the provisions of subsection (c)(1)(G) of this section, the commissioner shall not grant a permit for a modification to an existing stationary source for the installation and operation of air pollution control equipment, or the implementation of process changes to control air pollution, under this section unless the owner or operator of such source incorporates Best Available Control Technology in accordance with subdivision (2)(B) of this subsection or demonstrates, to the commissioner's satisfaction, that the installation of Best Available Control Technology is not required by subdivisions (2)(A) or (2)(C) of this subsection.

(4) The owner or operator who proposes to install air pollution control equipment, or implement process changes to control air pollution, pursuant to this subsection shall, not later than fourteen calendar days after receipt of a request from the commissioner, provide any documentation the commissioner may require in order to determine the amount of actual and potential emissions from the proposed modification.

(5) Nothing in this subsection shall preclude the commissioner from determining what air pollution control equipment or process represents the Best Available Control Technology for any individual air pollutant for which the potential to emit may increase by five (5) tons or more per year.

(6) Nothing in this subsection shall relieve an owner or operator from the responsibility to comply fully with the applicable provisions of subsection (k) or (*l*) of this section.

(7) This subsection shall apply to the owner or operator who files a permit application under this section prior to or after the effective date of this subsection, and for which a permit has yet to be issued or denied.

Statement of purpose: To encourage the installation of air pollution control equipment and the implementation of processes to control air pollution by limiting the scope of the analysis to comply with the applicable provisions of BACT to only those potential emissions increases of five or more tons resulting from the proposed modification.

VIII. Conclusion

Based upon the comments submitted by interested parties and addressed in this Hearing Report, I recommend the proposed final regulation, as contained herein, be submitted by the Commissioner of Environmental Protection for approval by the Attorney General and the Legislative Regulations Review Committee. Based upon the same considerations, I also recommend this proposed regulation, upon promulgation, be submitted to the EPA as a revision to the Connecticut SIP for Air Quality.

Paul E. Farrell
Hearing Officer

July 5, 2000
Date

Attachment 1
List of Commentors

1. John Courcier, Acting Manager
   Air Permits Program
   United States Environmental Protection Agency
   Region 1
   1 Congress Street, Suite 1100
   Boston, MA 02114-2023

2. David S. Brown, Division Head
   Project & Customer Services
   Connecticut Resources Recovery Authority
   100 Constitution Plaza 17th Floor
   Hartford, CT 06103-1722

3. Thomas D. Kirk
   Wisvest-Connecticut, LLC
   12 Progress Drive, 2nd Floor
   Shelton, CT 06484

4. Eric J. Brown, Associate Counsel
   Director, Environmental Policies Counsel
   Connecticut Business & Industry Association
   350 Church Street
   Hartford, CT 06103-1106

5. Brian C.S. Freeman
   Robinson & Cole
   One Commercial Plaza
   280 Trumbull Street
   Hartford, CT 06103-3597

6. Cynthia Karlic-Smith, Regional Manager
   NRG Energy, Inc.
   P.O. Box 1001
   Middletown, CT 06457