TECHNICAL SUPPORT DOCUMENT DEMONSTRATING THE STRINGENCY OF THE CONNECTICUT NEW SOURCE REVIEW PROGRAM AS COMPARED WITH THE FEDERAL NEW SOURCE REVIEW PROGRAM AS REVISED ON DECEMBER 31, 2002.

I. INTRODUCTION

On December 31, 2002 the Environmental Protection Agency (EPA) promulgated a revised New Source Review (NSR) program affecting modifications to major sources [67 FR 80186, the 2002 EPA rule]. The revised rule consisted of five elements intended to grant facilities greater operational flexibility while providing incentives for reduced emissions of air pollutants. The revisions resulted from a long-term NSR reform process dating back to 1992. The first regulatory proposal regarding this reform was issued in the Federal Register on July 23, 1996 [61 FR 38250]. A Notice of Availability, seeking further comments, was published on July 24, 1998 in the Federal Register [63 FR 39857] prior to adoption of the 2002 EPA rule.

The five elements of the 2002 EPA rule involved revising the method to determine the baseline for emissions, changing the applicability test (i.e. the method for determining an increase in emissions), the imposition of Plantwide Applicability Limits (PALs), exemptions for designated Clean Units, and exemptions for Pollution Control Projects. EPA expected that together these five elements would: "…reduce the burden, maximize operating flexibility, improve environmental quality, provide additional certainty, and promote administrative efficiency. " [67 FR 80189] EPA's expectation was that the rules would be adopted as a complete set as it was their belief that the "...program will work better as a practical matter and will produce better environmental results if all five of the new applicability provisions are adopted and implemented." [67 FR 80241] Two elements of the program, the Clean Unit exemption and the Pollution Control Project exemption, were subsequently struck by the D.C. Circuit Court of Appeals [State of New York et. al. v. U.S. EPA No. 02-1387, decided June 24, 2005]. EPA's petition to rehear the case was denied on December 9, 2005. EPA ranked the two struck elements among the more beneficial of the five elements in their November 21, 2002 report entitled "Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules" (SEA).

Because the EPA has adopted the new provisions as base elements, each state implementing the NSR program through an approved State Implementation Plan (SIP), must, if necessary, revise its implementing statutes and regulations and make a demonstration to EPA that the SIP is at least as stringent as EPA's 2002 rule [Clean Air Act section 116; 40 CFR 51.165]. This document demonstrates that Connecticut's NSR program, as revised on March 15, 2002 and approved by EPA effective March 31, 2003 [68 FR 9009, February 27, 2003] is at least as stringent as EPA's 2002 rule. Each of the three remaining elements of EPA's 2002 rule – baseline emissions, applicability test, and PALs – are considered and compared with Connecticut's NSR program.

In developing the Connecticut NSR program and in making this demonstration, the Connecticut Department of Environmental Protection (DEP) has utilized EPA's acknowledgement that a state permitting authority may exercise discretion in designing a SIP to best meet the needs of its jurisdiction, provided the SIP is at least as stringent as the base federal program.

> Notably, even without the menu approach, State and local jurisdictions have significant freedom to customize their NSR programs. Ever since our current NSR regulations were adopted in 1980, we have taken the position that States may meet the requirements of part 51 ‘‘with different but equivalent regulations.’’ [45 FR 52676] Several States have, indeed, implemented programs that work every bit as well as our own base programs, yet depart substantially from the basic framework established in our rules. . . . .For example, if a State decides it does not want to implement any of the new applicability provisions, that State will need to show that its existing program is at least as stringent as our revised base program. [67 FR 80241, December 31, 2002].

Accordingly, the Connecticut NSR program identified here is not identical to the 2002 EPA rule. However, Connecticut's NSR program, as explained herein, is found to be at least as stringent as the 2002 EPA rule and designed to best address Connecticut's circumstances.

II. CONNECTICUT'S REGULATORY AND BUSINESS ENVIRONMENT

To understand how the Connecticut NSR program compares with the 2002 EPA rule, this section provides an overview of the regulatory and business climate in which Connecticut's NSR program functions. This overview provides a context for the discussion that follows regarding the three standing elements of the 2002 EPA rule.

A. Connecticut's 2002 NSR Program

Connecticut's stationary source air permitting program began in 1972. While historically Connecticut has seen monitored violations of the National Ambient Air Quality Standards (NAAQS) for most of the criteria pollutants, it has made great strides in attaining and maintaining the standards for these pollutants. Many of these gains came as a result of our NSR program. We believe that our NSR program is among the most stringent in the Nation as a direct result of our non-attainment past. Our proximity in the eastern air-shed, with respect to both some of the most congested emission sources and some of the largest emitters, continues to hamper our ability to attain compliance for all of the NAAQS. For these reasons, we have worked with EPA and the other states in the region to continually improve both national and state regulations covering area and point sources.

Recognizing the need to improve once again, in 2002, like EPA, Connecticut made extensive revisions to its NSR regulations. Those revisions served to clarify the regulations, reduce the regulatory and administrative burden, provide sources with operational flexibility, and encourage emission reductions. Connecticut's revised rule took effect in March of 2002, and affected both new and modified sources at major and minor facilities. In part, Connecticut's revised rule referenced federal regulations in effect prior to December 2002.

In developing its 2002 rule revisions, just as it has in preparing past revisions, Connecticut worked closely with the regulated community and public stakeholders through our State Implementation Plan Revision Advisory Committee (SIPRAC). SIPRAC is comprised of approximately 400 members with representatives from Connecticut's business, industry, and environmental communities. General meetings are held on a monthly basis and focused workgroups are scheduled as needed to address the development of new regulatory programs. During the rule revision process Connecticut also worked with EPA, and participated in the ongoing EPA NSR reform process. Thus, Connecticut was able to incorporate many of the

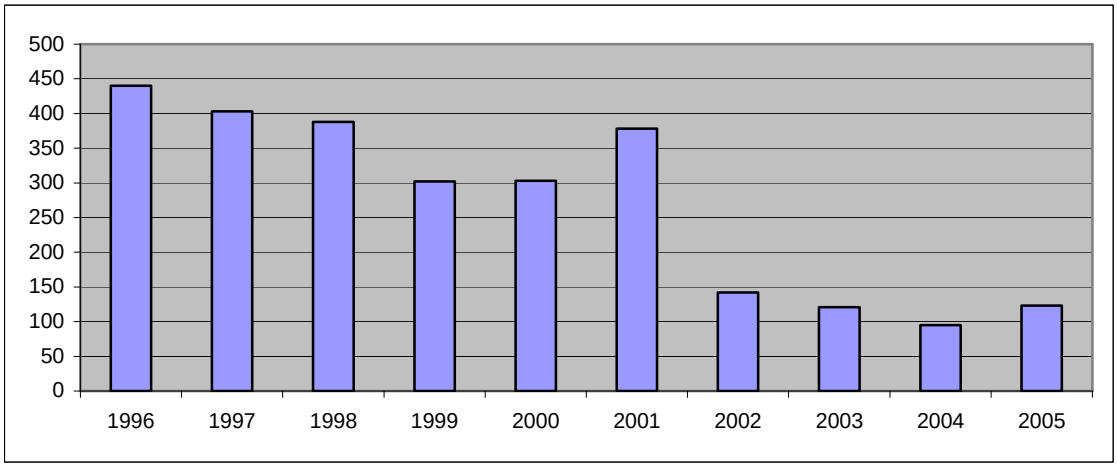
innovations and goals as were desired by the 2002 EPA rule, but with particular emphasis on Connecticut's business environment and air quality goals.

Connecticut's NSR revisions of 2002 clarified the regulations and simplified the permitting process. The operations and control measures for several source categories (external combustion units, automotive refinishing operations, emergency engines, nonmetallic mineral processing equipment and surface coating operations) were consistent and well understood. This allowed us to incorporate the typical permit requirements into an enforceable rule. This rule, or "permit-by-rule", is an option for sources in these categories to avoid the individual permit process. They may adhere to the rule by documenting actual emissions below the individual permit threshold of fifteen tons per year on a twelve-month rolling average basis [RCSA 22a-174-3b and 22a-174-3c, see Appendix A].

Connecticut's NSR revisions also included a streamlined track for "minor permit modifications" and revisions. This allows a source owner to increase emissions by up to fifteen tons per year under a simplified review process. This simplified process also allows a source to make administrative permit revisions and to begin certain minor projects without prior approval [RCSA 22a-174-2a(e) and 22a-174-2a(f)]. Environmentally beneficial projects were also given a simplified path to incorporating federally enforceable conditions, and units with existing federally enforceable conditions were more broadly recognized, and in certain cases exempted from the permitting process. [RCSA 22a-174-3a(2)]

As indicated by the chart below [Figure 1], implementation of our 2002 rule revisions dramatically reduced the administrative burden. This reduced work-load allows DEP staff to provide improved service to remaining applicants, and focus effort on facilities that represent a more significant part of the State's emissions inventory.

Figure 1. Number of new and modified NSR permit applications received by Connecticut DEP by year. Note that data for 2005 is complete through November.



Coincident with its NSR revisions, DEP also adopted streamlining measures for its Title V program. Significantly, the regulatory language for implementing the "General Permit to Limit the Potential to Emit" (GPLPE) was improved [RCSA 22a-174-33(d)]. This federally enforceable State operating permit allows a source which had potential emissions above the major

source threshold to register and operate under the known conditions of GPLPE to obtain minor source status. In selecting this option the source thereby opts out of Title V permitting and Title V fees, and establishes potential emissions more consistent with actual emissions. This permit undoubtedly caused emission reductions at Connecticut's larger sources and reduced the number of major source emitters in Connecticut.

Additionally, language in the Title V permitting provisions of Connecticut's regulations [RCSA 22a-174-33(j)(1)(I)] allows alternative scenarios for establishing compliance with emissions limits including the use of intra-premises emission reduction trades. During early stages of this regulatory process, Connecticut had included draft language to provide a PAL under the NSR permitting provisions. However, prior to public hearing, the PAL language was removed from the draft regulation in order to speed the regulatory review process.

Overall, DEP's NSR improvements of 2002, made with input from the stakeholders, covered the broad spectrum of facilities. These improvements allowed greater compliance options while benefiting the environmental goals of the State and were implemented in the context of the federal NSR reform.

B. Connecticut's Business and Industry

There are nearly 5,300 manufacturing firms in Connecticut that, together, employ almost 200,000 people and produce over $20 billion of the gross state product.

The DEP point source emissions inventory consists of approximately 6500 units located at nearly 2400 premises. Nearly four thousand of these units are housed at facilities that are considered "natural" minors, another 1400 units reside at facilities that are minor as a result of operation under the GPLPE. Therefore, only approximately 1200 units reside at major stationary sources. Most of the largest emissions occur from electric generating facilities. Utilities, which account for less than two percent of the units in the point source inventory database, account for nearly fifty percent of the inventory's nitrogen oxides emissions.

Connecticut's business is characterized and constrained by economic and geographic factors. Connecticut is the fifth most expensive state in the nation for business; energy and real estate costs are among the highest in the nation. Furthermore, Connecticut is the third smallest state by area in the nation and is densely populated. As a result, current industrial facilities are generally in well-developed areas that offer limited opportunities to expand the physical plant.

Connecticut manufacturers do not consider NSR permitting a significant impediment to their activities. In 2005, Connecticut manufacturing executives identified the overall cost of doing business, health-care costs, and labor costs as the most influential factors in major business decisions. When asked what the State could do to improve the companies' competitiveness, respondents identified tax incentives, reductions in the overall cost of doing business and investment incentives as the top choices. Environmental permitting in general -- much less air quality permitting in particular -- did not make the list of factors influencing a decision to expand or relocate a Connecticut manufacturing enterprise. Only seven percent of executives surveyed identified reducing the regulatory burden to do business as a top priority. [CBIA, 2005; Hartford Courant, 2005]

III. THE THREE ELEMENTS OF EPA 2002 RULE CHANGE

This section examines each of the three NSR elements in turn and describes how the Connecticut NSR program addresses each of the program elements. While the Connecticut NSR program differs in certain respects, such differences alone or in combination with other elements of the Connecticut NSR program are more protective of the environment and provide additional and appropriate flexibility suited to the inventory of Connecticut sources.

A. Baseline Emissions

If a physical or operational change at a major source results in a significant increase in pollutant emissions, the major modification requirement of NSR is triggered. Pre- and post- change emission rates must be compared to quantify the size of the emissions increase. The pre-change emission rate is referred to as the baseline emission rate.

The baseline emission rate, or any emission rate for that matter, must occur over a defined time period. Determining this period is an area where Connecticut chooses to be more stringent than the federal regulations.

In general, the State requires that the baseline period is the two years just prior to implementation of a physical or operational change at a facility. If it is demonstrated to the State that some other two-year period is more representative of normal source operation, then that period may substitute as the baseline. The State's regulations for determining the baseline refer to the Federal regulations in place prior to the 2002 EPA rule (i.e. December 31, 2002), and are similar [see Appendix B]. Two definitions in the State rule are particularly relevant to the two-year time frame. These definitions are “net emissions increase” and “actual emissions.” Actual emissions of a particular date are the emissions that occur during the two years prior to the particular date and represent normal source operation. A source with less than two years operating history must use potential emissions as a substitute for historical actual emissions.

Connecticut determines the baseline for Electric Utility Steam Generating Units (EUSGUs) in a slightly different manner. The baseline emission period for an EUSGU is any consecutive two years, demonstrated to be typical of normal operations, and occurring in the five years immediately prior to instituting a physical or operational change. This treatment for EUSGUs is known nationally as the WEPCO rule, after a court case involving Wisconsin Electric Power Company.

The 2002 EPA rule continues to treat EUSGUs by the WEPCO rule. Therefore, the State and EPA do not differ in their treatment of these sources.

For other sources, the 2002 EPA rule allows the baseline period for determining emissions to be any consecutive 24-months occurring during the ten years prior to the implementation of the change. It is left to solely to the implementor to determine the most representative 24 months.

In the SEA, EPA concludes that the changes to the baseline resulting from the 2002 EPA rule will have no effect for ninety percent of sources. These ninety percent include: new sources; new units at existing sources; EUSGUs; sources with recently high levels of emissions; and sources with emissions comparable to the past. In fact, as documented in the SEA, EPA's overall assessment of the effect of the December 2002 baseline rule is that it is negligible.

EPA recognizes that not all of the remaining ten percent of sources would be likely to consider a modification, but is concerned for two categories of sources in this subset: sources with recently installed control equipment that would be able to use a higher baseline period occurring prior to the installation of the equipment; and sources with progressively declining emissions.

EPA's solution for a source with recently installed control equipment is to require consideration of enforceable air pollution control measures that have been put into place.

In the case of recently installed air pollution control equipment, the Connecticut rule presumes that the most recent two years prior to the modification are the two years to be used as the baseline period. The recently installed air pollution control equipment would likely be in place during the period. In the event that the applicant chooses earlier years for the baseline, the applicant assumes the burden to demonstrate that the earlier years are representative of normal source operation. If the applicant demonstrates that the earlier years are more representative, it would be acceptable and expected that the State would make a downward adjustment for any pollution control equipment with enforceable conditions in place prior the making of a physical or operational change.

In the case of sources with progressively declining emissions, EPA states that a source owner could claim that, because there is no set “look back” limit in the State's approach (i.e. the federal rule prior to December 31, 2002), the source owner might persuade the State to accept a baseline period going back past ten years. EPA is concerned that this would allow a higher baseline than the baseline established by the EPA' s 2002 rule. However, the selection of a baseline beyond ten years would be a highly exceptional occurrence, for several reasons. First, Connecticut’s rule presumes that an applicant who does not choose the two years prior to implementing the change as the baseline will select from the five years prior to the change. The language of the rule emphasizes this, and Connecticut’s rule further emphasizes the five-year time frame in a definition related to the baseline – the definition of “net emissions increase” [RCSA 22a-174-1(70)]. In the event that the applicant chooses a baseline more than five years past, the burden is on the applicant to demonstrate that such a two-year period is in fact representative. As time passes, it is more difficult to demonstrate that those conditions are still representative of normal source operation. EPA has pointed out, it is this uncertainty in obtaining approval for the baseline years which may cause source owners to forego a modification. EPA further points out that the time and resources necessary to convince the regulating authority that the selected baseline is representative encourages the applicant to select a reasonable baseline time period. An applicant would fully realize that selecting a baseline which is ten or more years past would be difficult to argue and accept. EPA emphasizes this point in the SEA. Further, their analysis shows that the longest business cycle for any industry identified in the SEA was eight years. Therefore, except for in the rarest of circumstances, source operation beyond the ten years immediately preceding the modification would not serve as the basis of a reasonable baseline; virtually all baselines would be based on source operation within the five years immediately preceding the modification.

It is improbable then that the baseline selected under Connecticut’s rule would ever be as high as would be selected under the 2002 EPA rule. At most the State rules would allow a baseline which is as high as the EPA rule. More likely, the baseline would be higher under the EPA rule because it assures that the applicant can go back to a peak which is ten years past. In the case of the steadily declining business cycle, the State rule would generally take the applicant back less than halfway to the peak.

Though not an environmental concern, EPA has raised the issue of certainty and predictability of outcome as a factor which might prevent a source owner from pursuing a modification. We point out that under Connecticut's rule the outcome is assured if the applicant selects the two years just prior to the implementation of the change. No less important is the fact that an applicant has the opportunity to select the timing of his modification, and can conduct it near a peak if he so chooses. Businesses typically make market projections and anticipate growth. Nevertheless, we are aware of no permit application in Connecticut for a major modification that has ever undergone prolonged review as a result of debate over the appropriate baseline.

We conclude that Connecticut's rules typically result in a lower baseline than EPA's proposed rules, but never result in a higher baseline. Moreover, Connecticut accomplishes this in a manner which does not unduly burden the applicants. Therefore, Connecticut's rule for determining the baseline is at least as stringent as EPA's.

B. Applicability Test

The difference between the baseline emission rate and the post-change emission rate are compared to a predetermined level of emissions, the significance level, to determine if the modification is major. If the difference exceeds the significance level, then the calculation may be refined by including net emissions reductions at the facility. This is the applicability test used to determine if a physical or operational change at a major source results in a major modification.

Prior to the EPA's 2002 rule, the emissions difference was determined by comparing the actual emissions prior to the change, to the potential emissions after the change. This is referred to as the "actual-to-potential" applicability test.

EPA's 2002 rule adopts an "actual-to-projected-actual" applicability test. This test compares the actual emissions before the change to the expected actual emissions after the change. EPA retains the actual-to-potential test as an option. EPA retained this option because it recognized that the record-keeping burden for demonstrating compliance with the future actual emission rates might be considered by some to be too burdensome.

It must be recognized that a source owner will evaluate all options when making an application, and will use the least stringent option available to them. EPA's rule allows a source to use either applicability test. Therefore, even if the actual-to-future-actual test were more stringent, the source owner would likely elect to use the actual-to-potential option. Because EPA allows this choice, their approach is not more stringent than the Connecticut requirement.

Connecticut retains the pre-2002 federal rules in its regulations but with the more stringent major source thresholds and significance levels. Due to its attainment status history and source make-up, Connecticut has chosen to adopt major source thresholds and significance levels lower than required by current federal rules. For example, the federal rules allow Connecticut to adopt major source thresholds of 250 tons per year for emissions of both sulfur oxides and carbon monoxide, yet the State sets these thresholds at a more stringent 100 tons per year. Connecticut's major source threshold for nitrogen oxides does not exceed 50 tons per year but is allowed by federal rules to have a less stringent 100-ton-per-year threshold [RCSA 22a-174-1(57)]. Further, the federal rules allow Connecticut to adopt significance thresholds of 40 tons per year for emissions of both nitrogen oxides and volatile organic compounds, yet Connecticut maintains more stringent thresholds of 25 tons per year [RCSA 22a-174-1(55)]. Connecticut intends to retain

these more stringent thresholds, as we understand that facilities attempt to avoid major source status by keeping their emissions below these levels.

The WEPCO ruling, made prior to 2002, allowed utilities to use an actual-to-projected-actual emissions test based on projected future emissions. Utilities remain unaffected by the rule changes as both the State and federal rules continue to apply the WEPCO rule to utilities. Therefore, most sources in Connecticut, including its largest emitters, the utilities, will be unaffected by this rule change.

The change to the applicability test only affects existing major sources which implement a change which will not increase actual emissions but would show an increase using the actual-to-potential test. According to the SEA, there are two possibilities for such a source.

One possibility is to avoid major source review by stipulating to an emissions limit which does not trigger major source review. Under the prior federal rules, and under the existing State rules, the procedure for doing this is to accept a permit limit. Under the new EPA rules the source can stipulate to the new limit and avoid the permit process by keeping emissions records for five to ten years to show that the emissions did not exceed the threshold. EPA believes that significant administrative savings result from removing such a source from the NSR permit process. We disagree. The permit review process sets up record keeping requirements in a clear and predetermined manner specific to the source. The permit process avoids future difficulties and ambiguities and has been made easier by Connecticut's 2002 rule changes. In the SEA, EPA correctly states that, for such sources, no environmental benefit is gained by the change to this test.

The second possibility is that the source does not stipulate to the emission limit, and instead undergoes NSR for a major modification. EPA concedes that no environmental benefit is gained by their rule change in this case either.

EPA expects the environmental benefit from the change in test will result from: removing disincentives to implementing beneficial changes; and removing incentives to increase emissions just prior to a modification. Connecticut has long since been aware of these concerns and, as discussed below, addresses them appropriately, efficiently and effectively.

With respect to EPA's concern that the actual to potential applicability test creates a disincentive to implementing beneficial change, we believe that ultimately it is a business decision to implement any change at the facility. We understand that a business must weigh the costs of implementing a change at a facility and have always intended that among the costs the facility should weigh is the cost of implementing pollution control measures. Our businesses know this, and know that we are available to discuss our procedures and expectations prior to their making an application. We believe that by taking a role in this process, once the decision to invest in the facility is made, that we can assure that the most reasonably appropriate control measures are implemented, as is within our authority. This process prevents a source from implementing a less stringent control measure than might occur without our input. So many factors affect a decision to modify a facility that it is unreasonable to attribute our policies as an inhibition to growth, especially as we know of no instance where this has occurred.

EPA claims in the SEA that the actual-to-potential-test provides an incentive for business to keep emissions high so that the source retains a high baseline emission rate. This concern is mitigated by real business needs. The source must first have the capability of increasing its emissions in a cost-effective way. For example, sources with fuel switching capabilities, those most ready to

exploit this situation, are going to consider both the cost of switching fuels and the likelihood that the reviewing authority will approve the resulting increases as representative. Furthermore, in many cases, it can be expected that the highest production rates, and hence emission rates, will occur in the two years prior to implementing a change as equipment investments are typically preceded by tangible expectation of continued business. Further there are other disincentives for increasing emissions simply for the sake of increasing the baseline, these include increased emissions fees and lost opportunity to net out of major source review.

Like EPA, we do recognize that on certain occasions, sources will find loopholes to the regulations and will make their best effort to take advantage of them. We believe, however, that we have minimized the opportunity for this by requiring review by the permitting authority, an opportunity missed by EPA in their approach to streamlining. Our review allows us to evaluate the applicant's claims against our record of the facility's annual emissions statements, pre-inspection questionnaires and the results of our frequent inspections. We further reduce the opportunity for loopholes by minimizing the time frame over which the emissions baseline is considered.

In the SEA, EPA's overall assessment of this rule change it that it is likely to be environmentally beneficial, but only to a small extent. Their basis for this claim is that it induces sources to make beneficial changes that they would not otherwise make because the permit process discourages such changes. Connecticut's implementation of the applicability test is at least as stringent as EPA's because it covers more sources and avoids the administrative burden that the federal program has sought to avoid.

C. Plantwide Applicability Limits

The last element, Plantwide Applicability Limits (PALs), allows facilities to establish a cap on emissions and trade increases or decreases under the cap. Any modifications to a unit that maintain the source's emissions under the cap do not trigger NSR requirements. The source owner can look back ten years to select the highest level of emissions for setting the PAL.

In the preamble to the 2002 EPA rule [at 67 FR 80207], EPA describes the PAL as a voluntary tool which allows the applicant to make rapid changes to its facility, provided it does not exceed the PAL.

EPA bases their findings on examination of six facilities and conclude that "in a cap-based program sources strive to create enough headroom for future expansions by voluntarily controlling emissions." They go on to say that:

> Based on results of these [six] pilot projects, we believe that PALs will over time tend to shift growth in emissions to cleaner units, because the growth will have to be accommodated under the PAL cap. Specifically, we expect that PALs will encourage [a source owner] to undertake such projects as: replacing outdated, dirty emissions units with new, more efficient models; installing voluntary emissions controls; and researching and implementing improvements in process efficiency and use of pollution prevention technologies so that you can maintain maximum operational flexibility. We also expect that you and the reviewing authority will need to devote substantially fewer resources to discussing and reviewing whether major NSR applies to individual changes. Thus overall, we believe that PALs will prove to be as beneficial to the environment as they are to you and your reviewing authority [67 FR 80207-80208].

EPA's determination that the availability of a PAL will result in net environmental benefits nationwide is based on a case study approach involving six large manufacturing facilities. We do not believe that these facilities are representative of the businesses located in Connecticut. One facility in the study, 3M in Minnesota, once had potential VOC emissions of 65,000 tons per year. Under the flexible permit, the PAL limited 3M's actual emissions to 4,283 tons of VOC per year. It is not clear that the availability of the PAL is the sole motivating factor for these reductions. In the case of 3M, the SEA cites the value of Clean Unit rule, which is no longer a viable option. Moreover, EPA does not appear to weigh the incentive that the 1990 Amendments to the Clean Air Act may have played in 3M's decision to install air pollution control equipment. Such incentives may have included avoidance of Title V fees and existing or expected regulations, such as National Emissions Standards for Hazardous Air Pollutants. Regardless, manufacturing facilities of the sizes and categories considered by EPA in the SEA are not characteristic of the Connecticut business environment. Connecticut's business environment is service oriented; manufacturing is not reported among the top five industry sectors based on employment. [USCENSUS, 2001]

The entire State of Connecticut point source inventory contains on the order of 6,000 tons of VOC with less than 2,000 tpy emitted by the top 100 or so major source premises. Therefore the conclusions EPA makes with respect to reductions resulting from PALs are not appropriately generalized to Connecticut, and therefore cannot be expected to provide the same environmental benefit. Connecticut's program is designed to provide the conceptual goals of PALs in a manner that functions to provide environmental and administrative benefits suitable to Connecticut.

Furthermore, most of the largest emissions in Connecticut occur from electric generating facilities, which typically consist of a few like-kind units operating independently. Their operations are constrained by several factors outside the direct control of environmental regulatory agencies. ISO-NE dispatches these units based on economic criteria. Generating units located in the 52 town Southwest Connecticut node are designated as "must run", meaning ISO-NE can and does directly operate these units when certain demand criteria are met. The DPUC and the CT Siting Council regulate electricity rates and siting of fuel storage and ancillary equipment. Many units are bound by long-term contracts that have been agreed to in order to receive favorable fuel prices. As a practical matter, these units are unlikely to trade-off emissions under a PAL.

Taken as a whole, these considerations make the PALs, less environmentally beneficial in Connecticut compared to the EPA's nationwide estimates of the benefits. Connecticut's program as designed offers considerable flexibility in a manner best suited to the Connecticut business environment.

Finally, as stated previously, language in the Title V permitting provisions of Connecticut's regulations [RCSA 22a-174-33(j)(1)(I)] allows alternative scenarios for establishing compliance with emissions limits including the use of intra-premises emission reduction trades. Nevertheless, DEP has not received any requests for use of this option. Also, as noted, during early stages of Connecticut's 2002 regulatory revision process, Connecticut had included draft language to provide a PAL under the NSR permitting provisions. Though the PAL language was removed, the DEP received no requests to restore the language [DEP, 2001]. These facts, together with the positive comments received on the flexibility incorporated by our 2002 revisions, lead us to believe that Connecticut business does not desire the PAL as a means to obtaining permit flexibility.

Connecticut, therefore, does not expect that a significant number of its sources would assume a PAL. Coupled with the significant administrative overhead required to establish and implement the program, Connecticut concludes that the PAL program established by the 2002 EPA rule would not be effective here. Not establishing the PAL is in itself arguably at least as stringent as establishing it because establishing the rule does not imply that sources will avail themselves of the PAL. Notably, the EPA rule allows the State to deny any petition for a PAL [40CFR51.165(f)(1)(i) "The reviewing authority ***may*** approve the use of an actuals PAL for any existing major stationary source…" and 40CFR51.166(w)(1)(i) "The reviewing authority ***may*** approve the use of an actuals PAL for any existing major stationary source…" (emphasis added)]. Moreover, we believe that we have achieved many of the same goals of the PAL without the additional administrative burden. Therefore, we conclude that our program is at least as stringent as that devised by the 2002 EPA rule.

IV. CONCLUSIONS

The 2002 EPA rule was directed at improving the ability of existing major sources to cope with the requirements imposed by major source review. The rule included five elements which were meant to work together. Due to court rulings, only three of the elements remain. Of these, the EPA attributed negligible environmental benefit on a national scale to two, the baseline and the applicability test. The third element, which was optional, relied on other factors for its environmental gains.

In 2002 Connecticut also revised its NSR rule with many of the same goals as the EPA rule. Connecticut's revised rule was approved by EPA effective March 31, 2003 [68 FR 9009]. Connecticut did not restrict its reform to the major sources. Nationally, major modifications account for only 20% of NSR. In Connecticut, all major modifications go through the minor NSR as well. Nevertheless, our major source review is more stringent than the federal government requires. Under our rules, major source thresholds are set lower, significance levels are set lower, and the requirements for offsets are also more stringent. On the whole, Connecticut's NSR program is more stringent than the federal rules require. In part this results from our past problems with non-attainment for some of the criteria pollutants and our willingness to retain the more stringent regulations as part of our maintenance plan.

Connecticut strives to provide a predictable regulatory environment for business. Its analysis indicates that adopting the December 2002 rule changes will not enhance that predictability or improve the environment of the State. Each time the State implements a new or revised rule, significant ongoing overhead must be invested: new policies must be established; existing policies must be revisited; application forms must be revised; enforcement actions must be reviewed; and training must be implemented. This cost must be weighed against any environmental benefit that might result from a rule change. EPA's national scale assessment of the benefits of the 2002 EPA rule, according to the SEA, show minor environmental benefits. Our assessment of these rules as they might be applied in Connecticut show that no environmental benefit would occur. Therefore, we cannot justify implementing the rules.

Furthermore, we have demonstrated that Connecticut's baseline approach and applicability test are each at least as stringent as those of the 2002 EPA rule. Also, we have demonstrated that Connecticut provides flexibility in a manner well suited to its sources and regulates emissions from a broader range of sources, often without the need for a permit. The PAL, which intends to provide flexibility to sources in an effort to reduce the number of major modifications, is a program which might never be used by a facility even if it were available. As the PAL might

never be used, our approach to flexibility is at least as stringent as that of the 2002 EPA rule. Therefore, pursuant to this analysis of Connecticut's EPA approved NSR program, we exercise our right to retain our existing language and will focus our efforts on attaining our air quality goals rather than pursuing an optional, no more stringent, regulatory revision.

REFERENCES

CBIA, 2005. Survey of Connecticut Businesses, Connecticut Business and Industry Association and Blum Shapiro, 2005.

CTDEP, 2001. Hearing Report on the Hearing Conducted September 5, 2001 entitled: Amendment of the Regulations of Connecticut State Agencies Concerning the Adoption of Section 22a-174-2a -- Procedural Requirements for New Source Review and Title V Permitting; Section 22a-174-3a -- Permit to Construct and Operate Stationary Sources; Section 22a-174-3b -- Exemptions from Permitting for Construction and Operation of External Combustion Units, Automotive Refinishing Operations, Nonmetallic Mineral Processing Equipment and Surface Coating Operations: and Section 22a-174-3c -- Limitations on Potential to Emit for External Combustion Units, Automotive Refinishing Operations, Emergency Engines, Nonmetallic Mineral Processing Equipment and Surface Coating Operations and the Revision of Section 22a-174-1 -- Definitions; and Section 22a-174-33 -- Title V Sources and the Deletion of Section 22a-174-2 -- Registration Requirements for Existing Stationary Sources of Air Pollutants; and Section 22a-174-3 -- Permits to Construct and Permits to Operate Stationary Sources or Modifications. November 14, 2001.

Hartford Courant, 2005. "Rathburger to Take Over at CBIA", Hartford Courant, Business Section, December 15, 2005.

US CENSUS, 2001. Statistics of U. S. Businesses, Connecticut – All Industries by Sector, http://www.censud.gov/epce/susb/2001/ct/CT--.HTM, accessed 11/29/2005.

USEPA, 2002. New Source Review (NSR) Improvements, Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules. November 21, 2002

WEPCO, 1990. Wisconsin Electric Power Company v. Reilly, 893 F.2d 901 (7th Cir. 1990) (57 Fed. Reg. 32314 (July 21, 1992).