

CBIA

Connecticut Business & Industry Association

October 22, 2002

Ms. Ellen Walton
Department of Environmental Protection
Bureau of Air Management
Planning and Standards Division
79 Elm Street
Hartford, Connecticut 06106-5237

Re: Proposed sections 22a-174- 4 and 22a-174-7

Dear Ms. Walton:

Thank you for the opportunity to submit comments regarding the Department of Environmental Protection's (DEP's) proposal to revise sections 22a-174- 4 and 22a-174-7 of the Regulations of Connecticut State Agencies (R.C.S.A.). These comments were prepared by the Connecticut Business and Industry Association's (CBIA) Environmental Policies Council and are submitted on behalf of CBIA's 10,000 member companies, the vast majority of which are small businesses with fewer than 50 employees.

Section 22a-174-4

Section 22a-174-4(b)(1)

It is unclear as to whether the Continuous Emissions Monitoring ("CEM") requirements apply to stationary sources and not mobile sources. Subsection 4(b)(2)(C) specifically applies to two types of mobile sources, steam locomotives and steamboats. However, subsection 4(b)(1) appears to apply only to stationary sources. To make it clear that "process sources" potentially subject to the opacity CEM requirement are only stationary sources, we suggest adding the word "stationary" before "sources" in subsection (b)(1). Alternatively, subsection (b)(1)(D) should be revised to make this point clear.

In addition, subsection (b)(1)(D), which refers to process equipment when operated "in combination with pollution control equipment" is unclear. Is the intent to require opacity CEM for process sources with more than 25 pounds per hour after application of control equipment? If so, we suggest using the former language "after application of control equipment" to make this clear.

Section 22a-174-4(b)(5) and (7)

This section allows the Commissioner to require opacity CEM, if, among other reasons, the monitoring equipment is "needed to determine compliance. . . ." See, subsection 22a-174-4(b)(5)(D). We suggest that this subsection require consideration of technical and economic feasibility for requiring a particular source to use CEM instead of another method, like a Method 9 visible opacity test. This can be accomplished by revising subsection 4(b)(5)(D) as follows: "monitoring equipment is technologically and economically feasible and needed to determine compliance with Chapter 446c of the Connecticut General Statutes and Regulations promulgated thereunder." A similar change should be made to subsection (b)(7)(D).

Section 22a-174-4(c)

Subsection 22a-174-4(c)(1) allows the Commissioner to require CEM equipment if he determines that such equipment is reasonably available and necessary "in [the Commissioner's] sole discretion." While the Commissioner's decisions are typically given great deference by reviewing courts, such decisions cannot be arbitrary or capricious. It is unreasonable, therefore, to add the qualifier " in [the Commissioner's] sole discretion" to the determination language. In addition, the data availability requirements proposed in section (c)(6) are unreasonable. We understand that several of CBIA's members will be filing individual comments on the data availability requirements, and we support their comments.

Section 22a-174-4(d)

Subsection 4(d)(2) includes a document certification requirement that refers to the water discharge regulations, R.S.C.A. section 22a-430-3. Since the Air Bureau just recently adopted section 22a-174-2a, which imposes certification and signatory requirements, this section should be revised to incorporate the requirements of section 22a-174-2a to avoid confusion.

Section 22a-174-4(e)

This subsection allows the Commissioner to waive the monitoring requirement if a source can show that it is physically incapable of violating air pollution requirements. Since the CEM requirements under section 22a-174-4 relate only to specific pollutants, this section should make clear that the "physically incapable" determination relates to the specific pollutant monitored. This can be accomplished as follows:

- (e) THE COMMISSIONER SHALL NOT REQUIRE THE OWNER OR OPERATOR OF A SOURCE OF AIR POLLUTION TO MONITOR AIR POLLUTANT EMISSIONS FOR THE PURPOSE OF DETERMINING COMPLIANCE WITH CHAPTER 446c OF THE CONNECTICUT GENERAL STATUTES AND REGULATIONS PROMULGATED THEREUNDER IF THE OWNER OR OPERATOR OF SUCH SOURCE DEMONSTRATES IN WRITING, TO THE COMMISSIONER'S SATISFACTION AND FOR THE COMMISSIONER'S WRITTEN APPROVAL, THAT SUCH SOURCE IS PHYSICALLY INCAPABLE OF VIOLATING **THE ANY REQUIREMENTS APPLICABLE**

**TO SUCH AIR POLLUTANT EMISSIONS-SET FORTH IN CHAPTER 446c
OF THE CONNECTICUT GENERAL STATUTES AND REGULATIONS
PROMULGATED THEREUNDER.**

Section 22a-174-7(b)(2)

Section 22a-174-7(b)(2) should be revised. As proposed, this section allows an owner or operator to shut down air pollution control or monitoring equipment if three criteria are met: (1) the equipment is not required to be operated by a permit, order, or regulation; (2) the source is in compliance with applicable standards while the pollution control equipment is shutdown; and (3) the source generates emission reduction credits (ERCs) while operating. There may be circumstances in which a source installs control or monitoring equipment that is not required by any permit, order or regulation and which is not needed to comply with applicable emission limitations.

For example, sources of certain VOC emissions can comply with VOC RACT requirements either by using low solvent coatings or by add-on control equipment. If a source has control equipment, but later decides to change its process to use compliant coatings, and the control equipment is not required by permit or order, the source should be allowed to shut down the control equipment. Since VOC ERCs are not routinely traded, such a source would not be able to shut down the unnecessary control equipment under the proposed rule. In these circumstances, the source should be able to shut down the equipment voluntarily, even if the source has not installed such equipment to generate ERCs. Accordingly, we suggest that subsection 7(b)(2)(C) be deleted. If, for some reason, DEP wishes to identify the generation of ERCs as a situation in which equipment can be shut down, it should be separately identified. It should not, however, be the only circumstance in which a source can shut down equipment not required by law or necessary for compliance with an emission standard.

Subsection 22a-174-7(d) and(e)

Subsections 22a-174-7(d) and (e) require both a ten day written report and an immediate oral or electronic report whenever control or monitoring equipment is shutdown and is expected to continue for more than 24 hours. We have two comments on these subsections: First, subsection (e) should be revised to be consistent with subsection (d), which requires a report only in situations where, after the shutdown, there is "an exceedance of an emission limitation or standard." It is unclear as to why the immediate notification requirement in subsection (e) is not limited to such situations. Secondly, subsection (e)(2) should require a notice no earlier than 24 hours after the event. Sources need to be given an opportunity first to discover, and then to assess and attempt a repair before sending notice to the DEP. An "immediate" notice is unreasonable and vague. Must a source provide notice one minute, one hour or one day after it discovers a shut down? How quickly can a source reasonably be expected to determine if the equipment will be operating for more than twenty-four hours without the equipment?

Thank you for the opportunity to comment. If the Department decides not to make any of the requested changes, we would appreciate an explanation of the Department's position as part of the response to comments. Please notify both me and the chairman of our Air Task Force, Mark Sussman, when the rules are finalized.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Brown". The signature is written in a cursive style with a long horizontal stroke at the end. To the right of the signature is a vertical line.

Eric J. Brown
Associate Counsel
Director, Environmental Policies Council

cc. Mark R. Sussman