

# CBIA

*Connecticut Business & Industry Association*

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VIA EMAIL to [merrily.gere@ct.gov](mailto:merrily.gere@ct.gov)

October 18, 2010

Merrily Gere  
Department of Environmental Protection  
Bureau of Air Management – Engineering & Enforcement  
79 Elm Street  
Hartford, CT 06106-5127

RE: Comments on proposed revisions to RCSA 22a-174-3a and -33  
(greenhouse gas permitting)

Dear Ms. Gere:

The Connecticut Business & Industry Association (CBIA) appreciates this opportunity to submit comments on the above referenced proposed revisions. These comments were prepared by the Air Task Force of CBIA's Environmental Policies Council.

## I. BACT for greenhouse gases (GHG)

As the Department is aware, GHG permitting is an entirely new regulatory endeavor, both legally and technically. There is no commercially viable emission capture and control technology for carbon dioxide (CO<sub>2</sub>), the most common GHG and the one most likely to be addressed in GHG permitting. In the absence of emission controls, the U.S. Environmental Protection Agency ("EPA") has been working to develop guidance on what would constitute Best Available Control Technology (BACT) for GHG. This guidance is expected to focus on energy efficiency as BACT. Also as the Department is aware, however, to date EPA has not yet released any such guidance, despite the imminent onset of GHG permitting requirements on January 2, 2011.

The resulting uncertainty presents a risk of an unpredictable patchwork of makeshift BACT determinations, state by state, and project by project. Since many of the affected projects would involve electricity generating units, such a scenario threatens to further increase the cost of

electricity in Connecticut – which last year were already the second highest in the nation, behind only Hawaii,<sup>1</sup> and a significant part of the extremely high cost of doing business in Connecticut.<sup>2</sup>

Given the novelty of GHG permitting, the lack of guidance as to BACT, and the critical need to avoid further adverse impact on Connecticut's electricity costs, CBIA urges the Department to confirm the importance of an appropriately cautious and nationally consistent approach to BACT for GHG emissions.

## II. Proposed revisions to section 3a(a)(1):

For each of the following comments, requested language changes are provided below.

1. The proposed revisions to section 3a(a)(1) indicate an effort to incorporate the substance of EPA's "tailoring rule" through means other than that rule's labyrinthine approach. CBIA appreciates the Department's efforts in this regard. The Prevention of Significant Deterioration (PSD) program, although over three decades old, is still unduly complex and convoluted. This significantly increases compliance costs and uncertainties, and undermines actual compliance.

For increased clarity, the format for the proposed greenhouse gas (GHG) triggers in section 3a(a)(1) could be further broken out, as set out below. This revised format would also more directly track the core substantive components of the EPA tailoring rule, which would help regulated parties already familiar with the EPA format to navigate the reformatted Connecticut version. The revised format would also help to prevent loss of the clarity provided by section 3a(a)(1) relative to former section 3(a)(1), which by the time it was repealed had grown to a long and unwieldy list of over a dozen source types.

2. The GHG-related triggers proposed for section 3a(a)(1) do not incorporate the phased deadlines adopted by EPA in the "tailoring" rule for the first six months of 2011. If the proposed regulations are adopted before July 1, 2011, the lack of such phasing would cause the regulations to be stricter than the federal standards. No such intent is stated in the "Federal Standards Analysis" prepared by the Department as required by CGS 22a-6(h) and made part of the rulemaking record. Presumably the Department did not intend to disregard the phased deadlines adopted by EPA; accordingly, they should be incorporated into the proposed section 3a(a)(1) revisions.
3. As drafted, proposed section 3a(a)(1)(H) would seem to require section 3a permitting for "any ... (H) Stationary source that emits, or has the potential to emit, ... [ $\geq$ 100,000 TPY, and 100 TPY of GHG on a mass basis]," id. (emphasis supplied). This would seem to apply to any existing stationary source meeting those numeric criteria, and in the absence

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<sup>1</sup> "Connecticut's High Electric Rates and the Legislative Response," Connecticut General Assembly Office of Legislative Research, OLR Research Report 2010-R-0015 (January 20, 2010), <http://www.cga.ct.gov/2010/rpt/2010-R-0015.htm>.

<sup>2</sup> "Kosmont-Rose Institute Cost of Doing Business Survey®," Rose Institute of State and Local Government, Claremont McKenna College (2010), <http://rosereport.org/kosmont/>.

of a modification with a significant net emissions increase of GHG. Presumably the Department's intent was rather to expand section 3a permitting only to new sources and existing sources undergoing modification, subject to GHG potential-to-emit thresholds. Again, no contrary intent is stated in the CGS 22a-6(h) "Federal Standards Analysis" prepared by the Department.

4. As in section 33, the proposed GHG applicability triggers in section 3a(a)(1) should link the CO<sub>2</sub>e-based triggers with mass-based triggers, to avoid snaring small sources with low GHG emissions by mass. This would also make proposed section 3a(a)(1) consistent with proposed section 3a(j)(1).

Following is proposed language for section 3a(a)(1), to implement the foregoing comments (proposed changes in double-underlined red:

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**Sec. 5. Section 22a-174-3a(a)(1) of the Regulations of Connecticut State Agencies is amended as follows:**

(1) Applicability. Prior to beginning actual construction of any stationary source or modification not otherwise exempted in accordance with subdivision (2)(A) to (C) of this subsection, the owner or operator shall apply for and obtain a permit to construct and operate under this section for any:

- (A) New major stationary source;
- (B) Major modification;
- (C) New or reconstructed major source of hazardous air pollutants subject to the provisions of subsection (m) of this section;
- (D) New emission unit with potential emissions of fifteen (15) tons or more per year of any individual air pollutant;
- (E) Modification to an existing emission unit which increases potential emissions of any individual air pollutant from such unit by fifteen (15) tons or more per year;
- (F) Stationary source or modification that becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant; [or]
- (G) Incinerator for which construction commenced on or after June 1, 2009, except if such incinerator is used:
  - (i) for the primary purpose of reducing, controlling or eliminating air pollution,  
or

- (ii) as a solid waste incineration unit subject to an emission guideline issued pursuant to Section 129 of the Act; [.]

(H) With respect to greenhouse gas emissions:

- (i) New major stationary source that
  - i. is a major stationary source for one or more air pollutants other than a greenhouse gas, and
  - ii. emits or has the potential to emit 75,000 tons or more per year of CO<sub>2</sub>e and 100 tons per year of greenhouse gases;
- (ii) New stationary source that emits, or has the potential to emit, equal to or greater than 100,000 tons per year of CO<sub>2</sub>e and one hundred (100) tons per year of greenhouse gases;
- (iii) Existing major stationary source that
  - i. is a major stationary source for one or more air pollutants other than a greenhouse gas, and
  - ii. undertakes a physical change or change in the method of operation that will result in a net emissions increase that is equal to or greater than 75,000 tons per year CO<sub>2</sub>e and 100 tons per year of greenhouse gases; or
- (iv) Existing stationary source that emits, or has the potential to emit, equal to or greater than 100,000 tons per year of CO<sub>2</sub>e and one hundred (100) tons per year of greenhouse gases, when such stationary source undertakes a physical change or change in the method of operation that will result in a net emissions increase that is equal to or greater than 75,000 tons per year CO<sub>2</sub>e and 100 tons per year of greenhouse gases.

Subsections 3a(a)(1)(H)(ii) and (iv) shall take effect July 1, 2011 or upon adoption, if later.

III. Proposed new section 3a(j)(1):

Given the complexity of the existing PSD program, it would be best to provide for as much clarity as possible, and limit the added complexity from the pending proposed revisions. The text in section 3a(j)(1), already dense and difficult to assess, becomes that much more so by addition of GHG emissions. However, the content of section 3a(j)(1) is essentially variations on a single theme, and can be set out more coherently in a table format, as set out below.

In addition, there seem to several instances where additional language is needed to make the proposed section 3a(j)(1) consistent with EPA’s tailoring rule, and with the rest of the proposed regulatory revisions:

- The criterion for proposed section 3a(j)(1)(E) seems incomplete, in omitting the condition that the new major stationary source must be major for an air pollutant other than GHG.
- For proposed section 3a(j)(1)(G), the provision omits the 100 tons/year GHG threshold to accompany the 75,000 tons/year CO2e threshold.
- For proposed section 3a(j)(1)(H), the provision omits the causal linkage between the change and the 75,000 tons/year emissions increase.

These points are addressed in the table below.

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**Sec. 7. Section 22a-174-3a(j)(1) of the Regulations of Connecticut State Agencies is amended as follows:**

(1) An owner or operator shall incorporate BACT for the potential emissions specified in Table 3a(j)(1), and subject to all applicable conditions in such table:

**Table 3a(j)(1)  
Emissions subject to BACT**

|     | Source of potential emissions:   | Potential emissions consisting of: | Applicability threshold for BACT:   |
|-----|--|------------------------------------|---|
| (A) | New major stationary source  | Any air pollutant                  | The significant emission rate thresholds in Table 3a(k)-1 of subsection (k) of this section   |
| (B) | Major modification to a major stationary source                                      | Any air pollutant                  | The significant emission rate thresholds in Table 3a(k)-1 of subsection (k) of this section. (Note: where applicable, BACT applies to each individual emission unit that is being modified as part of such major modification.) |
| (C) | Each new emission unit   | Any air pollutant                  | ≥15 tons/year   |
| (D) | Modification to each existing emission unit  | Any air pollutant                  | ≥15 tons/year   |
| (E) | <u>New major stationary source that is major for an air pollutant other than GHG</u> | <u>CO2e and Greenhouse gases</u>   | <u>Both CO2e: &gt;75,000 tons/year, and GHG: &gt;100 tons/year</u>  |
| (F) | <u>New stationary source (see Note)</u>  | <u>CO2e and Greenhouse gases</u>   | <u>Both CO2e: &gt;100,000 tons/year, and GHG: &gt;100 tons/ year</u>  |
| (G) | <u>Major stationary source that undertakes a physical</u>                            | <u>CO2e and Greenhouse</u>         | <u>Emission increase from such change: - CO2e: &gt;75,000 tons/year, and</u>  |

|     |   |                                  |   |
|-----|---|----------------------------------|---|
|     | <u>change or a change in the method of operation</u>  | <u>gases</u>                     | <u>- GHG: &gt;100 tons/year</u>   |
| (H) | <u>Stationary source that meets the following criteria:</u><br><u>(1) Undertakes a physical change or a change in the method of operations, and;</u><br><u>(2) has potential or actual emissions of equal to or greater than 100,000 tons of CO2e and 100 tons of greenhouse gases (see Note)</u> | <u>CO2e and Greenhouse gases</u> | <u>Emission increase from such change:</u><br><u>- CO2e: &gt;75,000 tons/year, and</u><br><u>- GHG: &gt;100 tons/year</u> |
| (I) | <u>Stationary source that</u><br><u>(1) Undertakes a physical change or a change in the method of operations, and;</u><br><u>(2) Potential or actual emissions of equal to or greater than 100,000 tons of CO2e and 100 tons of greenhouse gases</u>  | <u>Any air pollutant</u>         | <u>Significant emission rate thresholds in Table 3a(k)-1</u>  |

Note: Effective July 1, 2011 or upon adoption, if later.

(A) Potential emissions of each [regulated] air pollutant above the significant emission rate thresholds in Table 3a(k) 1 of subsection (k) of this section, from each new major stationary source;

(B) Potential emissions of each [regulated] air pollutant above the significant emission rate thresholds in Table 3a(k) 1 of [subsection (k) of] this section, from each major modification. This requirement applies to each individual emission unit that is being modified as part of such major modification;

(C) Potential emissions of fifteen (15) tons or more per year of any [individual] air pollutant, from each new emission unit; [and]

(D) Potential emissions of fifteen (15) tons or more per year of any [individual] air pollutant, from a modification to each existing emission unit;[-]

(E) Potential emissions of 75,000 tons or more per year of CO2e from each new major stationary source;

(F) From each new stationary source, potential emissions of 100,000 tons or more per year of CO2e and potential emissions of one hundred (100) tons or more per year of greenhouse gases and potential emissions of each air pollutant above the significant emission rate threshold in Table 3a(k) 1 of this section;

~~(G) Potential emissions of 75,000 tons or more per year of CO<sub>2</sub>e from each major stationary source that undertakes a physical change or a change in the method of operation;~~

~~(H) Potential emissions of 75,000 tons or more per year of CO<sub>2</sub>e from each stationary source that:~~

~~(i) Undertakes a physical change or a change in the method of operation;~~

~~(ii) Emits or has the potential to emit equal to or greater than 100,000 tons per year CO<sub>2</sub>e, and~~

~~(iii) Emits or has the potential to emit equal to or greater than one hundred (100) tons or more per year of greenhouse gases; or~~

~~(I) Potential emissions of each air pollutant above the significant emission rate thresholds in Table 3a(k)-1 of this section from each stationary source that:~~

~~(i) Undertakes a physical change or a change in the method of operation;~~

~~(ii) Emits or has the potential to emit equal to or greater than 100,000 tons per year CO<sub>2</sub>e, and~~

~~(iii) Emits or has the potential to emit equal to or greater than one hundred (100) tons or more per year of greenhouse gases; or~~

IV. Proposed new section 3a(k)(1):

As with section 3a(j)(1), section 3a(k)(1) essentially consists of variations on a theme, and can be set out more coherently in a table format:

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**Sec. 8. Subdivisions (1) and (2) of section 22a-174-3a(k) of the Regulations of Connecticut State Agencies are amended as follows:**

(1) New sources. The provisions of this subsection shall apply to the owner or operator of any of the following sources, under the conditions as set out for that source in Table 3a(k)-New:

Table 3a(k)-New

|     | <u>Source of emissions:</u>        | <u>Emissions consisting of:</u>          | <u>Basis of calculating emissions</u> | <u>Applicability threshold for BACT:</u>   | <u>Additional conditions</u>  |
|-----|------------------------------------|--|---------------------------------------|--|---|
| (A) | <u>New major stationary source</u> | <u>Any air pollutant</u>                 | <u>Actual emissions</u>               | <u>The significant emission rate thresholds in Table 3a(k)-1 of subsection (k) of this section</u> | <u>i. Source must be located in an attainment area or unclassified area for the pollutant</u> |
| (B) | <u>New stationary source</u>       | <u>CO<sub>2</sub>e, greenhouse gases</u> | <u>Actual or potential emissions</u>  | <u>CO<sub>2</sub>e: &gt;100,000 tons/year<br/>Greenhouse gases: &gt;100 tons/year</u>              | <u>---</u>  |

(2) Modifications. The provisions of this subsection shall apply to the owner or operator of any of the following, under the conditions as set out for that source in Table 3a(k)-Modification:

Table 3a(k)-Modification

|     | <u>Source of emissions:</u>   | <u>Emissions consisting of:</u> | <u>Basis of calculating emissions</u>                          | <u>Applicability threshold for BACT:</u>  | <u>Additional conditions</u>  |
|-----|---|---------------------------------|--|---|---|
| (A) | <u>Major stationary source that undertakes a major modification</u>   | <u>Any air pollutant</u>        | <u>i. Actual emissions; and<br/>ii. Net emissions increase</u> | <u>For each of actual emissions and net emissions increase: the significant emission rate thresholds in Table 3a(k)-1 of subsection (k) of this section</u> | <u>i. Source must be located in an attainment area or unclassified area for the pollutant</u> |
| (B) | <u>Major stationary source that undertakes a physical change or change in the method of operation</u>   | <u>CO<sub>2</sub>e</u>          | <u>Net emissions increase</u>                                  | <u>&gt;75,000 tons/year</u>   | <u>---</u>  |
| (C) | <u>Stationary source that emits or has the potential to emit &gt;100,000 tons/year of CO<sub>2</sub>e and &gt;100 tons/year of greenhouse gases, and that undertakes a physical change or change in the method of operation</u> | <u>CO<sub>2</sub>e</u>          | <u>Net emissions increase</u>                                  | <u>&gt;75,000 tons/year</u>   | <u>---</u>  |

~~new; [major stationary source for each criteria air pollutant that is significant from such new major stationary source located in an attainment area or unclassified area for such pollutant.]~~

~~(A) Major stationary source for each air pollutant emitted at a level equal to or greater than the threshold designated in Table 3a(k) 1 from such new major stationary source located in an attainment area or unclassified area for such pollutant; or~~

~~(B) Stationary source that emits, or has the potential to emit, equal to or greater than 100,000 tons per year of CO<sub>2</sub>e and one hundred (100) tons per year of greenhouse gases.~~

~~(2) The provisions of this subsection shall apply to the owner or operator of any [major modification for each criteria air pollutant from such major modification located in an attainment area or unclassified area for such pollutant, that has]:~~

~~(A) [Actual emissions that are equal to or greater than the significant emission rate thresholds in Table 3a(k) 1 of this subsection; and] Major modification for each air pollutant from such major modification located in an attainment area or unclassified area for such pollutant, that has:~~

~~(i) — Actual emissions that are equal to or greater than the significant emission rate thresholds in Table 3a(k) 1 of this subsection, and~~

~~(ii) — A net emissions increase that is equal to or greater than the significant emission rate thresholds in Table 3a(k) 1 of this subsection;~~

~~(B) [A net emissions increase that is equal to or greater than the significant emission rate thresholds in Table 3a(k) 1 of this subsection.] Major stationary source when such major stationary source undertakes a physical change or change in the method of operation that will result in a net emissions increase that is equal to or greater than 75,000 tons per year CO<sub>2</sub>e; or~~

~~(C) Stationary source that emits, or has the potential to emit, equal to or greater than 100,000 tons per year of CO<sub>2</sub>e and one hundred (100) tons per year of greenhouse gases, when such stationary source undertakes a physical change or change in the method of operation that will result in a net emissions increase that is equal to or greater than 75,000 tons per year CO<sub>2</sub>e.~~

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Thank you for your consideration of these comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric J. Brown". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Eric J. Brown  
Associate Counsel