

However, the DEP's interpretation of state law provides it the authority to implement all provisions of the federal "actual emissions" definition that is incorporated by reference into its rules. This authority extends to the definitions for "Electric steam utility generator" and "Representative actual annual emissions" that are referenced in the federal definition but not explicitly defined in the state rule. Consequently, the DEP's rules comply with all provisions of the federal definition for "actual emissions" including the provisions for the WEPCO applicability test.

III. Revisions That Make Various Definitions Used in the State's Nonattainment NSR Rules and PSD Program Consistent With Federal Definitions

A. What Definitions Is the DEP Adding or Revising?

The DEP is adding or revising definitions to clarify general requirements of its permitting rules and to make the rules consistent with the federal permitting requirements. The list of new or revised definitions includes: Allowable Emissions; Baseline concentration; Begin Actual Construction; Commence construction; Construction; Emission limitation and emission standard; Emissions Unit; Excessive concentration; Federally enforceable; Good engineering practice; Innovative control technology, Malfunction; Secondary emissions; and Volatile organic compound.

Several definitions and other terms in Connecticut's rules reference EPA's NSR and PSD rules in the Code of Federal Regulations (CFR). Under Connecticut law, when the reference is to a CFR section "as amended from time to time," the reference is intended to incorporate amendments to the CFR made subsequent to state publicly noticing its proposal to adopt these rules. When the reference is simply to the CFR, it is to the EPA rules in effect as of July 17, 2001, which is the date DEP publicly noticed the proposed rule amendments.

B. How Will These Definitions Affect Permitting in Connecticut?

The DEP's decision to incorporate the federal permitting program definitions under 40 CFR 51.100–166 will ensure the DEP's permit procedures and permit decisions will be consistent with federal requirements. In addition, EPA policies and guidance will be directly applicable to the DEP's rules ensuring more consistent program implementation and improved program compliance.

For further details concerning the revisions to Connecticut's SIP and EPA's analysis, please refer to the memorandum from Brendan McCahill, Environmental Engineer, to Steven Rapp, Manager, Air Permits Program entitled, "Technical Support Document—Connecticut New Source Review/Prevention of Significant Deterioration Program Revisions," dated January 10, 2003, available upon request from the EPA regional office noted in the ADDRESSES section of this document.

IV. Proposal To Approve Revisions To Allow Sources To Limit Potential To Emit (PTE) Through Practicably Enforceable Limitations

A. Why Is PTE Important?

As explained in section II, the emissions increase from a modification is the difference between an emission unit's PTE after the modification and its actual emissions before the modification. Therefore, the rules governing how PTE limits are created and enforced is critically important in any PSD/NSR applicability determination. EPA defines "potential to emit" as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Absent an inherent physical or operational restriction, EPA calculates PTE assuming the source operating full time (*i.e.*, 8760 hours/year) at its maximum emission rate. Federal rules allow sources to overcome this assumption by accepting physical or operation restrictions that limit PTE. Typically, sources accept PTE limits to reduce the net emission increase from a modification and avoid NSR applicability. For example, a source may accept a restriction on hours of operation (*e.g.*, 4000 hours/year) if the restriction results in a PTE that reduces the net emission increase calculation to below the NSR/PSD applicability threshold levels.

Up to 1995, EPA's NSR and PSD rules required limits on PTE to be federally enforceable. The term "federally enforceable" incorporates two fundamental elements. First, EPA must have direct right to enforce restrictions and limitations. Second, limits must be enforceable as a practicable manner or "practicably enforceable." EPA has issued several guidance documents explaining the requirements of practicably enforceable. In brief, EPA has interpreted "practicably enforceable" to mean that sufficient monitoring, recordkeeping and reporting exists such that the source and/or permitting authority can show

continual compliance with the emission limitation.

EPA's requirement that a PTE limitation that keeps a source out of a CAA requirement must be federally enforceable was legally challenged by industry. In *Chemical Manufacturer's Association V. EPA*, No. 89–1514 (D.C. Cir. Sept. 15 1995), the court vacated the EPA's requirements that physical or operational restrictions on a source's PTE be federally enforceable. As a result, states may develop and submit for EPA approval NSR/PSD programs under 40 CFR 51.165/51.166 that include provisions for state-enforceable PTE limits provided that the provisions are practicably enforceable and effectively limit the source's emissions.

B. What Are Connecticut's Provisions Regarding PTE?

The DEP's new definition of "practicably enforceable" will allow sources the option of taking either federally enforceable or practicably enforceable PTE limits. In developing this definition, the DEP closely followed EPA's guidance on practicably enforceable limitations in a January 25, 1995 memorandum from John Sietz, director of the Office of Air Quality Planning and Standards entitled "Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and title V of the Clean Air Act." The policy specifies the following minimum elements required for a practicably enforceable limitation: (1) A technically accurate limitation and identifying the portions of the source subject to the limitation; (2) the time period for the limitation and; (3) the method to determine compliance including appropriate monitoring, recordkeeping and reporting. The DEP worked closely with EPA to ensure its definition followed EPA guidance on practicably enforceable limits and included these three minimum requirements. As a result, in the absence of any federal rules reimposing mandated federally enforceable PTE limits, EPA proposes to approve the DEP's "practicably enforceable" definition.

V. Proposed Action

EPA is proposing to approve the SIP revision submitted by Connecticut on June 14, 2002.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New