

Sierra Club Petition

Exhibit 15

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

May 19, 1992

Carl S. Pavetto
Bureau of Air Management
Department of Environmental Protection
State office Building
165 Capitol Avenue
Hartford, CT 06106

Dear Mr. Pavetto:

On March 17, 1992, the Connecticut Department of Environmental Protection (DEP) submitted a letter to EPA regarding Web Technologies, Inc. of Watertown, Connecticut. Web Technologies is proposing to construct a new plant near its existing location. The Company plans to move the existing operations to the new site and then plans to install additional operations there. The new facility will house a total of 10 to 12 coating machines. The new plant will take 5 to 7 years to construct.

The Connecticut DEP posed two questions to EPA in its March 17, 1992 letter. First, Connecticut would like to issue one single permit for the entire source. Connecticut asked if this is permissible even though the source will be installing the equipment over a long period of time (5 to 7 years). Second, Connecticut would like to determine that the source is not subject to the revised new source review (NSR) requirements under the Clean Air Act Amendments of 1990 (CAAAAs), and instead issue the source a permit in accordance with its current minor source permitting requirements in section 22a-174-3. Connecticut proposes to grandfather sources that have submitted complete applications prior to the effective date of its revised permitting regulations which are due to EPA by November 15, 1992.

EPA has several concerns regarding this situation. First, the March 17, 1992 letter indicates that this source will have potential emissions of 95 tons per year (TPY). This is very close to the current major source threshold of 100 TPY which triggers nonattainment area NSR. Connecticut should closely evaluate the calculations and assumptions to ensure that this source is a minor source under its current regulations. in addition, Connecticut should ensure that the source truly plans to operate at the 95 TPY level and is not trying to circumvent the nonattainment area NSR requirements.

Second, Connecticut only provided EPA with limited data about the proposed project and its construction schedule. Is this project truly phased construction? Does the source have firm plans for constructing and operating all of this equipment? Or, is the source trying to get a pre-approved check to cash in any time over the next 7 years? Connecticut must ensure that this source is not trying to circumvent the nonattainment area NSR requirements by attempting to link together activities from a single construction project that are truly independent from a physical, operational, or economic standpoint.

Third, this source is proposing to build in a nonattainment area which is classified as serious for ozone. Connecticut will be working on an attainment plan which will require large reductions in VOC and Nox emissions in order to attain the NAAQS by the statutory attainment deadline. If the State excludes this source from review at this time, the source will not have to secure emissions offsets. Consequently, the State rather than the source, will have to find reductions to offset the increased emissions from this plant. The more sources Connecticut excludes from the emissions offset requirements, the more reductions the State will have to find to reach attainment.

My staff has prepared a detailed response to these two questions in the enclosure to this letter. In general, this source may be excluded from nonattainment area NSR only if the State issues this source a construction permit prior to adopting the regulatory revisions required by November 15, 1992. In addition, the source must commence construction prior to the expiration date of the permit (as specified in Connecticut's regulation) but in no case later than 18 months. If the phases of this project are not mutually dependent, then all of the phases may not be excluded from the new requirements of the CAAAS. (See enclosure for a detailed explanation.)

Please be advised that there are no clear answers to the questions that you have raised. The Agency is in the process of developing policy on many of these issues. EPA will be undertaking a national rulemaking which is likely to address these issues. That rulemaking must undergo public comment. Consequently, these answers are necessarily tentative. In the absence of national rulemaking, EPA Region I's office is providing the best advice available to answer these difficult questions. The responses are formulated on the basis of EPA's current regulations as well as past precedent. Please be advised that the national rulemaking could impact the responses provided in this letter.

If you or your staff have any questions regarding EPA's responses to these questions, please contact Lynne Hamjian of my staff at (617) 565-3250.

Sincerely,

Linda M. Murphy, Director
Air, Pesticides and Toxics Management Division

Enclosure

cc: Stephen Peplau, CTDEP
State NSR Contacts
Praveen Amar, NESCAUM
Mike Sewell, US EPA, OAQPS, NSR Section

EPA'S RESPONSE TO CONNECTICUT'S QUESTIONS REGARDING
THE CONSTRUCTION OF A PROPOSED NEW SOURCE;
WEB TECHNOLOGIES, INC.

Summary of the Situation: Web Technologies is proposing to construct a new plant near its existing location. The Company plans to move the existing operations to the new site and then plans to install additional operations there. The new facility will house a total of 10 to 12 coating machines. The new plant will take 5 to 7 years to construct.

Relocation of a stationary source automatically triggers nonattainment area NSR if the source is major. Connecticut's March 17, 1992 letter indicates that the new source's potential emissions will be 95 TPY. This is not a major new source under section 22a-174-1 of Connecticut's regulations. A major stationary source must have potential emissions equal to or greater than 100 TPY. Although Connecticut's March 17, 1992 letter does not specify the exact location of the new site, it appears that this source will relocate in an ozone nonattainment area classified as serious. By November 15, 1992, Connecticut must amend its definition of major stationary source, as it applies to serious ozone areas, to 50 TPY of VOC. Sources with potential emissions equal to or greater than 50 TPY must comply with the ozone nonattainment area construction permitting requirements of the CAAAs. Such requirements include control technology which meets the lowest achievable emission rate (LAER) and emissions reductions to offset the proposed emissions increase.

Question 1: Can Connecticut issue one single permit for the entire source given the fact that the source will be installing the equipment over a long period of time (5 to 7 years)?

Response: EPA and Connecticut could consider this type of project phased construction. The PSD provisions in the federal regulations [40 CFR Section 52.21(j)(4) and (r)(2); 40 CFR Section 51.166(j)(4)] and Connecticut's regulations (subdivision 22a-174-3(k)(4)) provide special guidance for phased construction. Under these provisions, Connecticut may permit a source which will be built in phases up front if the BACT determination is reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operators of the applicable source may be required to demonstrate the adequacy of any previous determination of BACT.

There is no provision similar to this for phased construction in the nonattainment area NSR requirements or the general permit requirements in the federal regulations (40 CFR Section 51.160-165) or in the state regulations (section 22a-174-3). In the absence of specific guidance

under the nonattainment area NSR regulations and general permit requirements, EPA and Connecticut could look to the provisions under the PSD program. In addition to the regulatory provisions cited above, there is a detailed discussion of grandfathering PSD sources under phased construction in a Federal Register notice dated June 19, 1978 [43 FR 26380, 26396, col. 1]. The specific provisions of this notice are summarized below:

Multifacility sources approved for construction in distinct phases require special guidance.

Grandfathering from the newly revised PSD regulations hinges on whether or not the individual phases of a phased construction project are mutually dependent. Mutually dependent is defined in this notice as the following: construction of one phase would necessitate the construction of the other in order to complete a given project or provide a given type (not level of) service. An example of a mutually dependent project is a kraft pulp mill. On the other hand, an example of an independent project is a three boiler power plant.

If the phases of the project are mutually dependent and one of the major facilities has commenced construction by the applicable grandfather date, then all other dependent facilities specifically approved for construction at the same time will hold such status.

Conversely, each independent facility must individually commence construction by the prescribed grandfather dates.

(See discussion on grandfathering for the CAAAs in the response to Questions 2 below.)

EPA believes that this is a plausible approach. The Connecticut DEP, however, must specifically examine its regulations to determine if its regulations allow for such an approach. EPA did not receive any details regarding the proposed construction of this new plant. EPA does not know the specific construction schedule or Web's proposed plant design. Preliminary discussions between our staffs indicate that the company plans to conduct several different operations and may process as many as 40 different products at the new plant. Given these limited facts, the phases at this plant may not be mutually dependent. Therefore, Connecticut may not be able to grandfather the entire source from the new nonattainment area NSR requirements of the CAAAs. Even though Web's proposed 95 TPY source may be currently a minor VOC source, if the permit allows phased construction of facilities that are not mutually dependent over a 5 to 7 year modifications may be subject to the Part D nonattainment NSR requirements which include LAER and offsets.

The Connecticut DEP should require Web as part of its application to provide information of each piece of equipment, its function, installation. This will help the State make the proper determination in accordance with the above criteria. In addition, Connecticut must examine if this project is truly phased construction and if the company plans to operate at the 95 TPY level. Connecticut must ensure that Web is not trying to circumvent nonattainment area NSR. On June 13, 1989, EPA issued guidance document entitled, Guidance on Limiting Potential to Emit in New Source Permitting. The document includes guidance on circumvention and sham permits. The guidance suggests that the permitting authority closely scrutinized certain criteria such as the following: timing of the permit application, applications for funding, reports on consumer demand and project production levels, statements of authorized representatives of the source regarding plans for operation, The Connecticut DEP should examine the criteria listed above in order to ensure that this source is permitted properly.

Question 2: Connecticut plans to issue the source a permit in accordance with current minor source NSR requirements in its regulations and plans to grandfather the source from the NSR requirements of the CAAs. Can the State do this before November 15, 1992? Can it do this after November 15, 1992 if it receives a complete permit application? Connecticut wants to allow for grandfathering if a source has submitted a complete application.

Response: On August 7, 1980, EPA radically changed its PSD, nonattainment area NSR regulations, and its offset interpretative ruling pursuant to a court decision *Alabama Power Company v. Costle*. EPA's PSD regulations and the offset ruling allowed grandfathering if and only if the source/modification obtained all necessary permits by the date the notice appeared in the Federal Register and if the source/modification commenced construction within 18 months of that date.

This approach is similar to the requirements EPA imposed in its March 11, 1991 transition memorandum. The transition memorandum stated that if "the source received a permit prior to the date the area is designated as nonattainment, the permit remains in effect as long as the source commences construction within 18 months after the date of the nonattainment designation of the area. . . ."

Under the NSR program, construction permits expire if a source does not commence construction within a certain period of time. For example, prevention of significant deterioration (PSD) approval to construct becomes invalid if construction is not commenced within 18 months

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after receipt of a permit, if construction is discontinued for a period of 18 months or more, or if

construction is not completed within a reasonable time. Subsection 22a-174-3(e) of Connecticut's regulations also contains provisions which generally require cancellation of the permit to construct if construction is not begun within 1 year of the permit issuance.

Again, EPA believes that this approach is plausible. Although the existing minor source construction permitting requirements and nonattainment NSR regulations do not have any specific grandfathering provisions, EPA believes that the following must occur in order for the State to grandfather the source from the nonattainment area NSR requirements:

Connecticut must issue the construction permit to Web Technologies before the State adopts revisions to its nonattainment area permitting regulations which are due by November 15, 1992, and

Web Technologies must commence construction by the time as specified in the applicable state regulations, but in no case later than 18 months from the date of permit issuance.

If Connecticut does not issue the permit to this source before it adopts revisions to its nonattainment area permitting regulations which are due by November 15, 1992, then the source must comply with the new requirements. The Connecticut DEP must examine its regulations to determine if its regulations are consistent with this interpretation outlined above.

Connecticut is proposing to grandfather sources which submitted complete applications prior to implementing its NSR regulatory changes. Although EPA and states have done this in the past under limited circumstances, it may not be appropriate in this case. In 1980, when EPA promulgated major changes to the construction permitting process, the Agency consciously decided against this approach. One commenter urged EPA to promulgate a grandfather provision that would use the date of complete application instead of the date of permit issuance. The commenter was concerned that the proposed provision would unfairly treat a company that obtained the last permit necessary under the SIP just a day or two after the date appeared in the Federal Register. EPA concluded, however, that the use of the complete application date might exempt many more projects from review. EPA believed that this approach would fail to give adequate expressions to the interests behind the PSD program, especially the goal of protecting the air quality. [45 FR 52676, 52683] Web Technologies is proposing to build a new source in a nonattainment area that is classified as serious for ozone. The nonattainment permitting program is designed to protect the air quality and to help achieve reasonable further progress towards attaining the NAAQS.

Connecticut cited the PM10 PSD revisions as an example in its March 17 1992 letter. The PM10 revisions were different than the situation outlined above. In that rulemaking EPA converted the form of particulate matter regulated under the PSD program rather than imposing new requirements. At this time, EPA cannot issue a final determination regarding grandfathering provisions since the federal regulatory revisions to nonattainment area NSR have not been promulgated. Based on the precedent discussed above, however, this type of grandfathering may not be appropriate.

Summary: In summary, the State may issue this source a minor source permit which meets the permitting requirements in its current regulations (including best available control technology) prior to adoption of regulatory changes. If the following conditions are met, then the source may be exempt from nonattainment area NSR: 1) the phases of this project are mutually dependent, 2) the State issues the permit prior to adopting the new regulations which are due by November 15, 1992, and 3) the source commences construction prior to expiration of the permit (as specified in Connecticut's regulation) and in no case later than 18 months. If the phases of this project are not mutually dependent, then each phase that the State issues a permit to prior to adopting the new regulations which are due by November 15, 1992, and the source commences construction of prior to the expiration date of the permit may be exempt from nonattainment NSR.