



A Robinson+Cole Legal Update

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Ozone Nonattainment “Bump-up” in Connecticut: Is your facility about to get bumped into more stringent air regulations?

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For air emission sources in New Haven County, Middlesex County, and Shelton, Connecticut, the regulatory landscape will change on November 7, 2022.

Per a regulation published on October 7, 2022, the EPA is reclassifying the extent to which air quality in these parts of the state has failed to attain a certain federal air quality standard adopted in 2008 for ground-level ozone (aka smog). Effective November 7, 2022, these two counties and this one town, currently classified as in “serious” nonattainment, will now be reclassified as in “severe” nonattainment. The reclassification (aka “bump-up”) will immediately change the regulatory landscape -- and potentially, applicable regulatory requirements -- for facilities in those counties that emit or have the potential to emit volatile organic compounds (VOC) and nitrogen oxides (NOx), each of which is an ozone precursor.

VOC are found in a wide variety of operations, including coating, solvent degreasing, and printing. NOx is typically a byproduct of burning fuel or other combustion.

What does this mean for a VOC or NOx emission source in New Haven County, Middlesex County, and Shelton?

Reclassification to “severe” will cut in half the emissions-based threshold for certain categories – “major stationary source” and “major modification to a major stationary source” – that trigger regulatory requirements. The threshold for each under the current “serious” classification is 50 tons per year of actual or potential emissions (more on potential emissions below) of VOC, or of NOx. As of November 7, 2022, the threshold under the “severe” classification will be 25 tons per year.

As a result, a VOC or NOx emission source in the affected areas with actual or potential emissions between 25 and 50 tons per year or more may become subject, in some cases immediately, to several significant regulatory programs. These programs include:

- More stringent pre-construction permitting requirements for a proposed new source or modification under the Nonattainment New Source Review program.
- A requirement for an existing source to apply for and obtain an operating permit (aka Title V permit), which aggregates all applicable requirements into one “umbrella” permit along with requirements for detailed annual compliance certifications and other periodic reports.
- Expanded or more stringent requirements (known as Reasonably Available Control Technologies (RACT)) for VOC and/or NOx emissions from an existing source.

What to know about “potential emissions”

The term “potential emissions” is generally defined as the emissions that would result from continuous operation at maximum rated capacity, subject only to inherent physical constraints and any “practically enforceable” limits. For certain types of operations (e.g., paint guns that see limited use), potential emissions may far exceed actual emissions. Overlooking or improperly calculating the potential emissions of a source has long been one of the most common pitfalls in the air regulatory world. This will likely continue to be true in dealing with the “bump-up.”

Take-Away

The owner or operator of a VOC or NOx emission source in New Haven or Middlesex Counties or in Shelton would be well-advised to assess whether and how the impending bump-up might impact the regulatory status and requirements for the source, and to consider potential mitigation or avoidance strategies. Such strategies could include securing practicably enforceable limits (or additional such limits) on potential emissions. In some cases, prompt action may be necessary to avoid non-compliance with newly-applicable requirements.

The final bump-up rule can be viewed [here](#). Also helpful may be an [FAQ sheet](#) developed by the Connecticut Department of Energy and Environmental Protection.

For more information, contact either of the authors listed above.

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