UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION
NOV 19, 1991

MEMORANDUM

SUBJECT: Applicability of PSD to Watertown Power Plant, South Dakota; Shutdown for 9 years.

FROM: John B. Rasnic, Director
Stationary Source Compliance Division
Office of Air Quality Planning and Standards

TO: Douglas M. Skie, Chief
Air Programs Branch (8AT-AP)

This is in response to your memorandum dated September 26, 1991, regarding the applicability of PSD to a shutdown power plant upon reactivation. My staff has reviewed the materials provided and we believe that the position Region VIII has taken thus far is consistent with the EPA national policy.

The general policy on whether a shutdown plant if reopened would be subject to PSD as a new source is set forth in a series of memoranda from the Stationary Source Compliance Division (SSCD) starting with a September 6, 1978 memorandum from Edward E. Reich to Stephen A. Dvorkin. According to SSCD guidance, whether a source which has been shut down is subject to PSD review upon reactivation depends on whether the shutdown is considered permanent. EPA evaluates permanence of shutdowns based upon the intent of the owner or operator. The facts and circumstances of the particular case, including duration of the shutdown and the handling of the shutdown by the State, are considered evidence of intent of the owner or operator. A shutdown lasting for two years or more, or resulting in removal of the source from the emissions inventory of the State, should be presumed permanent. The owner or operator proposing to reopen the source would have the burden of showing that the shutdown was not permanent, and of overcoming any presumption that it was. Also see the attached May 27, 1987 memorandum from John S. Seitz to David P. Howekamp regarding Reactivation of Noranda Lakeshore Mines' RLA Plant and PSD review.

In the case of the Watertown Power Plant (WPP), your staff has provided

the following information. The plant consists solely of a single unit, simple cycle, oil fired combustion turbine. The WPP operated from 1979 until 1981 when the turbine failed. Extensive and costly repairs were made and completed in 1982.

Of the $1.5 million spent on repairing the turbine, $1.2 million was covered by insurance, and more of the cost was recovered by litigation against the manufacturer. The net cost to restore the turbine at WPP was $237,953.

Due to operating costs and diminished load growth, however, the Board of Directors decided to place the plant on deactivated status until 1984 and decided again in 1984 and then in 1989 to continue the deactivated status. The SIP operating permit was allowed to expire.

Since 1982, the unit has been treated as being in cold standby, requiring 6-8 weeks to reactivate. Information submitted to EPA thus far indicates that the plant has been maintained to ensure its readiness. The September 13, 1991 letter to Mr. John Dale of your staff from the Missouri Basin Municipal Power Agency (MBMPA) details what has been done during the entire standby period to ensure readiness; thereby, validating the intent to reactivate. These actions include maintaining two full time employees on site, and periodic testing and maintenance of the system to ensure quick reactivation. It appears that reactivation of the plant would not require more than a limited amount of time and capital. Further, the MBMPA has stated in a variety of reports, starting from the early 1980s, their intent to reactivate the plant.

With the facts presented, which include an intent to maintain the turbine, WPP has overcome the presumption that the shutdown was permanent. Therefore, although this plant has been shut down for a period of time long enough to be considered permanently shut down, and has relinquished its operating permits, the source has demonstrated their intent to treat the shutdown as temporary. This is a unique situation given the very long period of the shutdown. However, the continued maintenance of the facility throughout the years, the resulting ability to bring the plant back on line with only a few weeks of work, and the statements of intent of the owners at the time of shutdown and in subsequent years to reactivate the facility, all compel us to concur with your determination that Missouri Basin has demonstrated that the shutdown was never intended to be permanent. Therefore, given the evidence presented, reactivation of this combustion turbine would not be subject to PSD requirements.

If you have any questions concerning our response, please contact Clara Poffenberger at FTS 398-8709.

Attachments

cc: John Dale, Region VIII
Gary McCutchen, NSR Section, AQMD (MD-15)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 6 1978

OFFICE OF ENFORCEMENT

MEMORANDUM
SUBJECT: PSD Requirements

FROM: Director
Division of Stationary Source Enforcement

TO: Stephen A. Dvorkin, Chief
General Enforcement Branch
Region II

In response to your memo dated June 29, 1978, we have consulted with the Offices of General Counsel and Air Quality Planning and Standards and provide the following responses to your questions regarding the applicability of several PSD requirements.

Q - 1(a). Is a source which shut down approximately four years ago because of an industrial accident, and which was not and is not required to obtain a permit under a SIP, subject to the requirements of PSD? This source was not subject to PSD requirements prior to March 1, 1978.

A - This is a question which we have not previously addressed, but we believe that EPA policy should be as follows. A source which had been shut down would be a new source for PSD purposes upon reopening if the shutdown was permanent. Conversely, it would not be a new source if the shutdown was not permanent. Whether a shutdown was permanent depends upon the intention of the owner or operator at the time of the shutdown as determined from all the facts and circumstances, including the cause of the shutdown and the handling of the shutdown by the State. A shutdown lasting for two years or more, or resulting in removal of the source from the emissions inventory of the State, should be presumed permanent. The owner or operator proposing to reopen the source would have the burden of showing that the shutdown was not permanent,

and of overcoming any presumption that it was. Under the facts you have

given us, we would presume that the shutdown was permanent, since it has already lasted about four years. Consequently, unless the owner or operator of the source were to rebut that presumption, we would treat the source as a new source for PSD purposes.

We assume that your statement that the source was not subject to the PSD regulations in effect before March 1, 1978, means that it was not in one of the nineteen source categories listed in Section 52.21(d) (1) of those regulations. A proposed new source which was not in one of those categories would be subject to the PSD regulations promulgated on June 19, 1978, unless (1) all required SIP permits had been obtained by March 1, 1978, and (2) construction commences before March 19, 1979, is not discontinued for 18 months or more and is completed within a reasonable time. See Section 52.21(i) (3), 43 FR 26406. Here, all required SIP permits were obtained by March 1, since none was required. Consequently, the source would not be subject to the new regulations, assuming that the reopening is commenced before March 19, 1979, is not discontinued for more than 18 months and is completed within a reasonable time.

If we were to treat the source as an existing source for PSD purposes, we would also conclude that it is not subject to the new regulations.[SEE FOOTNOTE 1] No source on which construction commenced before June 1, 1975, would be subject to those regulations. [SEE FOOTNOTE 1] See Clean Air Act Sections 168(b), 169(4); 40 CFR 52.21(d) (1) (1977). Here, since the source was in operation about 4 years ago, construction on it presumably commenced before then, well before June 1, 1975. Hence, it would (presumably) not be subject to the new regulations.

Q - 1(b). Would your answer to 1.a., above, change if the source is or was required to obtain a SIP permit?

A - If the source shut down temporarily, it would not be required to obtain a PSD permit in order to start up.

[FOOTNOTE 1] Application of this rule requires special guidance for multifacility sources which construct in phases. Generally, if one phase of a multifacility source commenced construction by June 1, 1975, all other mutually dependent phases specifically approved for construction at the same time will also be "grandfathered". On the other hand, each independent facility must have commenced construction individually by June 1, 1975, to have achieved grandfather status. See 43 FR 26396, 19 June 1978.

On the other hand, if the source shut down permanently, it would, upon reopening, be required to obtain a PSD permit unless the following two

conditions were met: 1) the SIP permit was obtained prior to 3/1/78 and 2) any construction necessary for reopening is commenced prior to 3/19/79, is not discontinued for 18 months or more and is completed within a reasonable time.

Q - 2. Is the EPA required in all cases to forebear from issuing a PSD permit until a SIP permit has been issued or is such forbearance required only when the source is subject to the "Interpretative Ruling" (41 FR 55524, December 21, 1976)?

A - EPA should refrain from issuing a PSD permit prior to issuance of a SIP permit only in cases where the source is also subject to the Interpretative Ruling. (See 43 FR 26402, column 3.)

Q - 3. In the evaluation of BACT, does equipment reliability play a part, i.e., should a unit capable of 80% control with a 20% downtime, be preferred to a unit capable of 90% control with a 35% downtime? Can backup equipment be required for BACT purposes?

A - Questions concerning BACT should be addressed to the Control Programs Development Division in Durham, N.C.

Q - 4. For the purpose of determining what constitutes "air pollution control equipment," what is meant by the phrase ". . . normal product of the source or its normal operation"? (43 FR 26392, mid. col., June 19, 1978). Does that refer to the quantity or quality of the product or both, i.e., if a baghouse collects 100% of the product, a settling chamber collects 20%, and without some device no product is collected, what is deemed to be "air pollution control equipment"?

A - If a source (such as one which produces zinc-oxide) cannot capture any of its product without the use of some type of control device, the least efficient control device used in the industry will be considered vital to the process. For example, if sources in such an industry typically employ either settling chambers or baghouses, potential emissions will be calculated as the emissions from such a source with a settling chamber installed.

Q - 5. Do the provisions of Section 167 of the Clean Air Act, which refer to issuance of an Order and seeking injunctive relief for PSD violations, create enforcement authorities independent of those created in Section 113 for SIP violations, or do they simply incorporate Section 113 by reference?

A - We believe that Section 167 provides the Agency

with enforcement authority which is not necessarily otherwise provided by Section 113. The Office of Enforcement is drafting guidance on implementation of Section 167. This guidance should be completed shortly. In the interim, the Agency should enforce against violations of the PSD requirements under the mechanisms established by Section 113, generally. There is one important situation, however, in which resort to Section 167 may be necessary. This would occur when a state had issued a permit that EPA considered to be invalid. In this situation, we believe that Section 167 provides the Agency with the authority to halt the construction of the source directly, without first having to resort to the cumbersome process of seeking a judicial declaration that the state permit is invalid. (See 42 FR 57473 (1977)). In this respect, Section 167 provides the agency with authority similar to that provided by section 113(a) (5) and (b)(5) to prevent sources with invalid permits from constructing in nonattainment areas. Please note, however, that no delegations for enforcement of the PSD requirements have been signed yet, and so any action under Section 167 would have to be taken in close coordination with DSSE, and any Section 167 orders would have to be signed by the Administrator.

If you have any further questions on these issues, please contact Libby Scopino at FTS 755-2564.

Edward E. Reich UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION
MAY 27 1987

MEMORANDUM

SUBJECT: Reactivation of Noranda Lakeshore Mines, RLA Plant and PSD Review

FROM: John S. Seitz, Director
Stationary Source Compliance Division
Office of Air Quality Planning and Standards

TO: David P. Howekamp, Director

Air Management Division, Region IX

Pursuant to your recent request, this memorandum addresses the status of Noranda Lakeshore Mines' roaster leach acid (RLA) plant in Arizona. Noranda is contemplating startup of the RLA plant which has been shut down since 1977. The company contends that the shutdown was not intended to be permanent, and therefore believes that the plant should not be subject to PSD review.

Whether or not a source which has been shut down is subject to PSD review upon reactivation depends on whether the shutdown is considered permanent. EPA evaluates permanence of shutdowns based on the intent of the owner or operator. The facts and circumstances of the particular case, including the duration of the shutdown and the handling of the shutdown by the State, are considered as evidence of the owner or operator's intent. This decisionmaking framework follows the policy on plant reactivation which EPA set forth in 1978. The September 6, 1978 memorandum which initiated this policy states: "A shutdown lasting for two years or more, or resulting in removal of the source from the emissions inventory of the State, should be presumed permanent. The owner or operator proposing to reopen the source would have

the burden of showing that the shutdown was not permanent, and of overcoming any presumption that it was." Several memoranda later issued by SSCD (August 8, 1980; October 3, 1980; July 9, 1982) applied this shutdown/reactivation policy.

In the case of Noranda's RLA plant, your staff has provided the following information. The RLA plant, previously owned by Hecla Mining Company, was shut down by Hecla in 1977 due to market conditions. Reports issued by Hecla at the end of 1977 stated that the ALA facility could be operational within one week. However, due to poor economic conditions Hecla decided to terminate their lease for the ALA plant. In 1979 Noranda purchased the facility, but never operated the ALA plant due to similar economic problems; the ALA plant itself has not operated since 1977. The ALA plant was deleted from Noranda's operating permits in 1980, and Noranda' remaining operating permits were surrendered in 1984. In 1986, the ALA plant was removed from the State's emission inventory. Your staff has also indicated that the roaster may need at least several hundred thousand dollars worth of work before being operable, and could not come on line for approximately four months.

Since the ALA plant has been shut down for well over 2 years and has

been removed from the State's emission inventory, EPA presumes that the shutdown was permanent. However, Noranda has submitted documentation to Region 9 seeking to demonstrate that the shutdown was not intended to be permanent. Included is a 1980 statement of intent for long term operation of the facility, evidence of some search for toll concentrates of sufficient quality to allow operation, and evidence of some level of custodial maintenance. The question which now arises is whether the information submitted is sufficient to rebut the presumption of a permanent shutdown.

EPA evaluates the permanence of the shutdown based on the demonstrated intent of the owner or operator to reopen the source. Facts and circumstances surrounding the shutdown, including duration of the shutdown and the handling of the shutdown by the source and State, are evidence of the owner's intent. In Noranda's case, the significant amount of time that has elapsed, as well as Noranda's failure to maintain the operating permit, removal of the ALA plant from the emissions inventory, and the time and capital that must be invested in the rehabilitation of the plant in order to make it operable, are evidence that the shutdown was intended to be permanent.

There is not sufficient evidence of intent to reopen the source to regard this as a temporary shutdown. Therefore, SSCD concurs with Region 9's determination that the source, for PSD purposes, is permanently shut down, and must meet Federal PSD requirements for construction and operation.

If You have any questions, please contact Sally M. Farrell at FTS 382-2875.

cc: Wayne Blackard, Region IX
Nancy Harney, Region IX
Bruce Armstrong, OPAR
NSR Contacts→