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

MAR 28 1978

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: Jewell Coal and Coke Company - Applicability
of Condition 2 of the Interpretative Ruling

FROM: Director
Division of Stationary Source Enforcement

TO: Gordon M. Rapier, Director
Air and Hazardous Materials Division, Region III

This is in response to your request dated February 17, 1978, concerning Jewell Coal and Coke Company's planned construction of 33 new coke ovens and the applicability of EPA's Interpretative Ruling (IR) (in particular, Condition 2 of the Ruling).

Condition 2 of the IR requires that the owner or operator of the proposed new or modified major source (Jewell Coal & Coke) demonstrate that all existing sources owned or controlled by the applicant in the same Air Quality Control Region as the proposed source are in compliance with all applicable SIP requirements (or are in compliance with an expeditious schedule which is federally enforceable or contained in a court decree).

The 33 new coke ovens will be constructed ostensibly as replacements to Batteries 1 and 5. This closure will result in adequate emission offsets satisfying Conditions 3 and 4 of the IR. However, Batteries 2, 3, and 4 in plant 2 are currently operating in violation of the Virginia SIP. A schedule issued by Virginia has not been approved by EPA, nor has Jewell Coal and Coke signed a similar Consent Order initiated by Region III.

Although EPA has, in the past, suspended Condition 2 for replacement type facilities, I have concluded that such a suspension for Jewell Coal and Coke is not warranted by the facts. By telephone on March 8, 1978, members of your staff informed DSSE that the new ovens have a rated capacity

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of 205,000 tons per year, while Batteries 1 and 5 had a rated capacity of 110,000 tons per year. Since production capacity of the new ovens is in excess of the capacity of the shutdown batteries (by 95,000 tons per year) any new ovens which provide the production capacity increase are not replacement facilities and do not come with the limited exception from Condition 2.

Therefore, we concur with your recommendation that Condition 2 be complied with by Jewell Coal and Coke before any Section 51.18 new source review permit may be issued for the construction of the 33 new ovens. Any State delayed compliance order requiring compliance at the existing sources will not become effective for the purposes of satisfying Condition 2 until publication of a notice in the Federal Register approving the order after the appropriate proposal and public comment period.

I have also noted from your memo that you feel Condition 3 of the IR is satisfied due to the closure of Batteries 1 and 5. While Batteries 1 and 5

were closed on April 5, 1977, application for the permit to construct the new ovens was filed April 15, 1977. A strict interpretation of footnote 7 of the current IR would mean that the emission reductions associated with the closure of Batteries 1 and 5 could not be used to provide offsets consistent with the IR since these closures were not required by an enforcement action providing for the new source as a replacement for the shutdown. It is my understanding that although Batteries 1 and 5 were, at the time of the permit application, under State order to cease operation, this order did not provide for any new source as a replacement. Therefore, Jewell Coal and Coke would not normally be permitted to credit the decrease in allowable emissions provided by the shutdown of Batteries 1 and 5 as offsets for the emissions from the new ovens. I understand that this position is counter to communications you have had with the State and source.

I believe it is appropriate, upon full consideration of the facts, to suggest a possible alternative Agency position regarding these offsets which you may elect to adopt in this case, based on the facts and past history of the Jewell situation. This alternative involves a less restrictive approach than literal compliance with the IR's Condition 3, footnote 7, in that Jewell Coal and Coke would be excepted from the requirement that shutdowns prior to

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permit application can be used for offset credit only if required by an enforcement order requiring shutdown and replacement by a new source. Such an exception is based on and limited to the unique circumstances of the Jewell situation, including the cause of the shutdown and the close proximity in time between shutdown and permit application.

This approach would permit Jewell Coal and Coke to apply the decrease in emissions from the shutdown (approximately 633 tons/year) only to that portion of the allowable emissions from the new ovens which is related to the replacement capacity of the ovens (approximately 54% or 292 tons/year). Such a limitation on offset credit is required by footnote 7 and limits any exception to the IR to that discussed above. Jewell would thus be required to obtain offsets for that portion of the emissions for the new ovens which is related to the capacity increase (approximately 46% or 250 tons/year).

If you have any questions or comments please contact Rich Biondi (FTS 755-2564) or Jean Vernet (FTS) 755-7224) of my staff.

Edward E. Reich

cc: Kent Berry, OAQPS
Mike Trutna, CPDD
Steve Wassersug, Enforcement Division, Region III

Date: February 17, 1978
To: Mr. Edward Reich, EN 341

The attached memorandum was magnafaxed to John Rasnic on 2-17-78 and a request was made for decision on the questions raised as soon as possible.

EPA will be meeting with State and Company officials on February 23 and 24 and we would appreciate at least a preliminary decision by this time.

Thank you.

EILEEN M. GLEN
Project Officer
New Source Review Section
Phone: (215) 597-9871

U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION III
6th & Walnut Sts., Philadelphia, Pennsylvania 19106

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III - 6th & Walnut Sts.
Philadelphia, Pa. 19106

SUBJECT: Jewell Coal & Coke Company - Applicability of Condition 2 of the Interpretative Ruling DATE: FEB 17 1978

FROM: Gordon M. Rapier, Director
Air & Hazardous Materials Division, 3AH00

TO: Edward E. Reich, Director
Division of Stationary Source Enforcement, EN-341

Question: Should the proposed 33 new ovens be considered replacement facilities? If so, should Jewell Coal and Coke Company be exempted from Condition No. 2 of the December 21, 1976 Interpretative Ruling?

Discussion

Jewell Coal and Coke Company, Vansant, Virginia (hereinafter "the Company") operates a facility for the manufacture of metallurgical coke. The facility consists of two plants, Nos. 1 and 2, both of which violate current air pollution control regulations (particulate mass emissions and visible emissions).

Plant No. 1 consists of Batteries Nos. 1, 2, 3, 4 and 5. The ovens are modified beehive ovens (Mitchell ovens) and are unique to this facility. A flood in April 1977 caused the closing of Batteries Nos. 1 and 5 (86 ovens); they will not be reopened. Batteries Nos. 2, 3, and 4 are in operation manufacturing foundry coke and continue to violate the standards. These batteries were to have been shut down by June 30, 1977 but the Virginia State Air Pollution Control Board (VSAPCB) has twice extended that closing date and now, the batteries are expected to be in operation until at least April 30, 1978. On January 10, 1978, the Company submitted a Compliance Plan to the VSAPCB for the control of particulates and visible emissions at Plant No. 1 and requested its continued Operation thru July 1, 1979. The proposed plan is scheduled for completion by December 1978. The Board will review the Company's proposal at its February 6, 1978 meeting with final action taking place at the following Board meeting.

Plant No. 2 produces furnace coke. These ovens are also in violation of the State's particulate and visible emissions regulations. On October 21, 1977, the VSAPCB issued an Order calling for the compliance of all 45 ovens by December 1978. This schedule has not been approved by EPA and the Company has failed to sign a similar Consent Order initiated by us.

Construction of the 33 new ovens was approved by VSAPCB at its meeting on June 6, 1977. These ovens will be an extension to Plant No. 2 and will produce furnace coke. Permanent closure of Batteries Nos. 1 and 5 provides adequate emission offsets. However, approximately 72 more ovens would have to be closed before production capability of the closed ovens would equal that of the 33 new ovens.

EPA has not yet approved the offsets because Conditions Nos. 1 and 2 of the December 21, 1976 Interpretative Ruling have not been met. The VSAPCB permit, issued on June 6, 1977, references the Company's application which had specified that sheds would be built to control pushing emissions (LAER) but does not specifically require said sheds to be installed. Furthermore, although construction is proceeding on the ovens, the Company has not begun any work on the sheds. This leads us to believe the ovens will begin operation without emission controls. The Company's failure to satisfy Condition No. 2 is discussed above.

The Legal Branch, EPA, Region III has requested Headquarters approve a referral to the Department of Justice. This referral includes a Motion to Enjoin Jewell from operating Batteries #2, 3, and 4 of Plant No. 1. No action has yet been taken on this request.

By letter dated February 3, 1978, we have notified VSAPCB that certain problems exist with the construction permit (copy attached). We will be meeting with their staff to try to resolve these deficiencies as soon as possible.

EPA has never formally revised the December 21, 1976 Interpretative Ruling

to allow for the waiver of Condition 2 because the new source has been designated a replacement facility. Page 6 of the December 19, 1977 proposed Emission Offset Interpretative Ruling states: "...The original intent was that such facilities (replacement) should be considered a major modification subject to the emission offset requirements, and the Ruling is revised to make this clear." Based on the proposed revision of the I.R., it is our recommendation that Condition 2 not be waived.

Your earliest response to the replacement/exemption question with respect to this facility will be appreciated. If you have any questions about this matter, please contact Ms. Eileen M. Glen at 215/597-9871.