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February 24, 1989

MEMORANDUM

SUBJECT: Cut-off Date for Determining LAER in Major New Source Permitting

FROM: John Seitz, Director
Stationary Source Compliance Division

TO: David Kee, Director
Air and Radiation Division
Region V

This memorandum responds to a February 22, 1989 telephone request by Bill McDowell of your staff for a written answer to the following question:

When a permitting agency is issuing a new source review permit involving a LAER determination, must that LAER determination reflect the most stringent LAER construction permit which has been issued anywhere in the country in the time period up to and including the public comment period on the permit currently under consideration?

The answer to your question is yes. The conditions in a new source permit are not set until the final permit is issued. The final permit is not issued until after a draft permit has been published, there has been a public comment period, and the permitting agency has had an opportunity to consider any new information that may have come to light during the comment period. If the permitting agency cannot consider new information it learns during the comment period, including recent technological advances, the comment period does not serve its intended purpose.

Since a new source may not legally begin to construct until after it has received a final permit, a source is not put to an equitable disadvantage by having the permit conditions change between the proposed and final permit.

If you have any questions about this matter, do not hesitate to call me, or to refer to Judy Katz of OECM (382-2843) or Sally Farrell of my staff (382- 2875).