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ENVIRONMENTAL PROTECTION AGENCY

MEMORANDUM:

DATE: April 2, 1979

SUBJECT: Enforceability Requirements under Condition 2 of the Emission Offset Policy

FROM: Director
Division of Stationary Source Enforcement

TO: Diane Ajl
Enforcement Branch, Region III

This is in response to your March 9, 1979 telephone conversation with Robert Myers of my staff. You requested a written determination on whether a State new source permit issued to Crucible was valid. You were verbally notified that it did not meet all the conditions of the Emission Offset Interpretative Ruling and was, therefore, not satisfactory.

Crucible desires to construct two electric arc furnaces in a nonattainment area. It will be a major source constructed under the old Emission Offset Policy (41 FR 55524-30, December 21, 1976), since the permit was applied for before January 16, 1979. Offsets have been obtained and a State permit was issued in February 1979.

The issue involves condition 2 of the offset policy. This requires that the applicant "certify that all existing sources owned or controlled by the owner or operator of the proposed source in the same AQCR as the proposed source are in compliance with all applicable SIP requirements or are in compliance with an approved schedule and timetable for compliance under a SIP or an enforcement order issued under Section 113". All existing sources are in compliance with a State court timetable, but the timetable contains no provisions for Federal enforcement. The question is whether this invalidates the permit granted Crucible by the State.

Since the State court decree is not Federally enforceable, condition 2 is not met and permit application cannot be approved. The compliance timetable was not the subject of an enforcement order under Section 113 and is not part of the SIP.

The decision is similar to one made earlier and summarized as SSR/4 in the Emission Offset Policy Determinations of Applicability. Copies of these applicability determinations were sent to all regional EPA offices on January 29, 1979.

The revised Emission Offset Policy (44 FR 3274-85, January 16, 1979) is consistent with the original offset policy approach regarding condition 2. The revised policy says that all existing sources owned or operated by the applicant must be in compliance with all emission limitations and standards under the Act (or in compliance with an expeditious schedule which is Federally enforceable or contained in a court decree). DSSE has interpreted this as meaning a Federal court decree.

Should you have any questions, please contact Robert Myers of my staff at FTS 755-2564.

Edward E. Reich

cc: Mike James
Kent Berry
Stuart Silverman

En341:DSSE:RMyers:ncb:3/28/79:3202