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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Office of Air Quality Planning and Standards  
Research Triangle Park, North Carolina 27711

MEMORANDUM:  
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DATE: February 4, 1987

SUBJECT: Region IX New Source Review/Prevention of Significant Deterioration (NSR/PSD) Rulemaking Backlog

FROM: Gerald A. Emison, Director  
Office of Air Quality Planning and Standards (MD-10)

TO: David P. Howekamp, Director  
Air Management Division, Region IX

This is in response to your memorandum of December 22, 1986, in which you report on the current state of the Region IX NSR/PSD rulemaking backlog. In that memo you reiterated the causes of the backlog. You also expressed concern about the reprogramming of your Region's resources from NSR/PSD rulemaking to compliance, enforcement, and local agency oversight activities which, while allowing you to meet your enforcement strategic planning and management system commitments, emphasized the need to make the local NSR/PSD regulations federally enforceable to enhance enforcement options.

You feel that the current NSR/PSD regulations adopted by the State and local agencies "now generally conform to, or are more stringent than, the substantive Alabama Power regulatory requirements," yet are not promulgated into the State implementation plan (SIP) as 40 CFR Part 52 regulations because of the reasons you enumerate, particularly the inflexibility with which the Environmental Protection Agency (EPA) must apply the Federal SIP requirements. I agree with you. The EPA simply does not have the authority to apply an "equivalency" approach when determining the acceptability of a specific SIP revision. Each requirement of the Federal regulations must be met on a line-by-line basis, a test which many of the Region IX regulations do not pass.

Another problem with NSR/PSD rule approval is that the Federal requirements keep changing as technology advances or court cases are settled. For example, all PSD regulations must now reference the 1986, rather than the 1978, version of the EPA modeling guideline.

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Your Region is not alone in the problem of expending substantial Regional resources in an effort to make 40 CFR Part 51 regulations enforceable by incorporating State NSR/PSD rules into 40 CFR Part 52. My staff, in fact, has proposed the formation of a SIP task force to explore methods of minimizing the resources necessary to do this; their recommendation is similar to yours. If we initiate this task force, I will instruct it to focus first on the NSR/PSD rulemaking activities in Region IX. The task force will attempt to find a way to lessen your NSR/PSD backlog with a minimum of resources. At the very least, it may provide extra resources on a temporary basis to review your NSR/PSD regulations.

The possibility of a SIP task force and its composition will be discussed in more detail at the NSR Workshop in Denver, February 11-13. Since I assume Region IX would want to participate in the Task Force, I urge you to ensure that someone on your staff attends the workshop and discusses

this further with Nancy Mayer or Gary McCutchen of my staff. Should you wish to talk with Nancy or Gary prior to the workshop, they can be reached at (FTS) 629-5591.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
215 Fremont Street  
San Francisco, Ca 94105

December 22, 1986

MEMORANDUM:  
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SUBJECT: Region 9 NSR/PSD Rulemaking Backlog

FROM: David P. Howekamp, Director  
Air Management Division, Region 9

TO: Gerald A. Emison, Director  
Office of Air Quality Planning and Standards (MD-10)

Two years ago I sent the attached memorandum to you discussing Region 9's SIP Backlog for NSR and PSD rule approvals. I want to report on the current state of the backlog and indicate my strong support for the establishment of an NSR/PSD rule approval task force as a means of resolving many of the chronic problems of NSR/PSD rule approval.

In accordance with the intent I expressed in my 12/13/84 memorandum to you, Region 9 has reprogrammed resources from NSR/PSD rule development and approval to compliance, enforcement and local agency oversight activities. This reprogramming was instrumental in the Region's FY-86 success in the enforcement SPMS. Our increased permit program oversight, however, has emphasized to us that our NSR/PSD SIP backlog constrains federal enforcement options with respect to major sources.

While SIP approval continues to lag, the Region's 30 NSR rules now generally conform to, or are more stringent than, the substantive Alabama Power regulatory requirements. In lieu of program transfer through rule approval, Region 9 has delegated full PSD authority to 15 agencies -- more by far than in any other region. These 15 agencies include most of the active PSD jurisdictions within the Region.

The SIP backlog continues to build from the same causes enumerated in my earlier memo: the complexity of federal permit regulations and the inflexibility with which they are still applied; changes to EPA's rule approval criteria; and the extraordinarily large number of the Region's NSR/PSD SIP submittals.

I remain hopeful, however, that NSR/PSD rule approval criteria and procedures can be made more flexible and that, in so doing, some of Region 9's -- and the Agency's -- frustrations and

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inefficient use of resources in this area can be reduced. I would urge CPDD to initiate an NSR/PSD rulemaking task force, with participation from OGC, the regions, and state agencies, to help us deal successfully with at least our high priority NSR/PSD rulemakings.

Attachment

cc: Darryl Tyler (MD-15)  
Bob Bauman (MD-15)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: December 13, 1984

SUBJECT: Region 9 NSR/PSD Rulemaking Backlog

FROM: David P. Howekamp, Director  
Air Management Division, Region 9

TO: Gerald A. Emison, Director  
Office of Air Quality Planning and Standards

For many years Region 9 has devoted staff resources for NSR/PSD rule development and rule approval activities substantially beyond that provided by the workload model. For example, in FY85 the model allocates 0.6 WY while in reality we have provided 3.5 WY. To provide this level of effort, we reprogrammed compliance/enforcement staff. As you know, to staff the current emphasis on enforcement, this reprogramming is no longer acceptable.

Our past Regional resource commitment has resulted in the successful adoption of 30 NSR rules (one third of the NSR rules in the entire country). Most of these NSR rules meet the substantive Alabama Power regulatory requirements, and the NSR rules in the urbanized areas are far more stringent than the Alabama Power regulations. This success in NSR rule development has resulted in significantly enhanced environmental benefits through the local application of especially strong permitting rules in our nonattainment areas, as compared to typical rules in the rest of the country. The Region has also assisted in the development and adoption of 18 PSD rules and, in addition, has delegated PSD authorities under 40 CFR 52.21(u) to two other agencies (Nevada and Hawaii).

While the Region has essentially completed NSR rule adoption and, in the more active permitting areas, PSD program development, we have been increasingly unable to make progress in dealing with the NSR/PSD rulemaking backlog. There are three insurmountable causes of our problem besides our very success in encouraging the adoption of so many permit rules:

- 1) The federal permit regulations are extraordinarily detailed and apparently, inflexible: minor procedural or definitional deviations in local rules are sufficient grounds to prevent rule approval. The level of scrutiny during Headquarters review of NSR/PSD rulemaking packages is always far greater than that given to RACT regulations, which are far more important to attainment of the NAAQS. Also, previous Region 9 attempts to develop an overall equivalency policy for NSR/PSD rule approval have failed.

- 2) Because of national NSR/PSD litigation and changing EPA regulations and policy, the criteria for approval are in continuous flux.

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- 3) The Region's 57 permitting agencies (as compared to 58 agencies outside of Region 9) amend regulations frequently -- usually to make the rules still more stringent; this supersession often frustrates rulemaking approval in progress and contributes to the overwhelming size of the NSR/PSD backlog.

Since we lack the resources to make major inroads in our NSR/PSD rulemaking backlog, even looking forward many years into the future, and because the approval process for NSR/PSD rules is inherently inefficient, resource intensive, and subject to obsolescence, I suggest a conscious agency decision to postpone most Region 9 NSR/PSD rule approval projects. The rulemaking project could be renewed when the workload model provides adequate resources (at least 8 person years over a two year period) and the NSR/PSD criteria and rules reach some practical stability.

I do not believe that state or local agencies will protest or be adversely affected by the postponement, so long as EPA adheres to the following policy:

- 1) EPA will not impose any sanctions in areas that have adopted approvable NSR rules even though NSR conditions may remain formally in the Code of Federal Regulations until EPA completes final rule approval.
- 2) For purposes of applicability, netting, offsets, and trading, EPA

will recognize as valid ("federally enforceable") all emission limitations established under the current local NSR/PSD rules.

3) EPA will use established PSD delegation procedures under 40 CFR 52.21(u) to accomplish PSD program transfer, rather than withholding PSD authority until final rulemaking approval of the local regulations.

In those few cases where the adopted NSR rules are substantively deficient through the inclusion of unauthorized exemptions, EPA would protect air quality and achieve national permitting consistency either by persuading agencies to amend the rules or by completing rulemaking disapprovals of the exemptions. I propose that the limited staff I have available for NSR/PSD rulemaking be redirected to this activity, to completing PSD delegations, and to upgrading NSR rules and rule implementation in post-1987 attainment areas in accordance with "reasonable efforts" criteria. I am confident that the achievement of these goals would be of greater benefit to EPA than continued persistence in a futile rulemaking project.

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I would appreciate your consideration of this proposal as soon as possible and I would be pleased to discuss the matter further with you at any time.

cc: D. Tyler  
B. Bauman