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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: June 12, 1981

SUBJECT: PSD Determination: Sun Oil Company and the Definition of Major Modification

FROM: Director, Division of Stationary Source Enforcement

TO: Julio Morales-Sanchez, Director, Enforcement Division Region II

This is in response to your memo dated April 21, 1981, concerning the Sun Oil Company in Yabucou, Puerto Rico and the definition of major modification as that term is used in the context of the Prevention of Significant Deterioration (PSD) regulations. The source in question received a permit to construct in 1974, which limited the boiler to 300 million Btu/hr heat input. The source now proposes to increase the boiler's heat input to 475 million Btu/hr and claim an exemption from PSD review under 40 CFR 52.21 (b) (iii) (f). Specifically you seek clarification of this exemption in Section 52.21 (b) (2) (iii) (f) which provides that an increase in the hours of operation or in the production rate shall not constitute a physical change or change in the method of operation unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

This exclusion is interpreted to mean that any major source seeking to increase its hours of operation or its production rate shall be allowed to do so without the need of a PSD permit provided that such source was not limited by an enforceable permit condition which was established after January 6, 1975. In the instant case at hand, this would mean that the boiler could increase its rate of operation from 300 MM Btu/hr heat input to 475 MM Btu/hr without the need for a PSD permit.

The preamble to the August 7, 1980 PSD regulations states at page 52704:

"It (the exclusion) would exclude any increase in hours or rate of operation, as long as the increase would not require a change in any preconstruction permit condition established under the SIP (including PSD permits) after the relevant date of concern."

For the purposes of PSD the relevant date of concern is January 6, 1975. This is the date when EPA initiated its PSD program and began tracking changes in air quality impact. Action taken prior to that time could not have been undertaken with any prior knowledge or prejudice toward the PSD requirements.

While it is true that increase in production and operation may result in significant emission increases they are not obligated to obtain prior approval under PSD. This is explained in the preamble also at page 52704.

"This exclusion stems largely from EPA's decision that the definitions of major "modification" should focus on changes in "actual emissions." While EPA has concluded that as a general rule Congress intended any significant net increase in such emissions to undergo PSD or nonattainment review, it is also convinced that Congress could not have intended a company to have to get a NSR permit before it could lawfully change hours or rate of operation. Plainly, such a requirement would severely and unduly hamper the ability of any company to take advantage of favorable market conditions."

Although such changes will not be required to get PSD approval, they will consume air quality increment provided the baseline date has been established. Subsequent applicants should take such effects into account.

This response has been prepared with the concurrence of OAQPS and OGC. Any questions or comments you have concerning it should be directed to Janet Littlejohn Farella of my staff. She can be reached at 755-2564.

Edward E. Reich

cc: Mike Trutna
Peter Wyckoff
Gerald De Gaetano

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: APR 21, 1981

SUBJECT: Clarification of PSD Definition of Major Modification

FROM: Julio Morales-Sanchez, Director
Enforcement Division

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

The purpose of this memorandum is to request clarification with respect to the definition of "major modification" as that term is used in the context of the Prevention of Significant Deterioration of Air Quality ("PSD") regulations, codified at 40 CFR Section 52.21 (45 FR 52676, August 7, 1980), because a case being considered by the Region II Office may be affected by the definition of that term.

"Major modification" is defined in the PSD regulations as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the [Clean Air] Act." 40 CFR Section 52.21(b) (2) (i). The regulations further state: "A physical change or change in the method of operation shall not include: ...An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24." 40 CFR section 52.21(b) (2) (iii) (f) (emphasis added).

The situation in question involves a proposed increase in an existing boiler's allowable capacity. The original permit to construct was issued by the State in 1974 pursuant to the New Source Review ("NSR") procedures promulgated by that State and approved by EPA as part of the SIP on May 31, 1972 pursuant to 40 CFR Section 51.18. The construction permit is, therefore, federally enforceable.

That permit limited the boiler in question to a capacity of 300 million British thermal units per hour ("MMBtu/hour") heat input although the boiler was rated in excess of 500 MMBtu/hour. In December of 1980 the source applied to the State for a permit to increase the capacity of the boiler to 475 MMBtu/hour; this permit was issued in February of 1981. The source now contends that it should be exempt from PSD review pursuant to the definition of "major modification" because its permit to construct was issued before January 6, 1975.

The definition itself is not clear with respect to whether the January 6, 1975 date applies only to the regulations codified at 40 CFR section 52.21 or, in the alternative, to regulations approved pursuant to 40 CFR Section 51.18 and 40 CFR 51.24 in addition to those codified at 40 CFR Section 52.21.

Region II notes that the preamble to the August 7, 1980 PSD regulations gives some guidance on this issue. Specifically, the preamble states that the phrase "change in the method of operation" does not encompass "any increase in the hours or rate of operation of a source, so long as the increase would require no change in any preconstruction permit condition established after January 6, 1975 under the SIP." 45 FR 52698. This guidance would tend to support the interpretation that the January 6, 1975 date is intended to apply to all regulations referenced in the definition in question. This would, in turn, support the argument that, in the instant case, the intended increase in the rate of operation would not be subject to PSD review because the source's Section 51.18 or preconstruction permit was issued before January 6, 1975.

The Region, however, recognizes that there is an argument for interpreting the January 6, 1975 limitation as applicable only to those federally enforceable permit conditions established after January 6, 1975 pursuant to 40 CFR Section 52.21. In the instant case, this would lead to a determination that the source would be subject to PSD review. This argument can be summarized as follows:

1. While January 6, 1975 is the effective date of the first PSD regulations, it apparently has no relevance to permits issued pursuant to Section 51.18. As the January 6, 1975 date was not factored into the definition of "major modification" codified under the June 19, 1978 PSD regulations, it is unclear why it would be a factor under the current regulations (if such is indeed the case). A case can be made that a significant emissions increase at an emissions unit which was limited under a federally enforceable (Section 51.18 NSR permit) permit condition is comparable to a significant emissions increase which results from the addition of a new emissions unit at a source.

2. This is a modification of an existing major source which would potentially (a) increase emissions in significant amounts, (b) consume increment, and (c) degrade the ambient air quality.

An expeditious reply to this request would be appreciated. Should you require additional information relative to this proposal please contact Mr. Gerald DeGaetano at (212) 264-4726.

cc: F. Giaccone, 2AIR-AF
K. Eng, 2PM-PA
R. Stein, 2ENF-GE

