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

OCT 21, 1986

MEMORANDUM

SUBJECT: Applicability of PSD to Portions of a Plant Constructed
in Phases Without Permits

FROM: Darryl D. Tyler, Director
Control Programs Development Division (MD-15)

TO: David Kee, Director
Air Management Division, Region V (5AR-26)

This is in response to your correspondence, dated September 30, 1986, regarding the applicability of prevention of significant deterioration (PSD) review to a minor source that becomes major through a series of modifications.

Your memo describes a series of modifications to an initial minor source. With the first modification (A), the original source maintains its minor status. The second modification (B) puts the source over the major source threshold, and the third modification (C) results in an emissions increase greater than the PSD significance levels. To complicate matters, the original source was not required to obtain a permit under the State implementation plan (SIP) and all subsequent modifications were constructed without SIP permits. The source is then discovered at the point modification (C) is made.

You present two schools of thought with respect to the applicability of PSD review to the source.

- 1) PSD review is applicable only to modification (C) or,
- 2) the State should view the plant as it first appeared to them, i.e. as a major source without a PSD permit. This option would require that best available control technology (BACT) be applied to the total plant.

In general, the first determination is correct. The fact that the initial minor source and subsequent modification were not subject to, or failed to receive, a SIP permit has no bearing on applying the rules of PSD applicability. Except under the provisions of 40 CFR 52.21(r) (4), the PSD regulations do not contemplate the retroactive application of PSD

-2-

review to previously minor sources. A BACT review applies only to the emissions units which define a major modification to an existing major source or a new major source. However, the air quality impact portion of a PSD review must consider, as either baseline or increment consuming, the emissions from all emissions units at the source.

In the extreme case where the source has made a deliberate effort to circumvent PSD review (by the systematic construction of carefully sized emissions units which only in the aggregate would trigger review) a permitting agency may, however, make a finding that PSD applies to the total plant. Such a finding would have to be based on clear evidence that the

source made a conscious effort to escape review by knowingly misrepresenting the intended source size through the calculated juggling of actual and scheduled construction of emission units. For such evidence, the permitting agency may require that the source provide detailed information regarding original construction plans, timing and construction contracts, emission unit purchase orders, and project financing. The source should be compared to similar facilities to determine the industrial norm regarding final source size and configuration and construction scheduling.

If you have any questions regarding this matter, please have your staff contact David Solomon of the New Source Review Section at 8-629-5591.