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Date: January 11, 1990

MEMORANDUM

SUBJECT: BACT/LAER Determination Cut-off Date

FROM: John S. Seitz, Director
Stationary Source Compliance Division
Office of Air Quality Planning and Standards

TO: Air Management Division Directors
Regions III and IX

Air and Waste Management Division Director
Region II

Air, Pesticides and Toxics Management Division
Directors, Regions I, IV, and VI

Air and Radiation Division Director
Region V

Air and Toxics Division Directors
Regions VII, VIII, and X

The purpose of this memorandum is to affirm our present policy on the BACT/LAER determination cutoff date as stated in a February 24, 1989 memorandum on the subject. The BACT/LAER determination for a major new source is not set until the final permit is issued. We are affirming this policy after reviewing the Regional responses to the June 19, 1989 memorandum in which we agreed to revisit our BACT/LAER determination policy and asked the Regions to comment on an issue paper prepared by the Michigan Department of Natural Resources. The issue paper questioned the soundness of our present policy and suggested alternative BACT/LAER cutoff dates that would be earlier than the issuance of the final permit.

Contrary to the assertions made in the issue paper, the Regions

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indicated that BACT/LAER technology changes were not causing delays during the permitting process. The Regions emphasized that it is the responsibility of the source to investigate all available and pending control technologies for consideration as BACT or LAER. Hence, if the source has done a thorough investigation, a change in the permit conditions between the proposed and final permit should have been anticipated by the source.

In addition, the Regions felt that establishing a cutoff date at any time prior to the public comment period would limit public participation and the ability of the public to affect changes in the proposed permit. Furthermore, the present policy encourages the source to commence construction as soon as possible and complete such construction within a reasonable time. Establishing a cutoff date prior to the issuance of a final permit would enable a source to maintain a BACT/LAER determination for an extended period of time until the permit is issued; thus, avoiding more stringent controls.

After considering the above information, we have decided to affirm our present policy on the BACT/LAER determination cutoff date. If you have any questions on this matter, please contact Scott Throwe or my staff at FTS 382-2811.

cc: Gary McCutchen, NSR Section