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MEMO # 14.8

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
AIR AND RADIATION

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SUBJECT: Construction Activities Prior to Issuance of a PSD  
Permit with Respect to "Begin Actual Construction"

FROM: Director  
Stationary Source Compliance Division  
Office of Air Quality Planning and Standards

TO: Robert R. DeSpain, Chief  
Air Programs Branch, Region VIII

This memorandum addresses the interpretation of "begin actual construction" as it refers to construction activities which may occur, or are prohibited prior to issuance of a PSD permit under 40 CFR 52.21(i). The Control Programs Development Division of OAQPS, the Office of General Counsel, and the Air Enforcement Division of the Office of Enforcement and Compliance Monitoring were consulted in the development of this memorandum, and all three offices concur with its content.

Section 165(a) of the Clean Air Act states that "[n]o major emitting facility...may be constructed...unless - (1) a permit has been issued... [and various other requirements are satisfied]." Section 165 requirements, then, apply to major emitting facilities, i.e. major stationary sources. However, the PSD regulations at Section 52.21(i) (1) state that, "[n]o stationary source or modification... shall begin actual construction without a permit which states that the stationary source or modification... [has met various requirements]." The term "begin actual construction" at Section 52.21(b) (11) in the PSD regulations refers to "construction activities on an emissions unit." Emissions unit is defined at Section 52.21 (b)(7) as "...any part of a stationary source which emits or would have the potential to emit any pollutant subject

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to regulation under the Act." Therefore, although applicability of PSD is determined on a source-wide basis, it may become necessary to distinguish the emissions unit from the major stationary source or modification in order to determine at what point in construction planning or construction activities a PSD permit is required.

The question of what type of construction activities may be conducted prior to issuance of a PSD permit has been covered by EPA policy for many years. On December 18, 1978 EPA issued policy addressing this issue. That memorandum specified that certain limited activities would be allowed, such as planning, ordering of equipment and material, site-clearing, grading, and on-site storage of equipment and materials. Any of these activities, if undertaken prior to issuance of a PSD permit, would be at the risk of the owner or operator. All on-site activities of a permanent nature aimed at completing a PSD source (including, but not limited to, installation of building supports and foundations, paving, laying of underground pipe work, construction of permanent storage structures, and activities of a similar nature) are prohibited until the permit is obtained, under all circumstances. This December 1978 policy defines the type of construction activities allowed at a PSD-affected source prior to issuance of a PSD

permit.

Since section 52.21 (i) (1) specifies that a source may not begin actual construction (on an emissions unit) until a PSD permit is obtained by that source, and "begin actual construction" at Section 52.21 (b) (11) refers to the emissions unit, it is necessary to clarify the definition of emissions unit. "Emission unit" as defined at Section 52.21 (b) (7) refers not only to units which emit pollutants subject to review under PSD, but to any part of the source which emits a pollutant subject to regulation under the Clean Air Act. By definition then, any part of a PSD source which would emit any pollutant subject to regulation under the Act is considered an emissions unit, even if that particular unit is not subject to PSD review. The emissions unit would include any installations necessary to accommodate that unit. Therefore, before issuance of the PSD permit, construction is prohibited on any emissions unit or on any installation designed to accommodate the emissions unit. If the emissions unit (including any accommodating installation) is an integral part of the

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source or modification (i.e. the source or modification would not serve in accordance with its original intent, except for inclusion of the emissions unit), the PSD permit must be obtained before construction on the entire source commences.

The policy statement from 1978 reflects the current policy on the types of construction activities which are prohibited, or may occur at risk to the owner prior to issuance of a PSD permit. Language changes in the regulations after this guidance was issued did not alter EPA's interpretation of what a source may do prior to obtaining a PSD permit.

If you have any questions, please contact Sally M. Farrell at FTS 382-2875.

Edward E. Reich

cc: Kirt Cox, OAQPS  
Gregory Foote, OGC  
Douglas A. Johns, DOJ  
Judith Katz, OECM  
Tim Osag, Region VIII  
NSR Regional Contacts