

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
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DENVER, COLORADO 80202-2408**

March 22, 1990

Ref: SAT-AP

Jeffrey T. Chaffee, Chief  
Air Quality Bureau  
Department of Health and  
Environmental Sciences  
Cogswell Building  
Helena, Montana 59620

RE: Comments on the Draft Permit for Conoco Coker and Sulfur Recovery Facility

Dear Jeff:

EPA Region VIII has reviewed the draft permit and permit application analysis prepared by the Department for the proposed modifications and new equipment installations at the Conoco refinery in Billings, Montana. We have some comments and questions to submit during the public comment period, and March 23, 1990.

Generally speaking, I would like to commend the Department on this permitting effort. The draft permit not only appears to meet most of our enforceability concerns, but it is also written such that a potentially vary complicated regulatory scenario has been simplified to enable a relatively straight-forward compliance determination. The permit contains annual, 24-hour, and hourly emission limits; it specifies the compliance methods; it requires CEMs for continuous compliance demonstration, and it contains sufficient record-keeping and reporting requirements.

The most significant issue we focused on in our review was the question of whether or not the proposed project should be considered as two separate facilities with two permits, or as one facility and one permit. We believe that the proposed project should be treated as two separate sources, based on our understanding that the Karley ATS operation is a separate economic entity under the control of Karley and not Conoco. Our belief that this operation is a separate source and not a support facility, is based on the classification process contained in the Standard Industrial Classification Manual. Some EPA guidance on this issue is found in a PSD applicability determination (PSD/83), dated March 16, 1979 from Ed Reich (located in the New Source Review Guidance Notebook - PSD 3.10). This determination discussed operations which are under joint ownership or control. The decision references the revised emission offset policy (44 FR 3274-85 of January 16, 1979) which also provides guidelines that apply to PSD:

“For the time being, determinations of what entities control, are controlled by, or are under common control with, the applicant will be made on a case-by-case basis. However, to save time and resources of both applicants and decision makers, EPA proposes to establish criteria for determining issues of common control. For example, any person with a ten percent voting interest in an entity, or with the power to make or veto decisions by the entity to implement major emission-control measures, might be deemed to control the entity. Such criteria would also be used for determining whether facilities are part of the same source (p. 3279 of the FR, January 16, 1979).”

Although the issue is subject to public comment, the Stationary Source Compliance Division believes that a person with as much as 50% voting interest in an entity should be considered to control the entity.

Other evidence of joint control of the proposed project might support a finding that it should be treated as one source rather than two. The Department should evaluate and document the correct relationship between Conoco and Karley to determine if one or two permits are required. If the Department’s decision is to issue one permit, how will the liability issue be handled should an enforcement action prove necessary as a result of possible violations at Karley? For example, if Karley’s emissions over exceed permitted limits, would the Department take an enforcement action against Conoco? Will Conoco have the authority to control emissions from the ATS plant such that an existing violation could be eliminated and/or a potential violation could be avoided?

In addition to the permitting issue discussed above, we have the following comments and questions:

1. Section II, Condition C, identifies what items are to be included in an upset emission reports. The items listed are very good, but one significant item is missing. That is the requirement for the source to discuss what corrective actions will be taken to prevent a recurrence of the situation which caused the upset. Without corrective steps, the source could experience the upset condition over and over again until it becomes a predictable emission occurrence.
2. Sections II, Condition G.3, identifies an annual emission limit. Is this limit based on a rolling 12-month total? If so, the permit should state how and when the source will determine compliance with the limit.
3. In Section II, Condition G.5.b, does the 0.10 grains/dsef emission rate result in the emission limits expressed in G.5.a when the equipment is operating at design capacity?
4. Section II, Condition I outlines how compliance with the emission limitations will be achieved. However, what assumptions will be made during the time that CEMs are not operating? It is necessary to assume some emission rate during the time that the CEMs are inoperable.

5. In Section III, Condition B, it is not clear what the averaging time is for the monthly reports. Are they block emission totals for each calendar month or rolling 30 day totals? Condition b.2 contains the future tense “may occur” which we believe should be the past tense “occurred” since this is a report of what has happened.
6. In Section III, Condition B, there seems to be a missing requirement. An item should be required for the source to discuss what corrective actions will be taken to prevent a recurrence of the upset situation.

EPA Region VIII appreciates this opportunity to comment on this proposed permit action. Please address our comments when you issue the permit. Also, please provide us with your justification for issuing one or two permits to ensure proper implementation of the new source review rules, specifically under ARM 16.8.1105, as well as enforcement aspects under ARM 16.8.1109. If some of our other comments are not addressed in the permit, please provide a written response to those comments. This information should be provided shortly after permit issuance, to allow EPA sufficient time to determine if an appeal to the Montana Board of Health and Environmental Sciences under MGA 75-2-211 is justified. If you wish to discuss these comments, please contact Kris Knutsn at (303) 293-1754 or John Dale at (303) 294-7611.

Sincerely,

Douglas M. Skie, Chief  
Air Programs Branch

cc: Eric Finke, BMO