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

11/15/78

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: Issuance of PSD Permit to Sources Impacting Dirty and Clean Air Areas

FROM: Director
Division of Stationary Source Enforcement

TO: Enforcement Division Directors
Regions I-X

The following addresses several questions regarding issuance of PSD permits to sources that impact dirty (nonattainment) as well as clean* (attainment) air areas. These questions have been raised by a number of the Regional Offices.

1) Does a source which a) has allowable emissions equal to or greater than 100 tons/year and therefore is subject to the more stringent requirements of the emission offset ruling (41 FR 55524) and b) would impact no clean areas require PSD review?

Such a source need not obtain a PSD permit if it has demonstrated to the satisfaction of the Administrator that no clean area will be impacted and if the determination of no clean area impact has been subject to public review in accordance with §52.21(r), 43 FR 26408 (June 19, 1978). If the State new source review procedure met the requirements of paragraph (r) and if it included a determination that no PSD impact would occur, a duplicative EPA review would not be necessary.** Then, based on the findings of the State, the Administrator could determine that no clean area would be impacted. Once the Administrator had determined that no clean area would be impacted, the source

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*The term "clean area" means an area that is actually meeting the applicable NAAQS and includes clean pockets of designated nonattainment areas.

**This assumes that the State adequately informed the public in its notice of the significance under §52.21 (i)(5) of the regulations.

would have to be notified in writing that it was not subject to PSD permit requirements.

If the State §51.18 review did not include a demonstration that no clean area would be impacted or if it did not meet the requirements of §52.21(r), an additional review, subject to the requirements of paragraph (r), would have to be conducted by the permitting authority to determine whether any PSD impact would result. If a finding is made that no clean area would be impacted, the source must be notified in writing that the PSD permit requirements do not apply.

According to §52.21(i)(5) of the PSD regulations, the requirements of paragraphs j, l, n, and p, relating to BACT review and analyses of impact on air quality, soils, and vegetation, shall not apply to a major new source with respect to a particular pollutant if

a) for that pollutant the source is subject to the more stringent requirements of the emissions offset ruling, and

b) for that pollutant, no clean areas would be impacted by the source. See §52.21(i)(5), 43 FR 26388, 26406 (June 19, 1978).

The requirements of paragraph (r) relating to public participation are not waived, however, and must be satisfied as described in the preceding paragraphs.

2) Suppose that a source would, with respect to a particular pollutant, affect only dirty air areas and have allowable emissions of less than 100 tons per year. Would §52.21(i)(5) exempt such a source from full PSD review as to that pollutant?

No. For §52.21(i)(5) to apply to a source, the source must be "subject to the emission offset ruling", as well as affect no clean air area. 43 FR 26406. In light of the preamble to the new regulations, we would interpret the phrase "emission offset ruling" as referring exclusively to the more stringent requirements of that ruling, especially those for LAER and offsets. In the preamble, EPA explained that the purpose of §52.21(i)(5) was to avoid any PSD review that would be "pointless." 43 FR 26394. As EPA noted, PSD review of sources subject to the requirements for LAER and offsets would indeed be pointless. Review, however, of sources not subject to those

requirements would in many instances have some point. The emission offset ruling would require such sources to meet only the applicable emission limitations in the State Implementation Plan. 41 FR 55525, 55528. PSD review, on the other hand, would impose on many such sources, particularly those with allowable emissions equal to or greater than 50 tons per year, tighter controls than the emission offset ruling would, since many State Implementation Plans contain no limitation as stringent as BACT. Hence, it appears that EPA intended §52.21(i)(5) to exempt only those sources which would be subject to the more stringent requirements of the ruling. Currently, only sources with allowable emissions equal to or greater than 100 tons per year would be subject to those requirements. Consequently, §52.21(i)(5) would, in our view, exempt no source with allowable emissions of less than 100 tons per year.

3) Suppose that a source would, with respect to a particular pollutant, affect a dirty air area and have allowable emissions of less than 100 tons per year. Would an applicant for a PSD permit for such a source ever have to obtain, in order to get the permit, emission reductions which would offset the effect that emissions of that pollutant from the source would have on the dirty air area?

No. Section 52.21(l) is the only provision in the new PSD regulations which arguably would impose such a requirement. It provides that an applicant must show that the proposed source would not contribute to the violation of any NAAQS. 43 FR 26407. Since any source which would affect an area where a violation already exists would, to some extent, contribute to that violation without offsets, §52.21(l) on its face seems to require an applicant to obtain offsets no matter how insignificant the contribution. The emission offset ruling, however, currently requires offsets only for sources with allowable emissions equal to or greater than 100 tons per year. 41 FR 55528. It does not require offsets for smaller sources, on the ground that their effects are individually too insignificant. Id. at 55525. To require offsets for such sources for PSD purposes would be in effect to amend the emission offset ruling. If in promulgating §52.21(l) EPA had intended to do that, it would have clearly and affirmatively indicated that it did. The new regulations and their preamble, however, contain no such indication. Consequently, we would conclude that EPA did not intend §52.21(l) to require offsets for sources with allowable emissions of less than 100 tons per year.

It should be noted that EPA intends to promulgate revisions to the emission offset ruling which would require offsets for sources with potential emissions greater than or equal to 100 tons per year and allowable emissions greater than 50 tons per year. Hence, in time, §52.21(l) will require offsets for many sources with allowable emissions of greater than 50 tons per year.

4) When a source is subject to both the offset policy and the PSD requirements with respect to a particular pollutant, must the source obtain a new source review permit before a PSD permit can be issued?

Yes. Such a permit is necessary in order to demonstrate, for PSD purposes, that the source meets all applicable legal requirements relating to the nonattainment area or areas it would affect.

This memorandum has been prepared with the assistance and concurrence of the office of General Counsel. If you have any questions on this memorandum, please contact Libby Scopino at FTS 755-2564.

/s/

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