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

JUL 2 8 1988

MEMORANDUM

SUBJECT: Supplemental Guidance on Implementing the North County Prevention of Significant Deterioration (PSD) Remand

FROM: John Calcagni, Director
Air Quality Management Division (MD-15)

TO: Addressees

On September 22, 1987, Gerald Emison issued guidance on implementation of the Administrator's remand decision in the North County PSD permit appeal, PSD Appeal No. 85-2. That document sets forth, in general terms, the essence of the remand--that all pollutants, including those not directly regulated by the Clean Air Act are to be considered in making the best available control technology (BACT) determination for a PSD applicant. Now that the guidance is out, various issues beyond the scope of the September 22, 1987 document have arisen. I am addressing two of them. The first deals with the flexibility that the permitting authority has with respect to pollutants considered and controls selected, while the second involves the level of detail needed in the PSD public notice.

Consideration of Air Toxics in the BACT Determination

The BACT requirement is implemented through case-by-case decisionmaking. While this necessarily involves significant use of judgment by the permitting authority, certain policy presumptions apply: that it consider the full range of pollution control options available and choose the most effective means of limiting emissions, subject only to a showing of compelling reasons of economic or energy impracticality. Those are the important lessons underscored by the North County and H-Power remands. The presumption of employing a top-down BACT analysis was further emphasized in Craig Potter's memorandum of December 1, 1987, entitled "Improving New Source Review (NSR) Implementation," to the Regional Administrators. Other policy presumptions were articulated in the September 22, 1987 guidance requiring that the BACT determination for regulated pollutants be sensitized to the control of unregulated air pollutants (including air toxics).

The September 22, 1987 policy does not identify which toxic substances, require consideration in the BACT analysis, and at what levels. Among the reasons for this is that the information with respect to the type and magnitude of emissions of noncriteria pollutants for many source categories is limited.

For example, a combustion source emits hundreds of substances, but knowledge of the magnitude of some of these emissions or the hazard they produce is sparse. While the Environmental Protection Agency (EPA) is pursuing a variety of projects that will help permitting authorities to

determine pollutants of concern, EPA believes it is appropriate for agencies to proceed on a case-by-case basis using the best information available. Thus, the determination of whether the pollutants would be emitted in amounts sufficient to be of concern is one that the permitting authority has considerable discretion in making. Reasonable efforts should be made to address these issues. The EPA expects these efforts to include consultation with the Regional Office and with the Control Technology Center (CTC), National Air Toxics Information Clearing house, and Air Risk Information Support Center in the Office of Air Quality Planning and Standards (OAQPS) and review of the literature, such as EPA-prepared compilations of emission factors. Source-specific information supplied by the permit applicant is often the best source of information, and it is important that the company be made aware of its responsibility to provide for a reasonable accounting of air toxics emissions.

Similarly, once the pollutants of concern are identified, the permitting authority has flexibility in determining the methods by which it factors air toxics considerations into the BACT determination, subject to the obligation to make reasonable efforts to consider air toxics. Consultation by the review authority with EPA's implementation centers, particularly the CTC, is again advised. One exception to this approach is where a municipal waste combustor is involved. Here, the OAQPS has provided rather detailed guidance regarding pollutants of concern and their control. (See memorandum of June 22, 1987, from Gerald Emison to EPA Regional Air Division Directors.) Similar guidance on other source categories will be developed as appropriate.

It is important to note that several acceptable methods, including risk assessment, exist to incorporate air toxics concerns into the BACT decision. Whatever the methods selected, these serve only to affect the selection of the control strategy. The overall approvability of a project once it applies BACT depends on other criteria, as well, and is outside the scope of the North County remand and this guidance.

Level of Detail in Public Notice

The September 22, 1987 guidance strongly emphasizes public participation. The purpose of the PSD public notice is to provide sufficient information as to the type of source involved, and its projected emissions and proposed controls, such that potentially interested citizens will be apprised of the main issues. Individuals wishing to investigate those issues in depth can turn to the technical support document. Our intent regarding air toxics Is to provide the public with adequate notice of potential issues. The identification of specific toxic substances and the degree of detail in the notice should be consistent with the concern posed by air toxics.

For example, if there are no air toxics projected to be emitted in amounts sufficient to be of concern to the permitting authority, the notice

can be handled very simply. One way, but by no means the only way, of doing this would be to note that "the [permitting authority] also considered the impact of available control alternatives on emissions of other pollutants, including those not regulated by the Clean Air Act, in making the BACT determination, but found that no such pollutants would be emitted in amounts sufficient to cause concern."

When any toxic pollutants of concern have been identified, it is appropriate that the public be informed of them more directly. A variety of approaches is acceptable. Public notice requirements would be met if all these pollutants are mentioned individually, by name, or addressed by referring to them by groups (e.g., "toxic metals"). It might be reasonable to note the main representative pollutants (e.g., "the State has examined other pollutants of potential concern, including compounds A, B and C"). In short, the permitting authority can provide adequate notice in several ways, including the names of the pollutants at issue and an indication that the compounds are toxic. The notice can be quite brief on this subject (1-2 sentences), deferring any detailed analyses and discussion to the technical support document.

EPA Oversight

The EPA Regional Offices are now supporting State and local implementation of PSD review in virtually all cases and are charged with taking enforcement action, as necessary, to ensure proper implementation of the September 22, 1987 policy. Action is contemplated only where basic procedural steps are missed, such as appropriate public notice, or inclusion of discussion of relevant control alternatives in the technical support document, or where the substantive technical analysis is clearly inconsistent with general practice. Priority should be given to those cases in which there is a practical impact to any followup--for example, more effective and affordable controls were not considered.

The OAQPS is taking steps to facilitate continuing effective implementation of this policy. One step toward this goal is the recent addition of this policy in reviews of PSD permits under the National Air Audit System.

Thank you for your progress in carrying out this significant regulatory requirement. If you need further assistance, please contact Michael Trutna at FTS 629-5345 or Kirt Cox at FTS 629-5399.

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Director, Air, Pesticides, and Toxics Management Division, Region IV
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