



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
AIR AND WASTE MANAGEMENT

SUBJECT: Additional Guidance on Prevention of Significant
Deterioration (PSD) Regulations

FROM: Roger Strelow
Assistant Administrator
for Air and Waste Management (AW-443)

MEMO TO: Regional Administrators

Questions arising from the Regions have indicated the need for further headquarters guidance on various aspects of the PSD regulation (40 CFR 52.21).

A. Several questions relate to 40 CFR 52.21 (d) (5), which reads as follows:

(5) Where an owner or operator has applied for permission to construct or modify pursuant to this paragraph and the proposed source would be located in an area which has been proposed for redesignation to a more stringent class (or the State, Indian Governing Body, or Federal Land Manager has announced such consideration), approval shall not be granted until the Administrator has acted on the proposed redesignation.

The purpose of paragraph (d)(5) is to insure that while a governing body is seriously pursuing the redesignation of an area to Class I, the redesignation will not be compromised or nullified by a new or modified source. I would like to stress several basic points about this provision:

1. The issue of which was first in time -- the source's permit application or the governing body's announcement of redesignation consideration -- is irrelevant under paragraph (d)(5). If the governing body announces such reconsideration any time before a final permit has been issued, paragraph (d) (5) will be triggered.

2. A proposed source need not be located within the political boundaries of the governing body considering the redesignation in order for paragraph (d)(5) to apply. If the source's emissions could pose a threat to the proposed redesignation, then final permit approval would have to be withheld pending EPA's action on the proposed redesignation.

As is true of most aspects of the PSD regulations, the Regions will have to exercise their sound judgment on a case-by-case basis in determining whether a proposed source would be located far enough from the political boundaries of the governing body so as not to pose a threat to the proposed redesignation. This type of judgment should not present novel problems for the Regions, since the PSD regulation ultimately requires (in paragraph (d)(2)(i)) a finding that a source will not violate the applicable increments in any surrounding areas.

I realize that one could read paragraph (d)(5) in a very literal fashion to apply only to sources which would be constructed within the political boundaries of the governing body considering the redesignation. This interpretation would, however, do violence to the basic purpose of the PSD regulation (which is to insure that applicable air quality increments are not violated by new sources, without regard to the political boundaries a source might choose to locate within), and would do violence to the basic intent of paragraph (d) (5) (which is to insure that a pending redesignation will not be jeopardized by a new source).

3. Paragraph (d)(5) will be triggered even where a governing body "announces consideration" of a proposed redesignation. There is good reason for allowing such an early triggering event, since EPA regulations and guidelines require the governing body to go through several procedural steps (including detailed document preparation) before the redesignation can even be formally proposed. If this approach were not taken, then a governing body which was actively and expeditiously endeavoring to secure a redesignation could still find the redesignation compromised or nullified by an intervening permit approval.

We must recognize, however,, the potential for abuse in such a clause and take care to guard against it. The clause must not operate to allow a governing body to frustrate construction of a source if that governing body does not seriously intend to pursue a redesignation or does not pursue it actively and expeditiously.

Therefore, whenever a governing body announces it is considering a redesignation,* and that announcement would affect a proposed source's application, EPA should make clear to the governing body (in writing) that new source approvals will be withheld only so long as the governing body is actively and expeditiously proceeding towards redesignation. EPA should set forth a reasonable schedule of action considering all the circumstances of each case** and notify the governing body that any significant departure from that schedule, or any other evidence that the governing body is not actively and expeditiously pursuing redesignation, would be considered grounds for EPA to suspend the operation of paragraph (d)(5) and complete action on permits being withheld.

Such a suspension of paragraph (d)(5) should not occur automatically upon the failure of a governing body to meet a given deadline. Again, all relevant circumstances would have to be weighed. For instance, if a delay were caused through no fault of the governing body, it would probably be improper to suspend paragraph (d)(5). The main point is that EPA must remain satisfied that the governing body is doing all that can reasonably be expected to process the redesignation actively and expeditiously.

4. Paragraph (d)(5) only restricts EPA from granting permit approval while a redesignation is pending. A Region may therefore carry out all other provisions of paragraphs (d) and (e) in this period (if it chooses). This might have

* No special form of "announcement" is required. Any evidence that the governing body, or an appropriate official thereof, has seriously determined to consider redesignation and has communicated this determination in writing to EPA should suffice. In any event, as discussed in the text above, the form of announcement is not nearly as important as the governing body's follow-up actions in determining whether paragraph (d)(5) should hold up a permit.

** I.e., type of governing body (State? Indian Tribe?), number of potentially-affected jurisdictions, number of other governmental approvals needed, size of area affected, etc. It would probably be wise to develop this schedule in consultation with representatives of the governing body.

the salutary effect of "keeping the heat" on the governing body to complete its redesignation procedures. It might also, however, constitute in a Region's judgment an unwarranted diversion of resources for a permit which may never be issued. The Regions should use their own judgment in this area.

5. A Region may grant a permit pending a redesignation if the Region determines that the source would not violate the increments which would result from the redesignation.

6. When a potential applicant contacts a Region about initiating the permit process, the Region should make the applicant aware of the implications of paragraph (d)(5) so that the applicant may be encouraged to complete its application expeditiously. Obviously, whenever paragraph (d)(5) is triggered, the Region should immediately notify those whose permit applications will be affected.

B. A question has been raised concerning the applicability of the PSD regulations to certain kinds of coal cleaning plants [§52.21(d)(1)(ii)], specifically those that do not utilize a thermal dryer. Although the wording of the proposal of §52.21(d)(1)(ii) read "coal cleaning plants (thermal dryers)" the final regulations read simply "coal cleaning plants." Region VIII has recently interpreted the PSD regulation to cover all coal cleaning plants, regardless of whether a thermal dryer is used. Region VIII's interpretation is correct.

C. One Region has questioned whether a PSD permit can be conditioned to require emission control that goes beyond best available control technology (as when a power plant intends to use low sulfur coal and a flue gas scrubber and will be well below the NSPS for SO₂ from power plants). Unless it is necessary to meet the applicable air quality increment, we can not require a source to go beyond BACT. However, should a source indicate on its permit application that its emissions will be less than that which we would ordinarily define as BACT, the lesser emission rate may be made an enforceable condition of the permit. The legally enforceable emission rate should be used for purposes of keeping track of the unused portion of the increment. Obviously, the situation where actual emissions are less than the legally enforceable emission rate presents the potential for a source to "hoard" a major portion of the remaining increment for future expansion. Therefore, where a source will go beyond BACT, Regions should attempt to make the lesser emissions a legally binding permit condition.

D. Finally, some Regional Offices have requested a change to the PSD regulations enabling the Regional Administrator to require the applicants to perform the necessary diffusion modeling. We feel, and OGC concurs, that adequate authority to require such analysis is presently provided under §52.21 (d)(3), which indicates that EPA can require a source to submit ". . . information necessary to determine the impact that the construction or modification will have on sulfur dioxide and particulate matter-air quality levels . . .".

cc: Regional Counsels
Regional Air Directors
Regional Enforcement Directors