



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
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June 1, 2004

Mr. Evelyn Rodriguez, Director
Air Quality Area
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910

Dear Ms. Rodriguez:

This is in response to your May 6, 2004 request for guidance regarding a temporary operating permit dated April 25, 2003 that the Puerto Rico Environmental Quality Board (PREQB) issued to Caribbean Architects & Engineers (CAE) for a period of one (1) year which has expired. CAE had been contracted by the Fluor Daniels Company to build the structure for the pharmaceutical processes to produce Humalog at a new plant (PR5) in Eli Lilly's Carolina facilities. CAE had this temporary operating permit for the installation and operation of 68 electric generators and 8 light towers that they needed for the construction. The electrical generators were permitted to operate for 12 months with emissions over the major source threshold. On September 5, 2003, CAE applied for a modification to the temporary operating permit to extend the operation of the equipment for 8 additional months. PREQB denied the extension request and allowed the temporary operating permit to expire on April 25, 2003. PREQB's position is that the temporary permitted operation became subject to Title V according to Rule 602(a)(1)(ii). PREQB strongly believes that Eli Lilly should be responsible in addressing these temporary emissions in its Title V permit.

As you know, the Clean Air Act Amendments of 1990 (the Act) require that nonroad engines be regulated as mobile sources, not stationary sources. Regulations for nonroad engines have been codified in 40 CFR Part 89. As far as we know, no formal determination was made whether the equipment in question was considered to be nonroad engines during the initial 12-month period when CAE received a temporary operating permit. Notwithstanding, according to the definition of nonroad engines in 40 CFR §89.2, internal combustion engines are **not** considered to be nonroad engines if they remain or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. The regulation also defines "location" as "any single site at a building, structure, facility, or installation." It further states that "any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period." Based on this definition, it is EPA's determination that the electric

generators and the light towers (whether or not they were considered to be nonroad engines prior to the expiration of the 12-month period) do not meet the definition of nonroad engines if they continue to be used at Eli Lilly after the initial 12-month period expired. Therefore, if CAE wants to continue to use the electric generators and light towers, the equipment will be regulated as stationary sources.

The definition of major source found in 40 CFR §70.2 requires all stationary sources located on contiguous or adjacent properties under common control and belonging to a single major industrial grouping to be considered as the same source. This approach of grouping sources according to their 2-digit Standard Industrial Classification (SIC) code has been established in the New Source Review (NSR) and Prevention of Significant Deterioration of Air Quality (PSD) programs under Title I of the Clean Air Act. There are no provisions in Title I or Title V of the Act, or in regulations developed pursuant to them, for excluding contracted or temporary operation in defining major sources. Accordingly, it has been EPA's policy that temporary and contractor-operated units be included as part of the source with which they operate or support. As such, we agree with your assessment that if Eli Lilly plans to extend the usage of the temporary equipment beyond the original 12-month period, it will have to submit a revised Title V permit application within 12 months in accordance with Rule 602(a)(1)(ii) and a Prevention of Significant Deterioration of Air Quality (PSD) applicability demonstration.

If you have any questions, please contact Mr. Frank Jon of my staff, at (212) 637-4085.

Sincerely yours,

/ s /

Steven C. Riva, Chief
Permitting Section
Air Programs Branch

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