UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JUL 17 1980

Office of
Enforcement

MEMORANDUM

SUBJECT: PSD Applicability: TEX-USS
High Density Polyethylene Plant

FROM: Director
Division of Stationary Source Enforcement

TO: Allyn M. Davis Director
Air & Hazardous Materials Division - Region VI

This is in response to your memo of June 10, 1980, requesting a determination as to whether the proposed TEX-USS Polyethylene plant should be considered a modification or a new source for purposes of PSD applicability.

The 1978 PSD regulations define source as any grouping of pollutant emitting activities which are located on one or more contiguous or adjacent properties and which are owned or operated by the same persons (or persons under common control). 40 CFR 52.21(b)(4)(1979).

The TEX-USS project and the U.S.S. Novamont plant satisfy the first criteria in the definition of source; they will be located on the contiguous property. The question which must be answered is : Will the TEX-USS project and the U.S.S. Novamont plant be under common control?

According to the information in your memo, the U.S.S. Novamont plant is owned by U.S. Chemical, which is a wholly owned subsidiary of U.S. Steel. The TEX-USS project will be owned by TEX-USS, which is a partnership of Texaco and U.S. Steel. Each of those corporations will have an equal say in the management of the partnership. The key question boils down then to whether U.S. Steel would have “control” over the partnership within the meaning of the 1978 definition of “source”.

The 1978 PSD regulations and the preamble to them do not define the term "control". Presumably, therefore, the Administrator intended the therm to have the same meaning it has in common parlance. The Securities and Exchange Commission (SEC) has established a definition of "control which, in our view, states that common sense meaning with respect to business entities. The definition provides that:

> The term "control" including the terms "controlling," "controlled" by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership or voting shares, by contract, or otherwise. See, e.g., 17 CFR 230,405(F)(1979).

Here, U.S. Steel has equal power with Texaco to decide how the TEX-USS project should be run and it has the power to veto any proposal by Texaco. Hence, it has the power to "cause the direction of the management" of TEX-USS. As a result, U.S. Steel would have "control" over TEX-USS and the proposed polyethylene plant.

Since U.S. Steel would have control over the U.S.S. Novamont plant as well as the TEX-USS project, the TEX-USS project should be considered a major modification, rather than a new source, for the purposes of the 1978 PSD regulations.

If you have any questions regarding this determinaiton, please contact Janet Littlejohn of my staff at 755-2564.

Edward E. Reich

cc: Jim Weigold
Peter Wyckoff