

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV
345 COURTLAND STREET
ATLANTA, GEORGIA 30365

MEMORANDUM

DATE: DEC 1987

SUBJECT: Resolving Nonattainment NSR Violations by Making Major Sources Minor

FROM: Bruce P. Miller, Chief
Air Programs Branch

TO: Gary McCutchen, Chief
New Source Review Section (MD-15)
OAQPS

Recently, Region IV has had to address several questions regarding the proper permitting procedures for violating sources in nonattainment areas. In order to help resolve the questions with which we are now faced, we are requesting written confirmation of the following positions:

- 1) In nonattainment area, is it permissible for a source that was permitted as a minor source (i.e., less than 100 tons per year of the nonattainment pollutant), but actually operated at a level above the 100 ton per year threshold, to retain its minor source status?

It is our position that a minor source can remain a minor source, even if it actually operated as a major source, provided the proper penalties are assessed for the period of violation.

- 2) It is permissible for a source in a nonattainment area which never obtained a construction permit (or which received an invalid minor source permit), but was built and operated at a level above the 100 ton per year threshold for some period of time, to be permitted as a minor source (i.e., potential emissions restricted to below 100 tons per year of the nonattainment pollutant)?

If so, will the permitting of the violating source as a minor source negate the Lowest Achievable Emission Rate (LAER) and emissions offset requirements which would have been imposed if the source had been permitted as a major new source at the time of construction?

It is our position that a source that constructed and operated (without a permit) as a major source may be permitted as a minor source, provided the proper penalties are assessed, to remove the economic benefit achieved by the company for operating a major source without controls or without a valid permit.

It is also our position that if such a source is permitted as a minor source that the requirements for LAER and offsets would not apply.

- 3) Do these same conclusions hold true for sources in attainment areas?

It is our position that they do.

Please concur with our position or advise otherwise. You may contact me or Wayne Aronson of my staff at FTS 257-2864 if you need further clarification or additional information.