

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY WASHINGTON, D.C. 20460

MAY , 11 2001

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

FROM: Bruce A. Buckheit, Director
Air Enforcement Division

TO: Ken Eng, Chief
Air Compliance Branch, Region II

SUBJECT: Response to your Request dated April 8, 2000 on Streamlining of Multiple
Applicable Requirements

I am writing in response to your memorandum requesting our views concerning "streamlining" opportunities in permits for gas turbines subject to NSPS subpart GG in a co-generation mode with industrial boilers subject to Subparts Db or Dc. Your memorandum suggested that EPA's White Paper # 2 does not provide an opportunity to consolidate NSPS and PSD requirements applicable to co-generation systems of this type. We have reviewed the background information you provided and sought the comments of both OAR and OGC. Our conclusion is that White Paper # 2 is not a barrier to appropriate streamlining opportunities. Under the principles outlined in White Paper # 2, a permitting authority may streamline permits so as to avoid duplication of requirements, by having less stringent requirements subsumed by more stringent ones. However, this streamlining must be done in such a way that assures that each underlying obligation is met.

White Paper # 2 is agency guidance. It is not rulemaking and does not purport to change otherwise applicable law. Streamlining for administrative convenience does not repeal any applicable standard or any associated monitoring requirement. The assumption of the streamlined approach is that compliance with the most stringent limit automatically assures compliance with all subsumed limitations. As you stated in your memorandum, facilities must demonstrate compliance with emission limitations under all applicable programs. In accordance with White Paper # 2, this can be accomplished by using either fully or partially streamlined requirements. In case of multiple regulations applying to the same unit, a source can propose a streamlined approach that would contain the most stringent emissions limitations, monitoring, reporting, and recordkeeping requirements from all the underlying applicable regulations. The permitting authority could approve such a streamlined application, and require that the source's compliance certification indicate that all subsumed requirements are also met.

White Paper # 2 does not provide for the abandonment of more stringent underlying requirements to make the streamlined requirements compatible. For example, it is not appropriate to eliminate the requirement for acid rain or NSPS CEMS and replace it with less stringent parametric monitoring or annual stack testing. In such a case, it is more appropriate to use a partial streamlining approach that preserves both the most stringent monitoring method as well as the tightest emission limitation.

Your main concern regards situations under which the streamlined conditions are violated. Section II.A.4 of White Paper # 2 indicates that, when a source violates a streamlined emission limit of the permit, it "may be subject to enforcement action for violation of one or more of the subsumed applicable emissions limits to the extent that a violation of the subsumed emission limit(s) is documented." We recommend that, in case of a violation of the streamlined limits, the enforcement authority pursue an enforcement action for all violations of permit provisions that can be supported with evidence. Streamlined permit conditions should specifically identify all subsumed applicable requirements, but note that they have been subsumed. A violation of the streamlined limit may or may not be a violation of less stringent requirements, depending on the facts of the case. Enforcement at facilities that have streamlined permits should be no different than at other facilities with multiple applicable requirements. Our enforcement policies are designed to address the situation where a single act violates several requirements. However, this does not mean that every violation of the most stringent requirement is automatically a violation of all subsumed requirements. Some judgment on the part of the enforcement authority is warranted. If the enforcement authority has a reasonable suspicion that more than one limit or other requirement has been violated, it should consider enforcement of all violations and revocation of the streamlined permit conditions.

If you have any questions, please either contact me at 202-564-2260 or Zofia Kosim of my staff, at 202-564-8733.

cc: Richard Biondi
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