

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MEMORANDUM

DATE: May 5, 1982

SUBJECT: A.I. DuPont Institute PSD Permit

FROM: Director Division of Stationary Source Enforcement

TO: W. Ray Cunningham, Chief Air Programs & Energy Branch

This is to respond to your memo of March 30, 1982 which posed several questions concerning a PSD permit which was issued to the A. I. DuPont Institute on September 18, 1980.

According to your memo, the PSD permit contained a sulfur in fuel limitation of 0.85%. DuPont would now like to amend its State (51.18) permit to include a limit on the amount of oil which can be fired and allow the use of 1% sulfur fuel. These limits will reduce the source's potential to emit to below the 250 TPY PSD threshold. After DuPont receives these federally enforceable limitations, the source would like to have its PSD permit rescinded.

The August 7, 1980 PSD regulations contain a section on permit rescission (see 40 CFR 52.21(w)). Although the section does not directly address a situation such as DuPont's, it does not expressly preclude the Administrator from rescinding a permit when the regulations no longer apply. In fact, sections 52.21(w)(1) and (3) imply that the Administrator has the authority to do that.

If DuPont's 51.18 permit is amended to include federally enforceable limitations which would bring the source below the 250 TPY applicability threshold, the source may apply for a permit rescission. In rescinding the permit, the procedure presented in section 52.21(w) should be followed, particularly section 52.21(w)(4).

I would like to emphasize that the 51.18 permit should be amended to include realistically enforceable conditions -- i.e., limit oil used on a gallons of fuel consumed/day or tons of SO₂/day basis. In addition your office should be satisfied that the source can and will operate at these reduced levels, that this is a situation which will persist for the foreseeable future, and that there is no appearance of circumvention of the rules.

Your memo also raised a question concerning baseline date. The PSD permit for DuPont triggered the SO2 baseline in New Castle County, Delaware. If DuPont requests and is granted a rescission, it is necessary to determine the impact, if any, on the baseline date. The preamble of the August 7, 1980 PSD regulations discusses baseline dates and permit rescissions. (See Federal Register August 7, 1980, p. 52717, col. 1) From this discussion in the preamble, it appears that the only time a baseline date may be untriggered is when a source triggered the baseline under the June 19, 1978 regulations but would no longer be subject to PSD under the current regulations. Under the current rules the baseline date is triggered with the first complete application for a PSD permit after August 7, 1977. The baseline date is not affected by a withdrawal or denial of the permit application. DuPont's application fits the criteria for triggering the baseline and that date should remain as the effective baseline date.

If you have any questions regarding this response, please contact Janet Farella of my staff at 382-2877.

Edward E. Reich

cc: Mike Trutna, OAQPS
Peter Wyckoff, OGC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III - 6th & Walnut Sts.
Philadelphia, Pa. 19106

DATE: MAR 30 1982

SUBJECT: A.I. DuPont Institute PSD Permit Rescission and SO2 Baseline
Triggering

FROM: W. Ray Cunningham, Chief Air Programs & Energy Branch (3AW10)

TO: Edward Reich, Director Division of Stationary Source Enforcement
(EN-341)

The State of Delaware and A.I. DuPont Institute are in the process of developing a Federally Enforceable permit condition (51.18 permit) which will limit fuel usage at the institute's boilers such that the source's potential to emit any pollutant would be less than 250 tons/year. Questions have arisen concerning the effect this change will have on DuPont's existing PSD permit and the SO2 baseline date triggered by this source's PSD application. Please evaluate this situation based on the facts given below, and advise us of your decision at your earliest convenience.

The A.I. DuPont Institute applied for a PSD permit under the June 19, 1978 PSD regulations; however, the PSD permit was issued on September 18, 1980 in accordance with the requirements of the August 7, 1980 PSD amendments. The permit provides for the construction and operation of replacement boilers which are considerably larger than the boilers they replace. The replacement boilers were subject to the amended PSD regulations since they constituted a change at an existing non-major source which equated to a major stationary source by itself (Section 52.21(b) (1) (c)). In accordance with existing EPA policy, no credit was given for the closure of the old boilers. The potential emissions of SO2 for the new boilers exceeded 250 ton/year. No other pollutants were subject to PSD review. BACT for SO2 was determined to be a sulfur in fuel limitation of 0.85%. The source has been constructed but has not been fully operational because of low steam demand.

The State of Delaware has proposed to amend DuPont's permit to construct (Section 51.18 permit) by putting a Federally Enforceable limit on the amount of oil which can be fired at the source and allowing for the use of 1% sulfur fuel. The latter change is being proposed to eliminate an economic hardship claimed by the source. The net affect of these amendments will reduce the source's potential to emit to less than 250 tons/year of SO2 and the source would no longer meet the definition of a major source.

Based on the amendments noted above, Delaware and Dupont would like to have the PSD permit for these new boilers rescinded. However, 40 CFR 52.21(w)- Permit Rescission, only addresses the rescission of permits issued under the June 19, 1978 PSD regulations. It is not clear whether this Section limits EPA's PSD permit rescission authority to permits issued under the June 18, 1978 regulations since it does not specifically exclude the rescission of permits issued under the amended regulations. Does EPA have the authority to rescend DuPont's PSD permit based on the implementation of the Section 51.18 permit amendments noted above? If EPA does have the authority, should the procedures prescribed in 51.21(w) be followed?

The DuPont PSD permit application also triggered the SO₂ baseline in New Castle County, Delaware. If the permit is rescinded will the baseline date also be eliminated? Please note that the source is now and has always been clearly subject to PSD requirements. If implemented, the suggested Section 51.18 permit amendments would represent a new restraint on this source.

If you have any questions concerning this source, please contact Mr. Robert J. Blaszcak of my staff at FTS 597-8186.