

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JUN 1 1978

MEMORANDUM

SUBJECT: Interpretation of PSD Regulations as they
Apply to CIBRO, Albany, New York

FROM: Director,
Division of Stationary Source Enforcement

TO: Stephen A. Dvorkin, Chief
General Enforcement Branch
Region II

This is in response to your memo of May 10, 1978, requesting an interpretation of the PSD regulations as they apply to CIBRO Petroleum Products' ongoing construction project in Albany, New York. The questions raised in your memo are addressed below.

1. Q - When a new source incorporates one or more existing facilities, should the emissions from those facilities be considered when calculating potential new emissions for PSD purposes? What would be the result if such existing facilities had been moved to a different location within the same airshed to be incorporated into the new source? If a company purchases an existing source which includes, e.g., a boiler facility, demolishes all of that source except the boiler, and then incorporates the boiler into its new plant, what will be the PSD implications?

A - When a new source incorporates one or more existing facilities, the emissions from those existing facilities should not be considered when calculating the potential emissions from the new source. If the emissions from those facilities were allowed as of August 7, 1977 under the applicable SIP they will not constitute new emissions from that site.

If existing facilities are moved to a new location

to be incorporated into a new source, even within the same airshed, they will be considered new facilities at that site. As such, emissions from those facilities would be considered when calculating the potential emissions of the new source, and would be subject to BACT.

If a company purchases an existing source which includes, e.g., a boiler facility, demolishes all of that source except the boiler, and then incorporates the boiler into a new source, the emissions from the boiler will not be considered when calculating the potential emissions of the new source; the boiler will not be required to apply BACT; and the boiler emissions will not count against the available PSD increments. The preceding statement assumes that the boiler emissions do not increase above the level of actual emissions at the time the baseline was established (August 7, 1977). If the boiler emissions do increase above the baseline level but do not constitute "major modifications", e.g., the boiler increases production up to or below its rated capacity, the increase in emissions will count against the increment but will not be subject to BACT. Subsequent air quality analyses of other major new sources or of the source of which the boiler becomes a part will have to take into account any consumptive effect of the increased emissions, on the increment. If the boiler emissions increase due to "major modifications", e.g., the rated capacity of the boiler is increased, or the capacity is increased beyond some previously permitted level, the increased emissions will be subject to appropriate PSD review (assuming a 100 ton/yr. increase in potential emissions).

2. Q - Will facilities in the categories mentioned in Question 1, above, be exempt from BACT requirements simply because they are "pre-existing?" If so, what regulatory authority is to be cited in finding them exempt from BACT requirements?

A - BACT is to be applied to major new sources and major modifications. An existing facility incorporated into a new source neither constitutes a major modification nor contributes to the new emissions from the new source. (See response to Question #1 above.)

3. Q - Should CIBRO's plant (when the current construction is completed) be viewed as one or more sources? (i. e., should the plant be viewed as a new refinery, a modified petroleum storage facility, or some combination of the two? Note that 90% of the plant's storage capacity will be dedicated to serving its new distillation operation; indeed, no refinery is likely to exist without associated tankage.)

A - The latest draft of the PSD regulations defines a "source" as "any structure, building, facility, equipment, installation or operation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned by the same person (or by persons under common control)". CIBRO's plant should be viewed as a single source - a new petroleum refinery.

4. Q- Should CIBRO's boilers and existing tanks be exempt from BACT requirements" if the source is found to be PSD-affected?

A - CIBRO's existing boilers and tanks, as well as any other existing facilities, should be exempt from BACT as long as they do not undergo modifications.

5. Q - If you agree with Region II's assessment that the source is PSD-affected, do you have any objections to the use of a S113(a)(1) Administrative Consent Order as a vehicle for the resolution of CIBRO's ongoing violation, and as a virtual substitute for a PSD permit? (Note that such a Consent Order, a draft of which was submitted on May 5, 1978, would not be effective as a PSD permit until proper public notice and opportunity for comment has been given; indeed, depending on public reaction, such an Order might have to be rescinded. Our draft embodies language to this effect in the consent paragraph which CIBRO would be asked to sign.)

A - CIBRO's failure to obtain a PSD permit prior to March 1, 1978, makes it subject to review under the new, and more stringent requirements set forth by S165 of the Act, and its implementing regulations. These regulations clearly require that CIBRO obtain a valid PSD permit. Failure to obtain a permit will constitute a violation of these regulations, and will subject CIBRO to enforcement actions.

You propose to issue CIBRO an Administrative Consent Order as a substitute for the required permit. Such a procedure, however, is not consistent with the Agency's policy that administrative orders ordinarily may not be used to correct defective permits. This policy, although developed specifically for defective state new source review permits, also governs this situation.

While an administrative order may not be used to substitute for the necessary permit, your proposal may be issued, with some minor modifications, as a PSD permit. The proposed order is essentially a preliminary determination of the Region's intent to issue CIBRO the required


permit. It will be effective as a permit, provided that it is clearly labeled as such, and if it meets applicable procedural requirements. Specifically, it must include the necessary findings, allow for public comment and, if requested, a hearing may be required on the following issues:

- (a) whether CIBRO's allowable emissions will exceed any applicable increment or NAAQS;
- (b) whether CIBRO's allowable emissions will impact upon a Class I area, or significantly impact on any area already known to be in violation of any applicable increment;
- (c) that BACT, if required, will be installed;. and
- (d) that adverse comment may require a re-evaluation of CIBRO's impact, or whether the controls to be installed in fact, constitute BACT.

The proposed order already satisfies most of these requirements. In addition, it provides the necessary explanation for why EPA feels that a civil action would not be appropriate at this time. These findings, along with a statement that CIBRO waives the issuance of a NOV, should be incorporated into the final order/permit.

If no adverse public reaction has been received the proposed order/permit will become final, provided that the final PSD regulations have been published in the Federal Register. If these regulations have not been published prior to the expiration of the public comment period for the CIBRO action, the Region must delay issuance of the permit. (See March 29, 1978 memo from Edward Tuerk, Acting Assistant Administrator for Air and Waste Management.)

Should you require any further assistance, please feel free to call either Bob Homiak (755-2542) or Libby Scopino (755-2564), both of my staff.


Edward E. Reich

cc: Mike Trutna
Meyer Scolnick