

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

OFFICE OF  
AIR, NOISE AND RADIATION

MEMORANDUM

Date: January 9, 1987

Subject: Interpretation of the Policy on Compliance with the Statutory  
Provisions of Part D

From: Joseph A. Cannon Assistant Administrator for Air and Radiation

To: David P. Howekamp Air Division Director EPA Region IX

I have received and reviewed your memorandum of January 6th. Your memorandum accurately reflects my understanding of the November 2, 1983 policy on compliance with part D requirements. In particular, I agree with your interpretation of those requirements pertaining to new source review rules and discussed in greater length in Section IV.B. and Footnote 4 of the policy. I also understand the Office of General Counsel concurs in this opinion.

Attachment

cc: Air Division Directors, Regions I, III, V  
Air and Hazardous Materials Division Directors, Regions II IV, VI, VII,  
VIII, X  
John O'Connor  
Darryl Tyler  
William Pedersen

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

DATE: January 6, 1984

SUBJECT: Clarification of Sanctions Policy

FROM: David P. Howekamp, Director Air Management Division, Region 9

TO: Joseph A. Cannon, Assistant Administrator Office of Air, Noise, and Radiation (ANR-443)

Considerable controversy has recently arisen in California regarding the interpretation of Footnote 4 of the recent Sanctions Policy ("Compliance with the Statutory Provisions of Part D of the Clean Air Act," November 2, 1983), which discusses rulemaking conditions for new source review rules. Specifically, the first sentence of Footnote 4 has suggested to many readers that EPA will not impose sanctions for any NSR deficiencies arising out of the August 7, 1980 regulations. However, the third paragraph read in concert with Section IV.B seems to imply that SIPs with NSR conditions requiring conformity with the August 7, 1980 regulations must be revised according to the schedule in the existing condition or the area would be subject to the construction ban.

Most 1979 SIPs in California have NSR conditions due on various dates in 1981, requiring submittal of NSR rules consistent with the August 7, 1980 federal regulations. Our interpretation of Footnote 4 with respect to the situation in California is as follows:

- \* Imposition of the construction ban for failure to fulfill a condition must be preceded by an EPA finding that the unmet condition is germane reflects a serious plan deficiency, and is long overdue. When EPA makes this positive finding, the Sanctions Policy requires that the SIP for these areas be disapproved and that the Section 110(a)(2)(I) construction ban be imposed if the NSR rule is not immediately revised to meet fully the August 7, 1980 regulations. In the case of CMA Exhibit A requirements, however, the area may submit in lieu of rule revisions, an enforceable commitment for full implementation of the August 7, 1980 regulations.
- \* We believe that Footnote 4 further states that, for example, a California NSR-conditioned area submitting an NSR rule meeting all August 7, 1980

requirements except for the mandatory shutdown restrictions (40 CFR 51.18(j)(3)(ii)(c)), would be subject to the construction ban unless a commitment for the interim implementation of the restriction was submitted.

- \* With respect to source definition, we understand that EPA has suspended processing of new NSR rules that would be inconsistent with the decision in *NRDC v. Gorsuch*. Nevertheless, an NSR- conditioned area may avoid the construction moratorium either by adopting a dual definition, which EPA is willing to approve during this period before the Supreme Court decides the source definition case, or by retaining the conditionally approved source definition that meets either the January 16, 1979 or the October 14, 1981 federal source definitions. In the second case, EPA would formally extend that portion of the existing NSR condition requiring the area to correct its source definition until such time as the Supreme Court decides the case.

In order to insure national consistency, I would appreciate your confirmation that our interpretation is correct. A response is urgently needed to provide unequivocal guidance to the State and to local boards of supervisors currently updating their NSR rules and facing potentially imminent sanctions arising out of unsatisfied NSR conditions.

cc: W. Pedersen, A-133  
D. Tyler, MD-15  
R. Bauman, MD-15  
M. Trutna, MD-15  
E. Ginsburg, MD-15