

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

APR 24 1980

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: PSD Applicability Determination

FROM: Director
Division of Stationary Source Enforcement

TO: Allyn Davis, Director
Air and Hazardous Materials Division
Region 6

This is in response to your memo of March 18, 1980, regarding the applicability of the PSD regulations to surface coal mines which would be located adjacent to power plants. Your memo described two specific cases involving the construction of power plants, coal mines, and coal preparation plants which would be located on adjacent properties and owned by the same persons. In the first case, Brazos Coal Ltd. plans to construct a new power plant and new coal mine, both at the same time, at the same site. In the second case, the Southwestern Electric Power Company has already obtained a PSD permit for a power plant and is planning to add a coal mine at the same site.

A question fundamental to both cases is whether two independent facilities can be considered part of the same source when they are located on adjacent properties and are owned by the same persons. The answer to that question is yes; they should be considered part of the same source. The definition of source in 40 CFR §52.21(b)(1979) is:

"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 or operated by the same person (or by persons under common control)."

In the amendments proposed September 5, 1979, the wording of the definition of source changed but the meaning is still the same: a source includes all units owned or operated by the same person on contiguous or adjacent properties.

The next question which must be answered is: What should you call the source in these particular cases ("source" meaning all units on the property)?

One reasonable approach would be to look at the purpose or products of the units on contiguous or adjacent properties. Electric power can be identified as a product of both sources, which each consist of a coal-burning power plant, coal mine and coal preparation plant. Therefore, all the units at each source fall under the source category "power plant". Hence, I would consider Brazos Coal Ltd.'s proposed power plant and coal mine to be all one source, a power plant. And I would consider the addition of a mine at Southwestern Electric's power plant to be a modification of the power plant.

In both cases, the source is a power plant which basically is one of the 28 categories listed under section 40 CFR 52.21(b)(1). Therefore, even under the stay (45 FR 7800), fugitive emissions should be included in calculating the potential emissions increases at both sources.

I realize that this interpretation may not provide the same treatment for all surface mines. However, it is consistent with the definitions and with the intent of the regulations.

Should you have any questions, please contact Libby Scopino of my staff at 755-2564.

Edward E. Reich

cc: J. Weigold
P. Wyckoff
Regional PSD Contacts

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: March 18, 1980

SUBJECT: PSD Applicability Determinations in Consideration of EPA's Stay to
the 1978 Regulations

FROM: Allyn Davis, Director
Air and Hazardous Materials Division

TO: Edward Reich, Director
Division of Stationary Source Enforcement

As a result of EPA's stay to the application of 40 CFR 51.24 and 52.21 of the 1978 PSD regulations, we have found that most of the permit applications for surface mining operations are no longer subject to permit review. This is attributed to the majority of emissions being fugitive at mine sites and, since the fugitive emissions are no longer included in determining the source's potential to emit, these mines are no longer major sources.

Fugitive emissions are, however, included in determining the potential to emit pollutants from a fossil fuel-fired electric power plant. We presently have two permit applications for power plants associated with surface coal mines in which the power plant and the mine are located at the same site, the property is contiguous, and both the power plant and mine are under common ownership.

In our first case, Brazos Coal Ltd, both the power plant and the surface mine are to be considered for a PSD permit. The power plant, if considered independently of the mine, is a major source. The power plant and mine are not independent operations but they could conceivably be independent if the mine were to sell the coal to a purchaser other than the associated power plant.

Is this surface mine a facility of a major source (the power plant), and if so, must the mine undergo permit review for the fugitive mining emissions?

In our second case, Southwestern Electric Power Company, the power plant has already obtained a PSD permit and is now seeking a permit for the mine. The coal preparation plant was permitted along with the power plant which means that there are no point source emissions at the actual mining site.

Is this surface mine to be considered a modification to a major source (the power plant), and as such, are the fugitive mining emissions subject to permit review?

Our concern is that we apply the stay such that the permit review requirements are consistent for all surface mining operations. If the owner in either application were to sell land between the power plant and the mine, the property would no longer be contiguous, the mines would no longer be major sources, and the mines would not be subject to the PSD review. If this is allowed, sources could easily circumvent permit review for the mines.

One approach to this problem might be to view all surface mines as sources which are independent of power plants. However, we would have to develop criteria in order to discern what operations should be considered with the power plant and what operations should be considered with the mine. For instance, in our first case, the coal preparation facility is located at the mine site. In our second case however, the coal preparation facility is located at the power plant site. The location of the preparation plant becomes critical when considering mining operations under the stay. The preparation plant is the only facility at these mining operations with significant point source emissions.

We need definitive guidance on how to apply the stay to the Brazos Coal and Southwestern Electric Power Company mines, as well as other permit applications which we may receive prior to finalization of the revised regulations. Please contact us by April 4, 1980 concerning the PSD applicability requirements for the two cited cases so that we can proceed with permit processing.

If you have any questions concerning the issues that we have raised on surface mines, please contact Kathy Bell at (FTS) 729-2742.

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cc: Air & Hazardous Materials Division,
Regions 7, 8, and 9