



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

OCT 5 2009

REPLY TO THE ATTENTION OF:

(AR-18J)

G. Vinson Hellwig, Chief
Air Quality Division
Michigan Department of Environmental Quality
525 West Allegan Street
P.O. Box 30260
Lansing, Michigan 48909-7760

Dear Mr. Hellwig:

This letter provides U. S. Environmental Protection Agency's position concerning the netting analysis conducted by Michigan Iron Nugget, LLC (MIN), as part of its permit-to-install application (application number 386-08) for a new iron nugget processing unit in Palmer, Michigan. The facility's netting analysis, in which MIN proposed to "net out" of Prevention of Significant Deterioration (PSD) review for several criteria pollutants (carbon monoxide, nitrogen oxides, sulfur dioxide and particulate matter) relies on a February 2003 emissions decrease that the facility attempts to characterize as "contemporaneous" with the proposed major modification. After consultation with several HQ offices, we are confirming EPA's position that the facility's netting analysis should be disallowed because it relies on a non-contemporaneous emissions decrease to avoid PSD review.

In support of its position, MIN has attempted to argue that, while the facility's Empire Pellet Line 1 ("Line 1") was idled in February 2003, the facility had no "intent" to permanently shut down Line 1 until January 2005, when Line 1 was partially dismantled. The facility provided an EPA memorandum from 1991 that discusses EPA's reactivation policy in the context of a facility's intent to permanently shut down a unit, and when PSD will apply when such a unit is reactivated. However, EPA's reactivation policy is simply not germane to the rules that apply to netting.

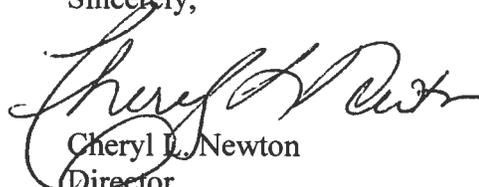
As you know, Michigan's PSD rules at R 336. 2801 (ee)(i), as well as EPA regulations at 40 C.F.R. § 52.21(b)(3)(i), define a "net emissions increase" in part as "the increase in emissions from a particular physical change...[and] *any other increases and decreases in actual emissions* at the major stationary source that are contemporaneous with the particular change and are otherwise creditable." [Emphasis added.] Further, EPA has issued relevant guidance memoranda that have considered and explicitly rejected the argument that a facility's intent or legal right to resume operations are relevant factors in determining whether an emissions decrease or increase is contemporaneous for netting purposes. See *Memorandum from Air Quality Management Division to Region 5, Proposed Netting for Modifications at Cyprus Northshore Mining Corporation, Silver Bay, Minnesota* (August 11, 1992), and the *Memorandum from Division of*

Stationary Source Enforcement to Region 1, PSD Questions at page 1 (April 1, 1981). Rather, the memoranda clearly state that the *actual emissions decrease or increase* in question must fall within the contemporaneous period in order to be eligible for netting. MIN's open-ended "intent" argument runs directly counter to the concept of a finite contemporaneous period. See R 336.2801 (ee) (ii) and 40 C.F.R. 52.21(b)(3)(ii) defining "contemporaneous."

As we have discussed, the contemporaneous period in this case currently begins on December 31, 2004 (five years before the proposed construction date of the new unit). MIN's February 2003 emissions decrease occurred 22 months before the beginning of the contemporaneous period, and thus cannot be characterized as a contemporaneous and otherwise creditable emissions decrease, eligible for netting. Absent the submittal of a valid netting analysis, MIN should submit a complete PSD permit application, pursuant to Michigan's PSD regulations.

Thank you for the opportunity to work together on these issues. If you have any further questions, please feel free to contact me.

Sincerely,



Cheryl L. Newton
Director
Air and Radiation Division