



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

AR-18J

DEC 07 2006

Nisha Sizemore, Chief
Permits Branch
Office of Air Quality
Indiana Department of
Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

Re: General Shale Brick, Inc.

Dear Ms. Sizemore:

On August 14, 2006, I sent you a letter expressing the Environmental Protection Agency's (EPA) concerns with the General Shale Brick, Inc. Significant Source/Permit Modification (Permit nos. 109-22584-00002 and 109-22865-00002). More specifically, I suggested that issuance of the proposed permit could constitute circumvention of the non-attainment new source review (NSR) and Prevention of Significant Deterioration (PSD) permitting requirements, in violation of the Clean Air Act and applicable requirements.

Subsequently, we examined additional materials related to General Shale's proposal. We also reviewed additional EPA policy documents. We found that while EPA has issued guidance on circumvention, as cited in our August 14, 2006 letter, this guidance does not squarely address the particular facts of this case. In the absence of more definitive EPA guidance on this issue, we have determined that Indiana reasonably exercised its discretion as a NSR/PSD permitting authority to issue the Title V and construction permits as it did in this situation. It is our understanding that General Shale plans to install sulfur dioxide control equipment to comply with the applicable MACT standards at 40 CFR Part 63, Subpart JJJJ, which will reduce sulfur dioxide emissions below the major source threshold for this source, that it intends to continue to comply with all emission and operational limits on its original brick manufacturing lines, and that historically it has not operated its brick manufacturing facility to emit major source levels of nitrogen oxides.

EPA's determination that Indiana exercised reasonable discretion is based on the narrow, case-specific facts and unique circumstances present in this situation. In addition, given the case-specific nature of such determinations, we encourage you and your staff to consult with us when making future decisions in this regulatory area.

For future permits, we recommend that Indiana include appropriate testing requirements consistent with EPA guidance to ensure continuing compliance with relevant emission limits. Finally, it should be noted that should General Shale exceed its synthetic minor limits in the future,-full review of the permitting requirements for NSR and PSD for the new brick line could be required.

If you have any further questions regarding this matter, please feel free to call me at (312) 886-4447.

Sincerely yours,



Pamela Blakley, Chief
Air Permits Section

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AUG 14 2006

REPLY TO THE ATTENTION OF:
(AR-18J)

Nisha Sizemore, Chief
Permits Branch
Office of Air Quality
Indiana Department of Environmental Quality
100 North Senate Avenue
Indianapolis, Indiana 46204

Dear Ms. Sizemore:

We have reviewed the General Shale Brick, Inc. Significant Source/Permit Modification (Permit Nos. 109-22854-00002 and 109-22865-00002). This draft permit modification authorizes General Shale to expand their existing brick manufacturing plant in Mooresville, Indiana, a PM_{2.5} (particulate matter 2.5 micrometers in diameter or less) and 8-hour ozone non-attainment area. The proposed modification allows the facility to modify their current plant without undergoing preconstruction review under the New Source Review (NSR) or Prevention of Significant Deterioration (PSD) permitting. For the reasons discussed below, we believe that this would constitute a circumvention of PSD/NSR.

The proposed modification adds an additional brick manufacturing line next to the company's two existing lines; increasing maximum brick production from approximately 250,000 tons per year to over 423,000 tons. The modification also includes the installation of two dry lime injection baghouses on two 1970 kilns and incorporates an applicable NESHAP at 40 C.F.R. Part 63, Subpart JJJJJ. The facility is currently permitted as an existing major source for PM, PM₁₀, SO₂, CO, and NO_x. Indiana is proposing that the facility become a synthetic minor source through the incorporation of production limitations and installation of the baghouses. Through the same permitting action, Indiana is proposing that the company be allowed to make a permit modification up to the major source 100/250 tons per year (tpy) NSR threshold.

A source may take a restriction on its potential to emit in order to become a synthetic minor (e.g., <250 tpy). A source cannot do so, however, if the purpose of this restriction is to avoid applicable preconstruction review requirements. See, e.g., Environmental Protection Agency (EPA's) June 13, 1989 guidance on "Limiting Potential to Merit in New Source Permitting," where EPA affirms that permits with conditions that do not reflect a source's planned mode of operation are sham permits and are void *ab initio*. See also June 17, 1993 memorandum from John Rasnic to George T. Czerniak, "Applicability of New Source Review Circumvention Guidance to 3M - Maplewood, Minnesota."

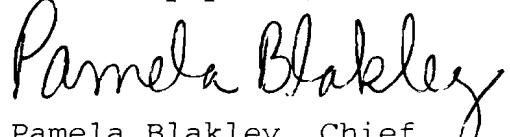
In its June 28, 1989 Federal Register notice on the definition of "federally enforceable," EPA noted that it was not possible to set forth, in detail, all the circumstances under which it would consider an owner or operator to have improperly circumvented PSD/NSR. It reiterated the importance of the new source statutory scheme established by Congress in Parts C and D of the Clean Air Act, and the need to "prevent owners or operators from turning the statutory scheme on its head by using federally enforceable minor source permits in a manner inconsistent with the statute and with EPA's intention." EPA further stated that it would look to "objective indicia" to identify circumvention situations. 54 Fed. Reg. 27274, 27281.

In this case, it seems abundantly clear that the sole purpose for General Shale seeking to convert from major to synthetic minor status is to shortly thereafter augment its emissions without triggering NSR/PSD. The intended conversion from synthetic minor to major source status would occur virtually simultaneously; the company will not even be able to show that its last 24 months of actual emissions have been less than the NSR/PSD major source threshold. See 40 C.F.R. 52.21(b)(21).

Since this facility is an existing major source proposing a physical change that could result in a significant emissions increase, we believe that the change should be subject to NSR and PSD permitting requirements.

If you have any further questions regarding this letter or would like to discuss the matter further, please contact Ethan Chatfield, of my staff, at (312) 886-5112.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Pamela Blakley".

Pamela Blakley, Chief
Air Permits Section