

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

OCT 31 1978

OFFICE OF
AIR AND WASTE MANAGEMENT

Jonathan B. Hill, Esq.
Markham and Hill
Suite 708
1000 Vermont Avenue, N.W.
Washington, D.C. 20005

Re: Deadline for Commencement of Construction
of the Eastport Refinery

Dear Mr. Hill:

This is in response to your letter of September 7, 1978, to Robert Thompson, Regional Counsel for EPA Region 1.

In that letter, you note that on August 18, 1978, EPA issued to the Pittston Company a PSD permit to construct a refinery and marine terminal in Eastport, Maine. You then ask in effect whether EPA would agree that Pittston, in order to preserve the validity of the permit, need commence construction on the refinery and terminal no earlier than 18 months from the date EPA issued it, that is, no earlier than February 18, 1980. For the reasons that follow, EPA would not agree. In our view, Pittston must commence construction no later than September 5, 1979.

As you know, there are three grandfather exemptions in the new PSD regulations. Sections 52.21(i)(2) and (3) contain two of them. Those sections provide that the new regulations do not apply to any major emitting facility for which certain permits were obtained by March 1, 1978, and on which construction commences by March 19, 1979. 43 FR 26388, 26406 (June 19, 1978). Section 52.21(i)(4), which expresses the third exemption, provides that the new regulations do not apply to any major emitting facility which was subject to the PSD regulations in effect before March 1, 1978, if EPA would have evaluated an application for a PSD permit for the facility under those regulations by March 1, 1978, but for an extension of the public comment period. The last sentence of section 52.21(i)(4) adds that "the application shall continue to be processed, and granted or denied, under [the old PSD regulations]." Id. EPA processed and granted the application for the permit for the refinery and marine terminal under the old regulations. It did so in accordance with section 52.21(i)(4).

You read section 52.21(i)(4) as giving permittees 18 months to commence construction on sources which that section would exempt. You rely on the last sentence of the section, having concluded that the sentence "requires that the permit be processed under [old regulations]". These regulations independently set an 18-month deadline for commencement of construction. See 40 CFR 52.21(e)(3) (1977). But to give permittees with sources exempt under section 52.21(i)(4) 18 months to commence construction would be to treat them much more favorably than persons issued the required permits just before March 1, 1978. Sections 52.21(i)(2) and (3) give those persons only one year and 18 days to commence construction. EPA did not intend to treat permittees under section 52.21(i)(4) any differently than persons issued the required permits just before March 1. Indeed, there is absolutely no reason to do that. In addition, the last sentence of section 52.21(i)(4) merely states that the "application" shall be processed under the old regulations. Thus, section 52.21(i)(4) specifies that the substantive and procedural requirements of the old regulations were to govern EPA's decision whether to issue a permit. Section 52.21(i)(4) does not cover the length of time that an issued permit remains valid. That matter is resolved by reference to section 52.21(i) as a whole.

In our view, sections 52.21(i)(2)-(4), when read together, require a permittee under section 52.21(i)(4) to commence construction within the same amount of time that would be the case for a person issued the required permits just before March 1, *i.e.*, within one year and 18 days from permit issuance. In the case of the Eastport refinery and marine terminal, construction on it must commence, therefore, on or before September 5, 1979.

This interpretation of section 52.21(i) is nationally applicable final action within the meaning of Section 307(b)(1) of the Clean Air Act. As such, it is reviewable only in the United States Court of Appeals for the District of Columbia Circuit.

If you have any questions, please contact Peter Wyckoff of the Office of General Counsel.

Very truly yours,

/s/

David G. Hawkins
Assistant Administrator for
Air, Noise and Radiation (ANR-443)

cc: William R. Adams, Jr., Regional Administrator, Region I
Harley Laing, Assistant Regional Counsel, Region I
Peter Wyckoff, Attorney, Office of General Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAR 11 1980

Mr. Charles H. Tisdale, Jr.
King & Spalding
2500 Trust Company Tower
Atlanta, Georgia 30303

Dear Mr. Tisdale:

In response to your letter of February 12, 1980, I agree that the PSD regulations require a source, in the situation described by your letter, to commence construction by March 19, 1979. Failure to commence construction by March 19, 1979, may subject the source to PSD review.

The relevant section of the PSD regulations is §52.21(i)(3) which states:

"The requirements of paragraphs (j) through (r) of this section shall not apply to a major stationary source or major modification that was not subject to 40 CFR 52.21 as in effect before March 1, 1978, if the owner or operator -

(i) Obtained all final Federal, State, and local preconstruction permits necessary under the applicable State implementation plan before March 1, 1978;

(ii) Commenced construction before March 19, 1979; and

(iii) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time." 40 CFR 52.21(1979).

As you pointed out in your letter, an amendment to this provision was proposed in the Federal Register on July 20, 1979. That amendment may extend the commence construction deadline for certain sources when there is a delay in the issuance of Federal authorizations to construct or operate.

This letter addresses only a generic question and is not intended to make a judgement as to any specific source. In order to obtain a source specific determination, you should contact the appropriate EPA Regional Office with detailed information on the source.

If you would like to discuss this issue further, please contact Libby Scopino of my staff at (202) 755-2564.

Sincerely,

Edward E. Reich, Director
Division of Stationary
Source Enforcement

cc: Kent Williams, Region 4
Peter Wyckoff, OGC
Jim Weigold, OAQPS

EN-341 LScopino ncb 3/4/80-3202 52564

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

OCT 16 1975

OFFICE OF
AIR AND WASTE MANAGEMENT

SUBJECT: Cutoff Date for Applying Significant Deterioration
Regulations

MEMO TO: Mr. Jack Green, Region VIII
Mr. Cliff Smith, Region X

The attachment reflects our currently-proposed resolution of the problem raised by Jack Green (too many power plants being "grandfathered" by the "commerce construction" definition in the regs) in a way that also avoids reversal of assurances given by other RA's (e.g., in Region X). This is being reviewed with your staffs and has met favorable reception with several national environmental groups who shared your concerns, Jack.

We plan to move as rapidly as possible on this to minimize any further "reliance" on a part of the regs that is now somewhat ambiguous. Please give me any comments within a week.

Roger Strelow
Assistant Administrator
for Air and Waste Management

Attachment

cc: Mr. John McGlennon, Region I
Mr. Gerald Hansler, Region II
Mr. Daniel Snyder, Region III
Mr. Jack Ravan, Region IV
Mr. Francis Mayo, Region V
Mr. John White, Region VI
Mr. Jerome Svore, Region VII
Mr. Paul DeFalco, Region IX
Mr. Dick Denney
Mr. Kent Berry
Ms. Cheryl Wasserman
Mr. Rich Biondi
Mr. Mike James
Mr. Jack Hiding
Mr. Ed Tuerk