

ENVIRONMENTAL PROTECTION AGENCY

FEB 13 1978

MEMORANDUM

SUBJECT: MAYTEP, Determination of Applicability

FROM: Director
Division of Stationary Source Enforcement

TO: Thomas W. Devine, Chief
Air Branch - Region I

This office has reviewed your determination of applicability of the PSD regulations to MAYTEP. Our comments are as follows:

1. The discussion in item 1 leads me to the conclusion that MAYTEP would not be subject to the revised NSPS for steam generators. This definition is only a part of draft regulations and in no way should be relied upon for any action taken by the Agency. Further, exclusion from NSPS does not indicate that the source should not be subject to PSD. NSPS are technology based standards developed for very specific source categories. PSD source categories, on the other hand, must be considered as broadly as possible since our objective is to protect air quality to the maximum degree. Rather than relying on a draft regulation, we should consider the PSD proposal (11/3/77) which includes an expanded list of source categories and a 250 tons/year potential emission catch-all. It seems reasonable to me that any determination made should move closer to the intent of Congress, instead of moving further from it.

2. We believe entirely too much reliance is made upon the NSPS. The mere fact that a source is, or is not covered by NSPS should not be the overriding factor when determining applicability to the PSD requirements. Since this source will emit approximately the same amount of pollution as one that was designed to produce 100% electricity, it makes no sense to me to exclude it from a review which is concerned with those emissions and their effect on ambient air quality.

3. Your decision that the source category "steam electric plants of more than 1000×10^6 BTU/hr heat input"

was chosen to cover only large steam electric power plants and not steam generating units is false and is not founded by any previous Agency actions. The Agency has always held that the source categories should be interpreted as comprehensively as possible in order to preserve the spirit and intent of the regulations.

4. Your discussion in item #4 is not very convincing when the main consideration should be air pollution and its effect on air quality. Neither the owner of the source of the emissions nor the source's use should play any role when considering its applicability.

5. What occurs as a result of an action taken by another program (effluent guidelines) should not be a controlling factor within the air program particularly if the definition is contrary to the one already in use.

6. Your discussion in item #6 may be correct, but since we are implementing a regulation that exists now, we cannot predict what may occur sometime in the future, nor can we base our decision on some future regulatory exemption which can only be triggered by what amounts to a political decision.

7. That there will be no environmental benefit realized by including this source in the PSD regulations, should not affect EPA's decision of whether or not to cover this source. The precedent this establishes could prove to be very damaging when attempting to implement the PSD requirements with similar sources. In addition similar sources which may have already complied with these requirements may now object to their applicability based on this decision.

In summary, it is the opinion of this office that MAYTEP qualifies as a 1000 million BTU/hr heat input fossil fuel steam electric plant and that it is subject to the PSD requirements. Further, it is the function of DSSE to provide guidance for interpretations which address the implementation of these regulations. Reliance upon opinions obtained from other EPA offices without consulting DSSE will not ensure uniform national policy for implementation of these regulations. Agency policy requires that DSSE, after consulting with other EPA offices, make the final recommendation for interpretation of these requirements.

If you have any comments or questions, please contact Rich Biondi (755-2564) of my staff.

Edward E. Reich

cc: Mike Trutna - CPDD
Dick Rhoads - CPDD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: JANUARY 6, 1978

SUBJECT: MATEP, Determination of PSD Applicability

FROM: Thomas W. Devine, Chief

TO: The Files

The following evaluation is based on the information available to Region I as of this date (December 20, 1977). This information was supplied by the Commonwealth of Massachusetts and United Engineers and Contractors (principle consultant for MATEP). It is the Agency's determination that this facility is not subject to the present significant deterioration regulations which remain in effect until March 1. If the facility receives all required permits from the state prior to March 1, 1978 and since it has already begun the construction under an earlier state permit it will not be subject to significant deterioration requirements in effect after March 1, 1978. If the necessary permits are not issued, the source would be subject to PSD regulations as proposed in the Federal Register at this time.

Following is the basis for this determination:

1. The proposed Standards of Performance for New Stationary Sources which is expected to be in the Federal Register prior to February 1, 1978 constitutes a partial revision to 40 CFR Part 60, Subpart D. Electric utility power plants are now defined as any facility where more than one-third of the steam generated is ultimately used to produce electric power for sale. MATEP would not be included in this category as only 20 to 25% of the steam generated is used to ultimately produce electric power and the distribution of that power would not be included in the definition of "for sale".

2. Sources which would not be included under the above definition would remain covered under 40 CFR Part 60, Subpart D and in the proposed revision are identified as industrial facilities that produce electric power or steam for their own use or that sell less than one third of their electrical steam generating capacity. This facility cannot be construed as being an industrial facility. The remaining section under 40 CFR Part 60.40 is applicable to any fossil fuel fired steam generating unit assuming that that definition would not be further redefined by the proposal. This facility is subject to New Source Performance Standards under this definition and has been reviewed on that basis by the state and conforms with standard requirements. (It also would meet all presently applicable PSD requirements.)

3. The only type of stationary source included within the present significant deterioration regulations which this source might fall under would be fossil fuel steam electric plants of more than 1000×10^6 BTU/hour heat input. This specifically identified source category is different from the NSPS source category referred to above. This category was chosen to cover large steam electric power plants not steam generating units. The Agency's choice of the 19 major source categories to be covered by the presently applicable PSD requirements has been upheld in court with the recognition that they were deliberately limiting.

4. MATEP is incorporated under Chapter 121A of the Massachusetts General Laws and as such is a non-profit corporation. MASCO, also a non-profit corporation, will operate the facility and distribute power to its members. MATEP will be reimbursed by those members based on use to defray operating and amortization costs. The only distribution outside of the MASCO membership will be to the Mission Hill Housing project which is owned by Harvard University (a member of MASCO). The project will not receive any power, only steam and chilled water. As a non-profit organization which is not selling anything this facility would not be included within the definition of utility or industrial under the proposed NSPS revision for electric utility steam generating units.

5. This determination is also consistent with the definition under "Effluent Guidelines", the standards for the NPDES program (40 CFR 423.1, Steam Electric Power Generating Point Source Category) which define applicability as being limited "to discharges resulting from the operation of a generating unit by an establishment primarily engaged in the generation of electricity for distribution and sale". This constitutes an Agency interpretation of "steam electric", and this definition would not include a source like the MATEP facility, since it is not primarily engaged in the generation of electricity.

6. It should also be recognized that this source could be exempted from PSD coverage by the Governor of the Commonwealth of Massachusetts in approximately 9 months after the state has revised its SIP to include significant deterioration within their new source review program.

7. It is the Agency's opinion, after reviewing the source design, that a further significant deterioration permit would not result in any further environmental improvement over and above that which is going to be required by the state's permits.

In summary, we feel that the PSD categories were intended to cover certain specific types of source which were major polluters. No catch-all category was included e.g., total emission or total heat input, although this would not have been difficult. The MATEPZ facility is closest to the "Fossil-Fuel Steam Electric Plant" category but does not fit because it primarily generates steam, not electricity, and its electric-generation related heat input is well below the 1,000 million BTU per hour level (equivalent to 235 million BTU per hour). To attempt to include the facility in this category would represent a substantial departure from the Agency's intent.

cc: R. Biondi, DSSE