

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

AUG 10 2001

Mr. Henry V. Nickel
Hunton & Williams
1900 K Street, N.W.
Washington, DC 20006

Dear Mr. Nickel:

This letter responds to your fax dated April 16, 2001, requesting the U.S. Environmental Protection Agency's (EPA) opinion on whether the Maricopa County Environmental Services Department (MCESD) had correctly interpreted and applied EPA's nonattainment NSR rules and applicable guidance in determining that the proposed Kyrene Expansion Project (KEP) at the Kyrene Generating Station, located in Tempe, Arizona, (Permit No. V95-009) was subject to nonattainment New Source Review (NSR) requirements (including offsets) for PM-10. Based on the review of the information we have before us, including the information presented in the briefing document submitted with your fax, EPA believes that the MCESD could have concluded that the KEP was not subject to nonattainment NSR requirements for PM-10, as long as the permit included certain safeguards described below.

As you describe in your briefing document, the existing Kyrene facility consists of two boilers (constructed in the 1950's) and three gas turbines (constructed in the 1970's) with a total generating capacity of approximately 250 MW. Although the facility has historically operated as a peaking plant, the facility is permitted for continuous operation. Hence, while the actual baseline emissions (for the last 2 years) of PM-10 have been less than 20 tpy, the existing Kyrene facility is considered a major facility for PM-10 since the PTE = 1044 tpy.

The proposed expansion consists of adding a new 250 MW combined cycle unit to the facility with a proposed increase of 63.3 tpy for PM-10. At an existing major facility, such an increase would result in a major modification triggering NSR. In fact, you indicate that the initial application for the KEP was submitted as an NSR application for PM-10 and VOC. Subsequently, to avoid NSR requirements, the applicant Salt River Project (SRP) proposed to take an emission limit of 68.5 tpy (< 70 tpy major source threshold) for PM-10, such that the entire source would become minor after the modification. Under these circumstances, MCESD determined that the KEP would be subject to NSR and added that to avoid NSR, SRP should have accepted a federally enforceable limit on PM-10 emissions to become a minor source at least 2 years prior to applying for the KEP. While MCESD would have been justified using that

rationale if the source continued to be a major source after the modification, in this case since the source would be a minor source, EPA believes that MCESD could have concluded that KEP would not be subject to NSR. An EPA memo dated April 1, 1981, from Edward Reich to Meril Hohman addresses a similar question under the PSD program. This memo states "...(i)f the existing source is of major status for one pollutant but the results of the modification will bring the source below the major source threshold for that pollutant, then PSD review will not be required." The EPA believes that this same reasoning also applies to nonattainment NSR.

Based on our review of the facts, including those presented in your briefing document and appropriate EPA guidance, EPA believes that the MCESD could have concluded that the KEP would not be subject to the nonattainment NSR requirements for PM- 10, as long as the permit included the following safeguards. First, to ensure that the proposed limit of 68.5 tpy for the entire source is practically enforceable, MCESD would also have to require short-term limitations on the hours of operation or fuel usage with appropriate monitoring requirements. We anticipate that MCESD would work with EPA Region 9 to develop these permit conditions. Secondly, since the source would become minor while proposing an otherwise major modification, EPA believes that the permit would have to include a federally enforceable condition stating that any relaxation of the 68.5 tpy limit would trigger the provisions under 40 CFR 51.166(r)(2). Finally, it is important to note that while the source would become minor for PM- 10 after the proposed modification, it will continue to be a major source for NOx and CO.

We appreciate this opportunity to be of service and trust that this information is helpful to you. If you have any questions regarding this determination, please contact Karen Blanchard or Raj Rao at (919) 541-5319.

Sincerely,

/S/ Robert G. Kellam for

William T. Harnett
Acting Director
Information Transfer and Program
Integration Division