



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

September 7, 2001

Reply To
Attn Of: OAQ-107

Jerald W. Holmes, General Manager
Forest Products Division
Colville Tribal Enterprise Corporation
P.O. Box 3293
Omak, Washington 98841

Re: Startup of Quality Veneer & Lumber Facility - Air Pollution Control Regulatory
Applicability

Dear Mr. Holmes:

This letter responds to your letters of June 15 and July 23, 2001, in which you requested EPA's views on a number of regulatory matters under the Clean Air Act (CAA) related to the Colville Tribal Enterprise Corporation's (CTEC) proposed purchase and operation of the Quality Veneer & Lumber plywood facility (QVL facility) located in Omak, Washington. As you have indicated, CTEC is in the process of purchasing the QVL facility, which has been shutdown since July 2000. It is our understanding that the QVL facility was, at the time of shutdown, a major source of air pollutants for purposes of both the Prevention of Significant Deterioration (PSD) construction permits program under Title I of the CAA and the Part 71 operating permits program (Part 71) under Title V of the CAA. We base the following responses to your questions on the information provided by CTEC and its consultant to EPA in your letters of June 15 and July 23, 2001, and in your telephone call with Dan Meyer of my staff on August 6, 2001.

1. Would CTEC's Startup of the QVL facility be Considered Construction of a New Source or the Continued Operation of an Existing Source?

Based on the information provided by CTEC and its consultant, EPA would not consider the startup of the QVL facility by CTEC to be a new source for purposes of the PSD program, but instead would consider it the restart of an existing PSD facility. According to EPA

guidance,¹

A source which had been shut down would be a new source for PSD purposes if the shutdown was permanent. Conversely, it would not be a new source if the shutdown was not permanent. Whether a shutdown was permanent depends upon the intention of the owner or operator at the time of the shutdown as determined from all the facts and circumstances, including the cause of the shutdown and the handling of the shutdown by the State. A shutdown lasting for two years or more, or resulting in removal of the source from the emissions inventory of the State, should be presumed permanent.

The information provided by CTEC does not indicate that the shutdown of the QVL facility was intended to be permanent. Even before the QVL facility ceased operation, CTEC entered into negotiations to acquire the QVL facility with the clear intent of operating the facility.² Negotiations continued after the shutdown of the facility in July 2000 until a tentative agreement was reached in September 2000 for CTEC's purchase of the facility. QVL filed for bankruptcy under Chapter 11 in October 2000 in an effort to reorganize its business, and negotiations for CTEC's purchase of the facility continued during this time. It is our understanding that CTEC and the Bankruptcy Trustee are currently finalizing agreements for CTEC's purchase of the QVL facility. Based on these facts and the fact that facility has been shutdown less than two years, we agree with CTEC's contention that the QVL facility was never intended to be shutdown permanently. Therefore, EPA concludes that the QVL facility should not be considered a new source for purposes of PSD upon startup. Assuming CTEC resumes operation of the QVL facility by July 2002, the QVL facility will have been shut down for less than two years.³ Therefore, based on EPA guidance, EPA does not presume the shutdown was permanent.

2. Are there Any Modifications Planned that Would be Subject to PSD Permitting?

Because the QVL facility is an existing major source, it would be subject to PSD permitting upon startup of the facility if a major modification occurs. A major modification is defined as:

[a]ny physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act.

40 C.F.R. 52.21(b)(2)(i).

¹Memo from Edward E. Reich, Director, Div. Of Stationary Source Enforcement, to Stephen A. Dvorkin, Chief, General Enforcement Branch, Region II (Sept. 6, 1978).

²Confidentiality Agreement between QVL and the Colville Confederated Tribes (June 20, 2000); Colville Confederated Tribes Purchase Offer to QVL for Facility (Sept. 7, 2000); and QVL Counter Offer (Sept. 8, 2000).

³EPA does not maintain a formal inventory of air emissions from sources on the Colville Indian Reservation.

You state in your July 23, 2001, letter to EPA:

The Colville Tribal Enterprise Corporation does not plan any modifications to the facility, which would increase emissions. The corporation plans to conduct regular maintenance activities on the two boilers and turbines. This maintenance would be considered normal annual maintenance. The capacity of the boilers and turbines is not being increased.

EPA understands you to mean that the CTEC will be conducting only routine maintenance, repair, and replacement. Such physical changes are exempt from PSD review as provided in 40 C.F.R. 52.21(b)(2)(iii)(a). In the event that CTEC is unsure regarding whether a specific action it intends to undertake constitutes “routine” maintenance, repair, or replacement, please consult EPA for a regulatory determination prior to commencing the action.

In addition to refraining from “non-routine” physical changes, you have also stated that CTEC does not intend to change facility operations when it restarts the QVL facility.⁴ In that event, there would also be no change in the method of operation of the facility. If CTEC acts consistent with your intentions and operates the facility as you have described, the restart of the facility would not trigger the major modification provisions of the PSD program. We caution, however, that we have based this conclusion on CTEC’s statements that it does not intend to make any physical changes to the facility, aside from routine maintenance, or any changes in the method of operating the facility.

3. Would Startup of the QVL Facility’s Boilers Subject the Facility to the Acid Rain Program?

As you indicated to Dan Meyer of my staff on August 6, 2001, the two hog-fuel boilers began supplying steam to two 12.5 megawatt steam turbines for electric generation and sale to local public utilities (such as the Okanogan PUD) in approximately 1980. Neither boiler combusts fossil fuel, and thus neither boiler is required to obtain an Acid Rain permit under Title IV of the CAA because the permitting requirements apply only to fossil fuel-fired combustion devices (definition of “unit” at 40 C.F.R. 72.2). Even if the previous operators of the facility used fossil fuel to supplement combustion in the boilers, another exemption applies. A fossil fuel-fired combustion unit that began generating electricity for sale before November 15, 1990, is exempt from permitting requirements of the Acid Rain program if the unit served a generator(s) with combined nameplate capacity equal to or less than 25 MW. *See* 40 C.F.R. 72.6(b)(2). Even if we assume that each boiler served both generators, the combined nameplate capacity of the generators is not greater than 25 MW. Thus, neither boiler is required to obtain an Acid Rain permit.

4. Must CTEC Submit a New Part 71 Application?

As a major source located in Indian Country, the QVL facility is subject to the requirements of the Part 71 operating permits program. QVL submitted an application for a Part 71 permit to EPA on August 18, 1999, which included an annual report of its actual emissions for 1998, a fee calculation work sheet, and payment of the first annual fee. By letter dated November 17, 1999, EPA notified QVL that its Part 71 permit application was deemed complete.

⁴August 6, 2001, phone conversation between Dan Meyer, EPA, and Jerald W. Holmes, CTEC.

EPA's November 17, 1999 letter also requested QVL to submit the following information to supplement its Part 71 application: a schedule of compliance as required by 40 C.F.R. 71.5(c)(8)(ii)(C); a determination of the applicability of Clean Air Act section 112(r) to the QVL facility; a determination of the applicability of the Acid Rain provisions of Title IV of the CAA to the QVL facility, and voluntary limits on the potential to emit of the QVL facility as required by the Compliance Order issued by EPA to the QVL facility on xxxxx. QVL provided information in response to EPA's request by letter dated January 10, 2000, although the information in the letter was not certified by a responsible official in accordance with 40 C.F.R. 71.5(d). In addition, QVL has not submitted the annual report, fee calculation worksheet, and annual fee for 1999, as required by 40 C.F.R. 71.9(h)(1), which was due on November 15, 2000. The next annual report, fee calculation worksheet, and annual fee for the QVL facility for the year 2000 is due on November 15, 2001.

In light of the pending change of ownership of the QVL facility, EPA believes the best course of action would be for CTEC to:

- a. thoroughly review the Part 71 application submitted by QVL on August, 18, 1999, the supplemental information provided by QVL by letter dated January 10, 2000, the information provided by the Tribe's consultant regarding concerns with QVL's application, the Compliance Order issued by EPA to QVL on April 15, 1999, and the current status of the QVL facility;
- b. submit a revised and updated Part 71 application for the QVL facility certified by a responsible official for CTEC in accordance with 40 C.F.R. 71.5(d); and
- c. submit the annual report, fee calculation worksheet, and annual fee for 1999, as required by 40 C.F.R. 71.9(h)(1), and interest and penalties for the past due fees, as required by 40 C.F.R. 71.9(i).

EPA believes that filing a revised and updated Part 71 application would best ensure that CTEC is familiar with all aspects of the application and operation of the QVL facility and will be able to work effectively with EPA in the issuance of the Part 71 permit to CTEC for the facility. It would also ensure that all the required information is in a single document. The QVL facility would not lose the application shield by filing a revised and updated permit application.

CTEC could instead choose to rely on the existing Part 71 permit application for the QVL facility, provided that CTEC:

- a. thoroughly reviews the Part 71 application submitted by QVL on August, 18, 1999, the supplemental information provided by QVL by letter dated January 10, 2000, the information provided by the Tribe's consultant regarding concerns with QVL's application, the Compliance Order issued by EPA to QVL on April 15, 1999, and the current status of the QVL facility;
- b. submits to EPA a statement certified by a responsible official for CTEC in accordance with 40 C.F.R. 71.5(d), stating that CTEC has reviewed all of the documentation and information referred to in the subparagraph (a) above and that, based on information and believe formed after reasonable inquiry, the statements and information in the application submitted by QVL on August, 18, 1999 and in the supplemental letter submitted by QVL on January 10, 2000, are true, accurate and complete; and
- c. the annual report, fee calculation worksheet, and annual fee for 1999, as required by 40 C.F.R. 71.9(h)(1), and interest and penalties for the past due fees, as required by 40

C.F.R. 71.9(l).

EPA does not believe this option results in a significant reduction in the work required of CTEC in order to fulfill its obligations under Part 71 upon its purchase of the QVL facility. Based on past experience, however, EPA does believe that this option could increase the risk that CTEC might overlook an error in the information provided by QVL or a change in circumstance of the facility since the application was first submitted, which error or omission would then be the responsibility of CTEC because it has certified the information as true, accurate, and complete. We therefore recommend and prefer that CTEC submit a revised and updated Part 71 application. In either case, EPA may determine during the processing of the permit application that additional information is necessary to evaluate or take final action on the Part 71 permit and CTEC would be required to provide such additional information as provided in 40 C.F.R. 71.5(a)(2).

5. Are There Any Outstanding Air Enforcement Issues?

As discussed in your letter of June 15, 2001, EPA issued a Compliance Order on April 15, 1999 to the QVL facility relating to the veneer dryers. EPA is not aware of any other potential Clean Air Act compliance issues at the QVL facility except for the failure to pay the Part 71 operating permit fees for 1999 and the failure to certify the supplemental information provided by QVL in its letter dated January 10, 2000. EPA emphasizes, however, that the ultimate responsibility for determining the compliance status of the QVL facility under the Clean Air Act rests with the owner and operator of the facility.

I am enclosing a copy of EPA's final policy entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" published in the Federal Register on April 11, 2000 (65 FR 19618) (Self-Disclosure Policy), for your consideration in the event you discover any Clean Air Act violations during the purchase and subsequent operation of the QVL facility. EPA issued the Self-Disclosure Policy to encourage facilities regulated by EPA to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties, although EPA retains its discretion to recover any economic benefit gained as a result of noncompliance.

I hope this letter responds to your questions. If you have a question regarding this response, please contact me at 206-553-6641.

Sincerely,

Douglas E. Hardesty, Manager
Federal and Delegated Air Programs

cc: Rachel Moses, Environmental Trust Department, Confederated Tribes of the Colville Reservation
Richard DuBey, Special Counsel to the Environmental Trust Department