

March 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 Section 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 yours,

Edward E. Reich, Director
Division of Stationary Source Enforcement

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

KING & SPALDING
2500 TRUST COMPANY TOWER
ATLANTA, GEORGIA 30303
404/572-4600

February 12, 1980

Mr. Edward E. Reich
Director, Division of Stationary Source Enforcement
Office of Enforcement
United States Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Reich:

I am submitting this letter to you following a conversation with Peter Wyckoff in the office of General Counsel. A client of our firm has recently inquired as to whether a procedure followed by another company in building a new facility without a PSD permit is valid. I would appreciate your written comments on the procedure used by the new facility which is as follows.

The company building the new facility obtained a state air permit to construct on February 28, 1978, just before the March 1, 1978 deadline established by EPA in its November 1977 proposed PSD regulations. The proposed facility would not have been within the categories of sources which were subject to PSD regulations in effect before the 1977 amendments to the Clean Air Act. However, the proposed new facility's emissions for a number of pollutants would, after all reductions from proposed control measures, exceed the 250 ton per year limit established by the June 1978 PSD regulations as modified by the Alabama Power decision and proposed September 1979 PSD regulations. Notwithstanding the provisions of the June 1978 PSD regulations, the proposed new source did not commence construction within the meaning of Section 169(2) of the Clean Air Act before March 19, 1979. Moreover, you should assume that there were no federal authorizations needed which delayed commencement of construction. Accordingly, the proposed regulations set forth in the July 20, 1979 Federal Register beginning at 42722 would not be applicable to this proposed facility. The proposed new source obtained an extension of the February 28, 1978 state air quality permit to construct. This extension extended the state permit to March of 1980. Within the past few months, the proposed new source has commenced construction pursuant to the state permit without obtaining a PSD permit.

Mr. Edward E. Reich
February 12, 1980
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I would appreciate your written comments on whether the procedure followed by this proposed new source was valid or not. In particular, I would appreciate your comments on whether a PSD permit was required since the proposed new source did not commence construction before March 19, 1979.

I look forward to your response.

Yours sincerely,

Charles H. Tisdale, Jr.

CHT/ljw

cc: Mr. Peter Wyckoff

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1800 M STREET, NW
WASHINGTON, D.C. 20036
202/466-7640

November 26, 1979

Mr. Michael James
Associate General Counsel
Air Noise and Radiation Division
United States Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. James:

A client of our firm has recently inquired as to whether a procedure followed by another company in building a new facility without a PSD permit is valid. I would appreciate your thoughts on the procedure used by the new facility which is as follows.

The company building the new facility obtained a state air permit to construct on February 28, 1978, just before the March 1, 1978 deadline established by EPA in its PSD regulations. The proposed new facility's emissions for a number of pollutants would exceed the 250 ton per year limit established by the PSD regulations. Notwithstanding the provisions of the PSD regulations, 40 C.F.R. Section 52.21(e) (42 F.R. 62020, December 8, 1977) the proposed new source did not commence construction within the meaning of Section 169(2) of the Clean Air Act before December 1, 1978. Instead, the proposed new source obtained an extension of the February 28, 1978 state air quality permit to construct. This extension extended the state permit to March of 1980. Within the past few months, the proposed new source has commenced construction pursuant to the state permit without obtaining a PSD permit.

I would appreciate your comments on whether the procedure followed by this proposed new source was valid or not. In particular, I would appreciate your comments on whether a PSD permit was required since the proposed new source did not commence construction before December 1, 1978. I look forward to your response.

Yours sincerely,

Charles H. Tisdale, Jr.

CHTJr/aep