

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

FEB 24 1981

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: Source Applicability under the Interpretative
Ruling

FROM: Director
Division of Stationary Source Enforcement

TO: Carl C. Kohnert, Jr, Acting Director
Enforcement Division, Region IX

This is in response to your memorandum of December 30, 1980, in which you requested an applicability determination under the Emission offset Interpretative Ruling.

Kernridge Oil Company submitted an application on June 27, 1979 for the installation of 15 steam generators. Under the January 16, 1979 Interpretative Ruling, in effect at the time of permit application, Kernridge was not required to install LAER or obtain offsets for CO because the project would be located in a "clean pocket" of a designated nonattainment area and its impact on the actual nonattainment area was determined to be insignificant for that pollutant. A problem has arisen because Kernridge has not yet received the necessary permits. The Region reconsidered what would be necessary in the way of particulate offsets (the area is also nonattainment for TSP), ultimately requiring stack rather than haul-road offsets. This reconsideration required considerable investigation and time and changes in local regulations. The process has just now been completed. Because a permit has not yet been issued and because the offset Policy has been revised in the interim to close this "clean spot" exemption, it is unclear to which regulation Kernridge oil should be subject. This issue is discussed below.

It is DSSE's determination that the project should not be subject to the construction moratorium because a complete application was submitted prior to July 1, 1979. In a January 13, 1981, telephone conversation with Robert Myers of my staff, Don Harvey of your staff confirmed that Region IX told Kernridge Oil that their application was complete prior to the July 1, 1979 date. The construction moratorium only applies if the permit is applied for after the June 30, 1979 deadline. See 44 FR 38471 (July 2, 1979).

There is no justification, however, for not subjecting this project to the requirements of the August 7, 1980 Offset Ruling amendments (45 FR 52741). These amendments do not apply to any major stationary source or major modification that was not subject to the ruling as in effect on January 16, 1979, if the owner or operator:

A) Obtained all final federal, state and local preconstruction approvals or permits necessary under the applicable SIP before August 7, 1980:

B) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable SIP; and

C) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

Kernridge was not subject to the January 16, 1979, offset Ruling because that ruling exempted sources such as Kernridge locating in clean pockets of designated nonattainment areas (the "clean spot" exemption). However, since Kernridge has not yet received final preconstruction permits necessary under the applicable SIP, it has not fulfilled condition A above and so cannot be exempted from coverage under the August 7, 1980 offset Policy amendments, which eliminated the "clean spot" exemption.

DSSE has discussed the Kernridge situation with the office of General Counsel (OGC) and the Control Programs Development Division (CPDD) and we all agree that the best option available, assuming the only problem is with the availability of offsets, would be redesignation of the CO nonattainment area. Dan Harvey has informed Robert Myers that the area in which Kernridge is located has never been monitored, and was designated nonattainment for CO despite data indicating that only the metropolitan area of Bakersfield exceeded the Co standard. If the part of Kern County where Kernridge is located can be redesignated attainment or unclassified, Kernridge would need to meet only the requirements of EPA's August 7, 1980 Prevention of Significant Deterioration regulations.

Under 40 CFR 52.21(i)(10)(i), published at 45 FR 52739 (August 7, 1980), if Kecnridge submits a complete PSD application before June 8, 1981, it would need to meet air quality monitoring provisions of the June 19, 1978 regulations, rather than the requirements of the August 7, 1980 regulations. Additionally, the source may be exempt from any applicable monitoring if it meets the impact level specified at 40 CFR 52.21 (i)(8). See FR 32739, August 7, 1980.

This response has been prepared with the concurrence of OGC and CPDD. Please contact Robert Myers at FTS-755-2564 if you have any questions regarding this determination.

Edward E. Reich

cc: Darryl Tyler
Eric Smith
Dave Howekamp
Don Harvey
Mike Trutna
Nancy Mayer