

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

OFFICE OF
AIR, NOISE AND RADIATION

SUBJECT: PSD Determination - Baseline

FROM: Director
Stationary Source Compliance Division
Office of Air Quality Planning and Standards

TO: Robert L. Duprey, Director
Air and Waste Management Division

This is in response to your memorandum dated April 22, 1983, requesting a determination as to whether the Colorado-Ute Craig Units #1 and #2 should be included in the PSD baseline or if they should be considered as increment consuming sources. After reviewing the facts presented in your memorandum and after consulting with the Office of General Counsel, I have concluded that the emissions from these two units will consume PSD increment.

The PSD regulations define baseline concentration as

" . . . the ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph (b) (13) (ii);

(b) The allowable emission of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

(ii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emission from any major stationary source on which construction commenced after January 6, 1975; and

(b) Actual emissions increases and decreases at any stationary source occurring after the baseline date. "

The key question in this case is then whether Colorado-Ute Craig Units #1 and #2 commenced construction after January 6, 1975, and are thus, excluded from the baseline concentration. Commence as applied to construction of a major stationary source means:

". . . the owner or operator has all necessary preconstruction approvals or permits and either has:

(i) Begun or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time."

While there is little evidence in your memorandum concerning whether units #1 and #2 had begun actual construction or had entered into binding agreements to undertake a program of actual construction, the facts in this case do not support the position that Colorado-Ute Craig had obtained all necessary preconstruction permits or approvals prior to January 6, 1975.

Necessary preconstruction approvals or permit means,

". . . those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan."

Your memorandum indicates that the Colorado State Air Pollution Control District did not issue its final approvals for the construction of units #1 and #2 until March 10, 1975. While there was some preliminary activity at the site and some discussion between the Company and the State prior to that date, the regulations are clear that final approvals are necessary in order to satisfy the commence construction requirements for grandfathering under the PSD regulations.

EPA has made one exception to the regulations concerning final approvals in connection with a Louisiana source. In that case, the State had completed all substantive reviews of the permit application but had not completed administrative permit issuance procedures prior to January 5, 1975. The exception established in that case is not applicable to Colorado-Ute Craig Units #1 and #2. Colorado had not even begun substantive review of the Colorado Ute Craig Units #1 and #2 permit application prior to January 5, 1975, and when Colorado did review the application it determined that the application submitted prior to January 5, 1975 was incomplete. I do not believe it is possible to conclude that Colorado-Ute Craig Units #1 and #2 received final preconstruction approval prior to January 5, 1975, within the meaning of Section 169 of the Clean Air Act.

In conclusion, it is the opinion of this office that Colorado-Ute Craig did not commence construction of units #1 and #2 prior to January 6, 1975, and that the emissions from these two units will consume the applicable air quality increments.

If you wish to discuss this further, please contact me at 382-2810 or Rich Biondi at 382-2831.

Edward E. Reich

cc: Peter Wyckoff
David Rochlin
Mike Trutna