



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET
ATLANTA, GEORGIA 30308

Rich Wheeler

SEP 7 1977

6-11700

SEP 20 1977

R. N. WHEELER JR.

Mr. C. H. Greenert, Plant Manater
Union Carbide
2043 Steel Drive
Tucker, GA 30084

Dear Mr. Greenert:

For your information, enclosed is a copy of additional information concerning the applicability of the proposed revisions to the vinyl chloride standards (42 FEDERAL REGISTER 28154 et. seq., June 2, 1977) to sources which commenced construction or modification after June 2, 1977.

Should you have any questions concerning the proposed revisions, please feel free to contact Dr. James S. Wu or me by telephone at 404/881-4552 or by letter to this office.

Sincerely yours,

Tommie A. Gibbs

Tommie A. Gibbs
Chief

Air Engineering Branch

Enclosure

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

9 AUG 1977

OFFICE OF ENFORCEMENT

SUBJECT: Applicability of Proposed Vinyl Chloride Regulations
(40 CFR Part 61) to Sources that Commence Construction
or Modification after June 2, 1977

TO: Enforcement Division Directors, Regions I-X

Several Regions have requested guidance on the applicability of the proposed revisions to the vinyl chloride standards (42 Fed. Reg. 28154 et. seq., June 2, 1977) to sources which commence construction or modification after June 2, 1977. Promulgation of the revisions will occur no earlier than January 1, 1978. The proposed regulations require that new or modified vinyl chloride sources comply with a more stringent emission limitation than that presently promulgated, and conduct a test to show compliance within 90 days of startup. In addition, the proposed regulations contain an emission offset standard which requires that a new source which is built within 8 kilometers of any other vinyl chloride source offset its emissions. Specifically, the issue which has been raised is:

May the Administrator deny a source approval to construct a new or modified vinyl chloride source which the Administrator finds will (1) not meet the design specifications necessary to achieve the proposed more stringent emission limitation standards at startup, or (2) not comply with the emission offset standard of the proposed regulations.

The analysis which follows leads to the conclusion that a new vinyl chloride source which begins construction after June 2, 1977, must be given approval to construct if it meets the presently promulgated standards. However, if the proposed standards are promulgated, any subject facility commencing construction after June 2, 1977, is required from the time of promulgation of the new vinyl chloride standards to meet those new standards, and we recommend that it be so informed.

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The statutory and regulatory language which governs approval of construction or modification of a NESHAPS source is somewhat confusing. Section 112(a) (2) of the Clean Air Act defines "new source" to mean:

a stationary source the construction or modification of which is commenced after the Administrator proposes regulations under this section establishing an emission standard which will be applicable to such source.

However, Section 112(c)(1) of the Act provides that:

After the effective date of any emission standard under this section --

(A) no person may construct any new source or modify any existing source which, in the Administrator's judgment, will emit an air pollutant to which such standard applies unless the Administrator finds that such source if properly operated will not cause emissions in violation of such standard. [Emphasis supplied.]

The prefatory language "[a]fter the effective date" modifies the requirement that a source receive the Administrator's approval prior to construction or modification of a new source. This proviso indicates that a new source is not required to seek the Administrator's approval until after the applicable emission standard is promulgated.

The regulatory language of 40 CFR Part 61 does clarify the issue: Section 61.05(a) provides that:

after the effective date of any standard prescribed under this part, no owner or operator shall construct or modify any stationary source subject to

such standard without first obtaining written approval of the Administrator in accordance with this subpart, except under an exemption granted by the President under section 112(c)(2) of the act. Sources, the construction or modification of which commenced after the publication date of the standards proposed to be applicable to such source, are subject to this prohibition.

Read alone, § 61.05(a) requires sources which commenced construction after the proposal date, but prior to the effective date, to seek the Administrator's written approval to construct after the effective date of the standard. This would seem to be an absurd requirement -- to require approval to construct after construction has already begun. However, when read in conjunction with § 61.05(b) and § 61.07(a), this "after the fact" approval of construction appears consistent with Section 112. Section 61.05(b) mirrors the statutory requirement of Section 112 (c)(1)(B) and provides that "after the effective date of any standard prescribed under this part, no owner or operator shall operate any new source in violation of such standard...." [Emphasis supplied]. Section 61.07(a) provides that:

the owner or operator of any new source to which a standard prescribed under this part is applicable shall, prior to the date on which construction or modification is planned to commence, or within 30 days after the effective date in the case of a new source that already has commenced construction or modification and has not begun operation, submit to the Administrator an application for approval of such construction or modification.

The regulations do not require the Administrator's approval to construct a new source contingent on meeting the proposed standards during the proposal period. However, the regulations prohibit a source which commenced construction after the proposal date to operate in violation of the promulgated standards, and require filing with the Administrator, within 30 days after promulgation of the standard, an application for construction.

In conclusion, the regulations and statute do not require submittal of an application of approval to construct a new NESHAPS source prior to the effective date of an applicable standard. Since there already is a promulgated vinyl chloride standard, albeit less stringent than the proposed standard, a new source must apply for approval to construct. However, approval to construct must be granted if the source will meet the existing standard. Each source which commenced construction after June 2, 1977, should be notified that if the proposed standards are promulgated the new source must immediately comply with the new standards. The Regional Offices should document (certified mail, return receipt) notification to the source of the operating requirement in order to avoid any estoppel defense should the source fail to operate under the promulgated standards.


Richard D. Wilson,
Deputy Assistant Administrator
for General Enforcement

cc: Ronald Naveen, OGC
Donald Goodwin, OAQPS

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