

MEMORANDUM

SUBJECT Identification of Candidates for Best Available
Control Technology (BACT) Determinations

FROM: John S. Seitz, Director
Office of Air Quality Planning and Standards (MD-10)

TO: Director, Air, Pesticides and Toxics
Management Division, Regions I and IV
Director, Air and Waste Management Division,
Region II
Director, Air, Radiation and Toxics Division,
Region III
Director, Air and Radiation Division,
Region V
Director, Air, Pesticides and Toxics Division,
Region VI
Director, Air and Toxics Division,
Regions VII, VIII, IX, and X

This memorandum addresses an issue which has been raised to me, most recently by the American Forest & Paper Association, concerning the roles of the Environmental Protection Agency's (EPA's) various offices in the identification of potential control options for consideration in the determination of BACT for prevention of significant deterioration purposes.

In broad overview, the initial responsibility for identifying candidate control options for consideration as BACT usually lies with the applicant, and the permitting authority may suggest certain additional options for consideration. The permitting authority independently reviews the applicant's proposal to assess its adequacy. Thus, ultimately, the permitting authority decides, on a case-by-case basis, what emissions limitation constitutes BACT. Any individual or representative of a public, private, or government organization or agency has the right to bring to the permitting agency's attention information on control options or technologies for consideration in BACT analyses. So long as the applicable administrative procedures are followed, the

permitting authority is at liberty to confer with any individual, organization, or agency at any time during the review process, regarding technical information on possible BACT candidates.

Applicants are responsible for considering all relevant data available to them, including recent new source review (NSR) permits, maximum achievable control technology (MACT) and reasonably available control technology (RACT) requirements, compliance with new source performance standards (NSPS), recent source-specific State implementation plan (SIP) requirements and negotiated settlement agreements to the extent the information is publicly available.

As you are aware, EPA has created a repository for such information called the RACT/BACT/LAER Clearinghouse (RBLC) which is run by the Emissions Standards Division. In the past, States only have voluntarily submitted BACT decisions to the RBLC [submission of lowest achievable emission rate (LAER) determinations is mandatory]. As a result, the Clearinghouse is currently not a complete data base. Consistent with recent recommendations to EPA by the NSR Reform Subcommittee of the Clean Air Act Advisory Committee, the EPA is considering more actively encouraging States, and Federal offices in some cases, to submit relevant control technology information to the RBLC. Indications are that the quality and quantity of data are improving. We are also planning to develop a bulletin board to publicize state-of-the-art technology applications and innovative approaches to controlling emissions.

As part of their oversight of State NSR programs, Regional Offices have the primary responsibility within EPA to assist permitting authorities in obtaining and analyzing all data relevant to a BACT decision. The Regions are also primarily responsible for initiating enforcement action in those instances where a State has not issued the necessary permit or has issued a permit that does not conform to legal requirements.

In terms of the Office of Air Quality Planning and Standards' involvement in the BACT process, the Air Quality Management Division is responsible for development of regulations, policies and guidance regarding BACT, including procedural requirements, evaluation criteria and review of innovative control technology waivers. The Stationary Source Compliance Division has the lead in enforcement and compliance issues associated with BACT. The Technical Support Division works to develop and improve emissions test methods for standards development and compliance, and develops emission factors for industrial processes, which may be used in BACT analyses. The Emissions Standards Division, in addition to operating and

maintaining the RBLC, develops NSPS and MACT standards, and writes control technology guidelines and alternative control technology documents, all of which may generate information on potential BACT candidates.

In summary, I would like to reiterate that the BACT determination is the responsibility of the permitting authority with jurisdiction over a particular permit application. However, any person, regardless of the office they work for (including EPA staff), has the right to provide a permitting authority with technical information on the availability or function of a control option or technology, or other information that is relevant to a BACT determination. This information includes the existence of any emissions limits or technology requirements that are included in publicly-available documents (i.e., permits, SIP's, enforcement settlements). Appropriate offices within EPA have an affirmative responsibility to assist in this effort. The EPA encourages anyone with information that they believe should be considered in a BACT analysis to bring this information to the attention of the permitting agency as early in the application review process as possible.

I hope this memorandum clarifies any concerns or issues regarding the input of relevant technical or policy information into a State or local permitting authority's BACT determination process. Please distribute copies of this memorandum to the respective permitting agencies in your Region. If you have further questions regarding these issues, please feel free to contact me, or have your staff contact David Solomon, Chief, New Source Review Section, at (919) 541-5375.

cc: Air Branch Chief, Regions I-X
G. Foote, OGC
J. Rasnic, SSCD
J. Domike, OECM
B. Jordan, ESD
B. Kellam TSD
K. Berry
E. Lillis
D. Solomon
D. Crumpler