

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

APR 12 1979

OFFICE OF ENFORCEMENT

SUBJECT: PSD and NSPS Applicability - PEPCO Dickerson Generating Station
Unit #4

FROM: Director Division of Stationary Source Enforcement

TO: Steve Wassersug, Director Air and Hazardous Materials Division (3AH00)

This is in response to your memo dated February 16, 1979, concerning Unit #4 at the Dickerson generating station, Dickerson Maryland, and its applicability to both the Prevention of Significant Deterioration (PSD) requirements and New Source Performance Standards (NSPS).

PSD

Based on your finding that PEPCO has not commenced a continuous program to construct the Dickerson #4 generating unit, I have concluded that that unit is subject to review under the Prevention of Significant Deterioration (PSD) regulations. The analysis leading to this conclusion is outlined below.

The original PSD regulations, promulgated December 5, 1974, were applicable to new sources, in any of nineteen specified source categories, which commenced construction after June 1, 1975. The term "commenced" was defined to mean,

"that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification." See 40 CFR Section 52.21(b) (7) 1977.

You stated in your February 16, 1979, memo that while PEPCO has expended funds to purchase equipment and construction materials and to store these item at the Dickerson site, a continuous program of construction has not ensued. It is my understanding that physical on-site construction of the unit has not yet begun despite the originally planned inservice date of 1976. This indicates to me that construction of the unit has not proceeded continuously since June 1, 1975, and

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will not be completed within a reasonable time. Because construction did not commence, within the meaning of Section 52.21(b) (7), prior to June 1, 1975, the 800 MW Dickerson unit was subject to the old PSD regulations.

In order to facilitate a smooth transition from the old PSD requirements to the new, the amended regulations (June 19, 1978) establish the following policy regarding applicability of the new requirements to sources subject under the old regulations:

The requirements of the new regulations shall apply to a major stationary source or major modification that was subject to the review requirements of 40 CFR Section 52.21(d)(i) as in effect before March 1, 1978, unless the owner or operator -

- (i) obtained a PSD permit under 40 CFR Section 52.21 prior to March 1, 1978, and
- (ii) commenced construction prior to March 19, 1979, and
- (iii) did not discontinue construction for a period of 18 months or more and completed construction within a reasonable time.

Failure to satisfy any one of the above conditions would subject PEPCO to review under the amended PSD regulations. Clearly, PEPCO did not obtain a PSD permit before March 1, 1978, and is therefore subject to review at this time.

In summary, PEPCO must undergo PSD review because they failed to commence a program of continuous construction by June 1, 1975, and then failed to obtain a PSD permit by March 1, 1978. I would suggest notifying PEPCO that PSD applies on the basis that construction has not proceeded continuously. Review should be in accordance with the new regulations (43 FR 26388 et. seq., June 19, 1978.)

NSPS

The information contained in your submission concerning the stage of completion of the Dickerson #4 generating unit is unclear and, therefore, makes it difficult to definitely determine whether this unit has commenced construction as that term applies to NSPS.

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The term commenced as defined in 40 CFR 60.2(i) states,

"with respect to the definition of "new source" in section 111(a) (2) of the act, that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification".

PEPCO's October 2, 1978 submission to Region III states at page 2 that "the boiler components were delivered between November 1973 and December 1974. Substantial progress payments were made to the boiler vendor in advance of delivery". There is no further discussion in any of the material supplied by PEPCO in your attachments which indicate whether the fabrication of the boiler was ever completed.

While the PSD definition for commencement of construction centers around the on-site activities of PEPCO, the NSPS criteria for satisfying this requirement address only those activities surrounding the construction of the affected facility, the boiler in this case.

I do not think there is any question that PEPCO entered into a contractual obligation for the construction of Unit #4. I do, however, think that there is some question as to whether PEPCO has (1) completed construction of the boiler or (2) undertaken a continuous program of construction. The issue at hand is not only whether PEPCO can satisfy both these criteria but also the timing of their activities. While PEPCO may not have undertaken a continuous program to complete Unit #4 as early as November 14, 1972, when the original contractual commitment was entered into, they may in fact have commenced a continuous program prior to September 19, 1978, the proposal date of the revised NSPS for fossil fuel- fired utility steam generator.

I would recommend that some additional investigation be made to ascertain the status of construction of Unit #4. Conversations between members of your staff and mine seem to indicate that PEPCO may have interrupted their construction program for a period in excess of two years, through the present time. If these allegations can be substantiated, then I would agree that Dickerson Unit #4

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is subject to the NSPS as proposed on September 19, 1978.

If you have any additional questions concerning either of these issues, please contact Richard Biondi of my staff at 755-2564.

Edward E. Reich

cc: Mike James - OGC
Dick Rhoads - CPDD
Jack Farmer - SDB
Ed Vollberg - Region III