

## **Exhibit 11**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MEMORANDUM

DATE: October 3, 1980

SUBJECT: PSD and NSPS Applicability to a Reactivated Source

FROM: Director  
Division of Stationary Source Enforcement

TO: Sandra S. Gardebring, Director  
Enforcement Division, Region V

This is in response to your memo of September 22, 1980, in which you requested clarification of EPA's policy concerning PSD, NSR and NSPS applicability for reactivated sources.

According to your memo, the source in question (SME Cement, Inc.) has installed and begun operating a rotary cement kiln which had been shutdown in 1976. After shutdown in 1976, the emissions from the kiln were removed from the state's emissions inventory and the owner issued a statement that the closure was permanent. The issue of whether the kiln, upon reactivation is subject to PSD or NSR review or NSPS, must now be addressed.

Consistent with previous PSD determinations, (See Attachment A) and the purpose of the PSD program, the reactivation of the kiln is subject to PSD review, since its 1976 shutdown was deemed permanent. For the same reasons that the source's emissions must be assessed under PSD, the kiln would also be subject to New Source Review.

Under NSPS, the kiln would be considered an existing source. Reactivation would not subject the kiln to NSPS unless the kiln is modified or reconstructed, as defined in 40 CFR 60.14 and 15, respectively. This determination is also consistent with previous Agency policy (See Attachment B). If you have any questions regarding this determination, please contact Janet Littlejohn of my staff at 755-2564.

Edward E. Reich

Attachments

cc: Jim Weigold (OAQPS)  
Peter Wyckoff (OGC)  
Mike James (OGC)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

DATE: SEPTEMBER 22 1980

SUBJECT: PSD and NSPS Applicability to a Reactivated Source

FROM: Sandra S. Gardebring  
Director, Enforcement Division

TO: Edward E. Reich, Directs  
Division of Stationary Source Enforcement (EN-341)

Region V requires clarification concerning United States Environmental Protection Agency (hereinafter "U.S. EPA") policy on PSD and NSPS applicability to a reactivated source.

This source, which is presently owned and operated by SME Cement, Inc., 8282 Middlebranch Avenue, Middlebranch, Ohio, Division of Standard Machine & Equipment, Inc., was shutdown on December 15, 1976, pursuant to a U.S. EPA Consent Order. The Order required Flintkote Company, the former owner, to cease operations of rotary cement kilns #1, #2 and #3 and cease operation of kiln #4 unless it is operated in compliance with Ohio Air Pollution Control Regulations concerning particulates. Prior to shutdown, kiln #4 was operated as a dryer.

SME Cement, Inc. purchased the facility in November 1977, and received a permit to install on April 24, 1979, from the Ohio Environmental Protection Agency (hereinafter "Ohio EPA"). The permit allowed SME Cement, Inc. to install rotary cement kiln #4. The kiln was reactivated and began operations approximately May 1, 1980, without obtaining a PSD applicability determination or permit, or a NSPS applicability determination.

On September 4, 1980, the Director of the Enforcement Division, Region V, issued a notice of violation to SME Cement, Inc. SME Cement, Inc. was found to be in violation of PSD Regulations, 40 C.F.R. Section 52.21, as amended at 43 Fed. Reg. 26403(1978), NSPS, 40 C.F.R. Section 60.7(a), and Ohio Air Pollution Control Regulations AP-3-07 and AP-3-12(B), (Ohio Ad. Code 3745-17-07 and 3745-17-11, respectively) dealing with the control of particulate emissions. A conference with officials and attorneys of SME Cement, Inc. is scheduled on September 29, 1980, to discuss the notice of violation. During the conference, it is expected that SME Cement, Inc.'s representatives will contest the PSD and NSPS applicability determinations.

This source was considered to be a new source for PSD purposes pursuant to a September 1978 memo from the Director of the Division of Stationary Source Enforcement (hereinafter "DSSE") to Stephen A. Dvorkin, Chief, General Enforcement Branch, Region II. The memo stated that a reopened source is considered a new source if the shutdown had been permanent. Facts relied on in categorizing the shutdown as permanent include a period in excess of three years during which the source failed to operate, the Ohio EPA Emissions Inventory System Point Source Report for 1979 which listed no emissions for this source, and a statement by a Flintkote Company official that the closure of kiln #4 was permanent.

Ohio EPA has consistently classified this source as a new source and required SME Cement, Inc. to obtain a permit to install, rather than a permit to operate.

Region V determined that SME Cement, Inc. is a new source for both PSD and the NSPS applicability as definitions of "construction" includes fabrication, erection, or installation for both PSD and NSPS, 40 C.F.R. Section 52.21(b) (7) and 40 C.F.R. Section 60.2(g). These PSD regulations were in effect when SME Cement, Inc. commenced construction. The definition of construction in the amended PSD regulations has been expanded to include "any physical change in the method of operation....which would result in a change in actual emissions". 45 Fed. Reg. 52676(1980) (to be codified in 40 C.F.R. Section 52.21).

Region V has contacted various headquarter's staff members and received conflicting opinions concerning this matter. Please clarify the applicability of PSD, NSPS and new source review to this source within the usual ten day turn around period.