

## **Exhibit 19**

Memorandum from D. Bray, Senior-Policy Advisor, U.S. EPA,  
to R. Albright, Director, Office of Air, Waste, and Toxics, U.S. EPA  
(July 2, 2009)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

July 2, 2009

Reply To: AWT-107

**MEMORANDUM**

**SUBJECT:** Implementing PSD Baseline Dates, Baseline Areas, and  
Baseline Concentrations on the Outer Continental Shelf in Alaska

**FROM:** David C. Bray *DCB*  
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**TO:** Rick Albright, Director  
Office of Air, Waste, and Toxics

Janis Hastings, Associate Director  
Office of Air, Waste, and Toxics

**Introduction**

The purpose of this memorandum is to clarify how EPA Region 10 intends to implement the PSD increments on the OCS in Alaska the absence of formal area designations under section 107(d).

**Background**

Pursuant to Section 328 of the Clean Air Act (Act) EPA has promulgated regulations to control air pollution from Outer Continental Shelf (OCS) sources to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of Part C of title I (prevention of significant deterioration of air quality or PSD). See 40 CFR Part 55.

In Part C of Title I of the Act, Congress sets forth a program for preventing significant deterioration of air quality in areas that have air quality better than the National Ambient Air Quality Standards (NAAQS). Specifically, Congress established an approach for defining "significant deterioration" that relies upon changes in air quality concentrations from a baseline. The "baseline concentration" is defined in section 169(4) of the Act and the acceptable changes in concentration, called "increments," are defined in sections 163 (for Congressionally-established increments) and 166 (for EPA-established increments) of the Act.

Under Section 169(4) of the Act, the term "baseline concentration" means, "with respect to a pollutant, the ambient concentration levels which exist *at the time of the first application for a permit in an area subject to this part*, based on air quality data available in the Environmental Protection Agency or a State air pollution control agency and on such monitoring data as the permit applicant is required to submit. Such ambient concentration levels shall take into account

all projected emissions in, or which may affect, such area from any major emitting facility on which construction commenced prior to January 6, 1975, but which has not begun operation by the date of the baseline air quality concentrations determination. Emissions of sulfur oxides and particulate matter from any major emitting facility on which construction commenced after January 6, 1975, shall not be included in the baseline and shall be counted against the maximum allowable increases in pollutant concentrations established under this part.” (emphasis added). EPA has promulgated regulatory definitions for the phrases “the time of the first application for a permit” (known as the “minor source baseline date”) and “in an area subject to this part” (known as the “baseline area”). These definitions are found in 40 CFR 52.21(b) of EPA’s regulations and incorporated into the OCS regulations at 40 CFR 55.13.

The requirements to which OCS sources are subject depend on the distance of the source from shore. From the State’s seaward boundary (typically 3 miles from shore) and extending out 25 miles, the requirements for the Corresponding Onshore Area (COA), as well as federal requirements, apply to OCS sources; beyond 25 miles from the State’s seaward boundary, only federal requirements apply. See 40 CFR 55.3(b) and (c). Because of these different regulatory requirements, the implementation of PSD increments is different in these two portions of the OCS.

#### **Sources located less than 25 miles from the State’s seaward boundary**

In accordance with section 328 of the Act and EPA’s implementing regulations at 40 CFR Part 55, an OCS source located less than 25 miles from the State’s seaward boundary is subject to the same requirements as would be applicable if the source were located within the COA. Section 328(a) of the Act; 40 CFR 55.3(b). As a result, EPA incorporates by reference the air quality regulations, including the major source permitting programs, that are in effect in the COA and applies them to OCS sources inside this 25 miles limit. See 40 CFR 55.12. The OCS rules define the term “onshore area” in terms of the section 107(d) area designations. 40 CFR 55.2. Hence the COA is generally synonymous with a section 107(d) area and, if designated attainment or unclassifiable, with a PSD baseline area.

Since the COA PSD rules look to the designation of the COA for determining baseline dates, applying the COA PSD rule to an OCS source includes using the COA minor source baseline dates. Importantly, the minor source baseline dates for a section 107(d) area are not established in regulation, but rather they are determined through the implementation of the PSD regulations. See 40 CFR 52.21(b)(definition of “minor source baseline date”). Where the COA PSD rules apply on the OCS, the baseline date that has already been determined under the COA rule is the baseline date that applies for the permitting of the OCS source. This baseline date is then used to determine the baseline concentration in the area of the OCS source in accordance with the COA PSD rules.

When using the onshore minor source baseline date for OCS sources located less than 25 miles from the State’s seaward boundary, there is no need to define separate baseline areas (and hence section 107 area designations) for the OCS source. In fact, establishing this portion of the OCS as a separate baseline area, or extending the onshore baseline area onto the OCS, would be contrary to the current Part 55 rules which require a case-by-case determination of the COA for the purpose of determining the applicable onshore rules. See 40 CFR 55.5. Since the COA may be different than the nearest onshore area (NOA), and can actually differ from permit to permit,

the applicable permitting rules, and hence the baseline date, could be different than that of the NOA. As such, a fixed baseline area for the OCS within 25 miles of the State's seaward boundary could potentially prevent the utilization of the COA minor source baseline date, contrary to the intent of Congress that such sources be subject to the same requirements as would be applicable if the sources were located within the COA.

**Sources located more than 25 miles beyond the State's seaward boundary**

For sources locating on the OCS more than 25 miles from the State's seaward boundary, the EPA PSD rules at 40 CFR 52.21 apply. The definition of "baseline area" in the federal PSD rules relies on the existence of intrastate areas designated as attainment or unclassifiable under section 107(d) of the Act. See 40 CFR 52.21(b). Until EPA either designates section 107(d) areas on the OCS and/or promulgates revisions to the definition of "baseline area" in 40 CFR Part 55, it is appropriate to implement the term "baseline area" in 40 CFR 52.21(b), for OCS areas more than 25 miles from the State's seaward boundary by using the boundaries of the coastal Air Quality Control Regions on shore as a guide. Accordingly, the following areas will be considered as separate "baseline areas" for purposes of 40 CFR 52.21:

Each area bounded on the shoreward side by a parallel line 25 miles from the State's seaward boundary; on the seaward side by the boundary of U.S. territorial waters; and on the other two sides by the seaward extensions of the onshore Air Quality Control Region boundaries.

This approach is consistent with the approach of the Clean Air Act and EPA's implementing regulations for defining baseline areas on shore. Section 107 of the Act sets forth the criteria and processes for defining Air Quality Control Regions (AQCR's) and attainment/nonattainment designations. AQCR's for all States have been promulgated by EPA in 40 CFR Part 81, Subpart B. States are required, under section 107(d) to submit to the Administrator recommendations for attainment/nonattainment designations for (air quality control) regions or portions thereof. The final attainment/nonattainment designations for each State have been promulgated by EPA in 40 CFR Part 81, Subpart C. Under this statutory scheme, the largest possible onshore PSD baseline area is an AQCR. See Section 107(d) of the Act and 40 CFR 52.21(b)(definition of "baseline area"). The approach set forth in this memo essentially mirrors the onshore AQCR's for purposes of establishing separate offshore baseline areas in order to implement the PSD increments on the OCS for the areas more than 25 miles from the State's seaward boundary.

Once the "baseline area" is determined according to the above approach, the "minor source baseline date" and the "baseline concentration" are determined in accordance with the rules at 40 CFR 52.21.

cc: Herman Wong, OEA  
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