

Petitioner's Exhibit 17

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue
Seattle, WA 98101

ReplyTo
AttnOf: OAQ-107

Aug 21, 2001

Mr. John Kuterbach, Chief
Air Quality Management
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 303
Juneau, Alaska 99801-1795

Re: Permitting of Forest Oil's Kustatan Production Facility and Osprey Platform Pursuant to the Alaska SIP

Dear Mr. Baumgartner:

Through the federal National Environmental Policy Act (NEP A) process, EPA has been evaluating the potential environmental consequences associated with Forest Oil's development of the Redoubt Shoal Unit. As you already know, development of the Redoubt Shoal Unit will require permitting of an off-shore platform, Osprey, and an on-shore production facility, Kustatan, for purposes of air quality protection. Our recently issued draft environmental assessment identifies Forest Oil's obligation to apply for an air quality construction permit from the Alaska Department of Environmental Conservation (ADEC). In fact, we are aware that Forest Oil submitted a revised PSD-avoidance permit application to you in July 2001, for Kustatan in responding to ADEC's finding that the original application was incomplete.

In ADEC's May 15, 2001, incompleteness letter to Forest Oil, ADEC expresses a concern that Kustatan and Osprey should be permitted together as one facility. We share ADEC's concerns as evidenced by our recent contribution to the NEPA process. See the enclosed August 17, 2001, EPA memorandum from me to Robert R. Robichaud, Manager, NPDES Permits Unit. For the reasons developed in the enclosed memorandum, it is our position that Kustatan and Osprey are one facility for the purposes of air quality construction permitting consistent with the Alaska SIP-approved PSD rules and EPA guidance. Based upon my most recent conversation you, we are in agreement on this position.

Please consider the enclosed memorandum and guidance as your office reviews Forest Oil's revised application for Kustatan. If you have any questions regarding the enclosed material, please contact Dan Meyer of my staff at 206.553.4150.

Sincerely,

Douglas E. Hardesty Manager
Federal and Delegated Air Programs

Enclosures

cc: John Amundsen, Forest Oil
Jim Baumgartner, ADEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION10
1200 Sixth Avenue
Seattle, WA 98101

AUG 21 2001

MEMORANDUM

SUBJECT: Forest Oil Kustatan Facility and Osprey Platform Construction Permitting
Applicability Determination

FROM: Douglas E. Hardesty, Manager
Federal & Delegated Air Programs Unit (OAQ- 107)

TO: Robert R. Robichaud, Manager
NPDES Permits Unit (OW-130)

The purpose of this memorandum is to communicate the Office of Air Quality's position regarding the air quality construction permitting of Forest Oil's Kustatan Facility (Kustatan) and Osprey Platform (Osprey). Both Kustatan and Osprey play vital roles in the Redoubt Shoal Unit Development Project in central Cook Inlet. In preparation for issuing an NPDES permit to Forest Oil for Osprey, Matthew Harrington of your staff is currently developing an environmental assessment (EA) to address potential environmental consequences associated with the development of the Redoubt Shoal Unit. In addition, the environmental assessment identifies the specific federal and state agencies under whose permit authorization mitigation measures for environmental impacts may be applicable.

Mr. Harrington has asked Dan Meyer of my staff to identify the applicable air quality construction permit requirements enabling the Alaska Department of Environmental Conservation (ADEC) to implement the mitigation measures related to air quality impacts. Specifically, Mr. Harrington asks whether or not Kustatan and Osprey should be permitted as one facility or two under the Alaska State Implementation Plan (SIP)-approved Prevention of Significant Deterioration (PSD) program. Mr. Harrington has provided Mr. Meyer with the following background information:

March 2001 Application for an Air Quality Construction Permit for the Forest Oil Corporation Kustatan Production Facility,

April 12, 2001, Draft Environmental Assessment for the New Source NPDES Forest Oil Redoubt Shoal Unit Production Oil and gas Development Project,

May 15, 2001, ADEC Notice of Incomplete Application to Forest Oil Corporation for the Kustatan Production Facility, and

July 2001 Revised Application for an Air Quality Construction Permit for the Forest Oil Corporation Kustatan Production Facility.

Based upon information provided in the records noted above, the Alaska SIP-approved PSD regulations, and EPA's PSD guidance documents, it is the position of the Office of Air Quality that the Kustatan and Osprey projects are one facility under the Alaska SIP-approved PSD regulations. Given that the development of the Redoubt Shoal Unit is intended to progress swiftly to production in a relatively short period of time, Kustatan and Osprey should be permitted together consistent with rule requirements and so as to avoid potential PSD circumvention.

Discussion

The scope of the proposed Redoubt Shoal Unit development, according to the April 12, 2001, draft EA, includes the following components:

- Conversion of the Osprey Platform from a manned exploratory platform to a minimally-manned production platform.
- Production drilling operations using freshwater-based and oil-based drilling fluids. Drilling muds and cuttings will be disposed of with on-platform grind and injection facilities.
- Construction of a new oil production facility located at Kustatan on the West Forelands for oil separation, platform power generation, and produced water treatment for reinjection offshore.
- Transportation of crude oil and natural gas from the Redoubt Shoal Unit to the new oil production facility.
- Transportation of the crude oil from the new oil production facility to existing facilities onshore (through the Trading Bay Production Facility).

Osprey is located 1.8 miles southeast of the tip of the West Forelands off-shore in central Cook Inlet. Formerly an exploratory drilling operation, Osprey will soon be converted to an oil and gas production platform. The oil and gas produced by Osprey will be processed on-shore at Kustatan approximately 4.5 kilometers (2.8 miles) away.

According to the July 2001 Revised Application for an Air Quality Construction Permit for Kustatan,

No industrial activity currently occurs at the [Kustatan] facility location. Exploratory drilling was conducted in November and December 2000. One well was drilled. Production quantities of petroleum were not found and the drilling operation was discontinued.

The proposed operation will collect produced liquids and gas from Forest Oil's Osprey Platform, separate the oil, produced water, and natural gas, and transfer the oil and natural gas' to Forest Oil's West MacArthur River Production Facility.

According to 18 Alaska Administrative Code (AAC) 50.900(21) and (41) of the Alaska SIP, approved February 16, 1995, 60 Fed. Reg. 8943,

“facility” means pollutant-emitting sources or activities which are located on one or more contiguous or adjacent properties and which are owned or operated by the same person or by persons under common control; and

“source” means a structure, building, installation, or other part of a facility which emits or may emit a regulated air pollutant¹.

Both Kustatan and Osprey are individually considered “sources” given that each will contain equipment that emits regulated air pollutants. In order for Kustatan and Osprey to be considered one facility, two elements of the “facility” definition must be satisfied. Namely,

1. Kustatan and Osprey must be located on one or more contiguous or adjacent properties, and
2. Kustatan and Osprey must be owned or operated by the same person or by persons under common control.

It is our understanding that ADEC has not yet made a final determination whether or not to classify the two sources as one facility. ADEC reviewed the March 2001 Application for an Air Quality Construction Permit for the Forest Oil Corporation Kustatan Production Facility, and ADEC provided comments to Forest Oil in a May 15, 2001, letter. As indicated in the letter, the application did not include emissions from Osprey. ADEC noted,

It appears' that the Kustatan Facility and Osprey platform are a single facility as defined in AS 46.14.990.(9) As such, Forest Oil should determine facility classification based on combined emission rates.

Forest Oil responded to these comments in a July 20, 2001, letter to ADEC accompanying its July 2001 Revised Application for an Air Quality Construction Permit for the Forest Oil Corporation Kustatan Production Facility. Forest Oil stated,

Forest Oil is the owner of both the proposed Kustatan Production Facility and the Osprey Platform. Pipeline and electrical and communications cables will span

¹EPA's regulations relating to the requirements for a State to obtain a SIP-approved PSD program requires that a State's definition of “facility” or “source” must be more stringent or at least as stringent, in all respects to the EPA definitions provided in the regulations. See 40 C.F.R. §51.165(a)(1).

the distance between the two facilities. However, the two properties are approximately 4.5 kilometers distant from each other. Forest Oil does not own the land between the Osprey Platform and the Kustatan Production Facility. The intervening terrain is Cook Inlet. The State of Alaska owns the land under that water body.

There is no dispute that Kustatan and Osprey are under the common control of Forest Oil and thus satisfy the “common control” element of the “facility” definition. However, Forest Oil disputes that Kustatan and Osprey are “contiguous or adjacent” as noted in its response to ADEC.

The “common sense” notion of plant dictates that these two facilities are not contiguous or adjacent and should be treated independently for permitting purposes.”

Forest Oil refers to a “common sense” notion of plant, which is a reference to the preamble to EPA’s August 7, 1980, final PSD rulemaking in the Federal Register, 45 Fed. Reg. 52695; however, Forest Oil, does not evaluate how this “common sense” notion applies to the different elements of the Kustatan - Osprey relationship (ie. the distance between Kustatan and Osprey, or the support facility relationship between the two.) The preamble to the August 1980 FR, in addition to other EPA guidance documents, however, do provide further guidance related to the “common sense” notion of whether two facilities are contiguous or adjacent. With respect to the definition of source [facility for purposes of the Alaska SIP], EPA states,

(1) it must carry out reasonably the purposes of the PSD; (2) it must approximate a common sense notion of “plant”; and (3) it must avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of “building,” “structure,” “facility,” or “installation.” Each source is to be classified according to its primary activity, which is determined by its principle product or group of products produced or distributed, or service rendered. Thus one source classification encompasses both primary and support facilities, even when the latter includes units with a different two-digit SIC code. (emphasis added)

45 Fed. Reg. 52694 and 52695.

More specifically, with respect to the concept of “contiguous or adjacent”, EPA states,

EPA has stated in the past and now confirms that it does not intend “source” to encompass activities that would be many miles apart along a long-line operation. For instance, EPA would not treat all of the pumping stations along a multistate pipeline as one “source.” EPA is unable to say precisely at this point how far apart activities must be in order to be treated separately. The Agency can answer that question only through case-by-case determinations.

45 Fed. Reg. 52695.

EPA Region 8, with the assistance of EPA's Office of Air Quality Planning and Standards and Office of General Counsel, provided guidance to the State of Utah concerning multi-source aggregation for purposes of air quality construction permitting. In formulating the guidance. The May 21, 1998, guidance document (Utility Trailer - attachment) utilizes previous EPA determinations to assist Utah in determining whether or not to aggregate two sources under common control but separated by about a mile. The guidance suggests that the determination include an evaluation of whether the distance between the two facilities is sufficiently small to enable them to operate as a single source. The evaluation questions proposed by Region 8 are transposed here with responses specific to the facts surrounding Kustatan and Osprey:

1. Was the location of the new facility chosen primarily because of its proximity to the existing facility, to enable the operation of the two facilities to be integrated? In other words, if the two facilities were sited much further apart, would that significantly affect the degree to which they may be dependent on each other?

Forest Oil chose to construct the Kustatan production unit at the former Tomcat drill site in West Foreland, 2.8 miles from Osprey, for a number of reasons. Utilization of the old Tomcat drill site avoids any further disturbance of wetlands, archaeological sites, and other surrounding properties while utilizing existing assets. Regardless of the specific location of the production facility in West Foreland (or outside West Foreland for that matter), the platform and production unit operate as one facility as each is exclusively dependent upon the other as illustrated in response to item 4. below.

2. Will materials be routinely transferred between the facilities? Supporting evidence for this could include a physical link or transportation link between the facilities, such as a pipeline, railway, special-purpose or public road, channel or conduit.

To enable such an integrated operation, Kustatan and Osprey are physically connected by the following equipment: a) pipelines to transport the oil/gas/produced water from Osprey to Kustatan and to transport the treated produced water from Kustatan to Osprey, b) electrical cables to provide Osprey with power generated at Kustatan, and c) communication cables to coordinate efforts between the two.

3. Will managers or other workers frequently shuttle back and forth to be involved actively in both facilities? Besides production line staff, this might include maintenance and repair crews, or security or administrative personnel.

During the production phase of the project (20 years), the project will support 10-full time employees according to the draft EA (page 4-50). It is anticipated that Osprey will require up to 5 employees per hitch, and onshore personnel from Kustatan will also work at the West McArthur River Unit (West McArthur). Personnel from Kustatan and West McArthur will be utilized at Osprey to perform maintenance activities as required.

4. Will the production process itself be split in any way between the facilities, i.e., will one facility produce an intermediate product that requires further processing at the other facility, with associated air pollutant emissions? For example, will components be assembled at one facility but painted at the other?

Osprey relies upon Kustatan to process all the platform's product into marketable oil and gas while separating and treating the produced water. Once treated, the produced water is piped back to Osprey and is then reinjected off-shore by Osprey. Kustatan also provides power generation to Osprey. Thus, after considering the factors relevant to determining whether Kustatan and Osprey are "contiguous or adjacent," we conclude that they are adjacent facilities within the federal definition of "source" and consequently under the definition of "facility" under the Alaska SIP-approved PSD regulations.

Conclusion

The Office of Air Quality concludes that because Kustatan and Osprey are located on adjacent properties and are owned or operated by the same person under common control, they should be considered one facility under the Alaska SIP-approved PSD regulations. If you have any questions regarding this determination, please contact Dan Meyer of my staff at 206.553.4150.

Attachment

cc: Marcia Combs, AOO
Matthew Harrington, OW -130
Jeff Kopf, ORC-158
Dan Meyer, OAQ-107
John Pavitt, AOO
Theodore Rockwell, AOO