March 12, 1996

4APT-AEB

Mr. Edward A. Cutrer, Jr.
Air Protection Branch
Environmental Protection Division
Georgia Dept. of Natural Resources
4244 International Pkwy., Ste. 120
Atlanta, GA 30354

RE: Aerospace Ground Equipment, Hush Houses, and Jet Engine Test Cells

Dear Mr. Cutrer:

We have received your January 8, 1996, letter which was submitted in response to our December 1, 1995, letter regarding aerospace ground equipment, hush houses, and jet engine test cells. In your letter, you have brought to our attention that aerospace ground equipment does not meet the criteria of a stationary source, since it is typically moved around and deployed wherever needed and does not usually remain at a particular site or location on a property. We have also received letters from the Department of the Air Force dated January 29, 1996, and February 9, 1996, which address this issue and present other questions related to Title V permitting at their facilities. Copies of these two letters are enclosed.

As stated in our December 1, 1995, letter, the definition of stationary source in section 302 of the Clean Air Act (CAA) does not include nonroad engines or nonroad vehicles, as defined in section 216. According to the definition of nonroad engine in 40 CFR Part 89.2, internal combustion engines are not considered to be nonroad engines if they remain or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. Your letter is correct in that 40 CFR Part 89.2 specifically defines a location as any single site at a building, structure, facility, or installation. As such, a specific piece of aerospace ground equipment would be considered a stationary source unless it is determined that it is moved (for reasons other than to solely qualify it as mobile) to another location within the requisite time period. Determinations concerning whether particular pieces of aerospace ground equipment are considered nonroad engines should be made by the permitting authority on a case-by-case basis.

In the January 29, 1996, letter from the Department of the Air Force, trim pads and the emissions from trim pads are described. Similar to hush houses, trim pads are not considered stationary sources, since the aircraft engines are not removed from the aircraft prior to testing.

Jet engine test cells, as discussed in EPA's December 1, 1995, letter, are considered stationary sources. Since the aircraft engine is removed from the aircraft prior to testing in a test cell, the engine is not considered a "nonroad engine" as

defined in 40 CFR Part 89, because it is not "in or on a piece of equipment that is self-propelled...." Since the engine is physically secured in the test cell, which is a permanent structure, the test cell operation is considered a stationary source. As stated in our December 1, 1995, letter, this position is consistent with prior Prevention of Significant Deterioration (PSD) determinations which have been made regarding test cells at jet engine manufacturing facilities.

We disagree with the argument by the Air Force in its letters that coverage of test cells under a state's Title V program is preempted by federal law. Section 233 of the Act, 42 U.S.C. 7573, provides that states may not "adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof" unless the standard is identical to a standard applicable to the aircraft under Subchapter II, Part B of the Act. Likewise, in the 1990 Amendments to the Act, Congress directed EPA to study the potential regulation of nitrogen oxides emissions from the "testing of uninstalled aircraft engines in enclosed test cells." 42 U.S.C. 7571. States are permitted to adopt and enforce standards for nitrogen oxides emissions only after giving public notice of whether the standards are in accordance with the findings of the study. Id.

Title V "does not impose substantive new requirements..." (ref. 40 CFR Part 70.1). The requirement that a source obtain, and operate only pursuant to, a Title V permit is not an emission standard. Therefore, the Act's prohibition against state emission standards for aircraft or aircraft engines different from federal standards and its public notice requirement for state emission standards for test cells have no bearing on whether operators of test cells are required to obtain a Title V permit or whether test cells should be included in Title V applicability determinations. For the same reasons, the fact that the test cells study apparently has been completed and was inclusive, as reported by the Air Force in its letter of February 9, 1996, has no bearing on Title V.

The Air Force argues in a similar vein that regulation of Air Force engine test cells may be a discriminatory regulation of a federal agency under Section 118(a) of the Act, which gives states the authority to regulate federal agencies only "in the same manner and to the same extent as any nongovernmental entity." The apparent claim here is that the treatment of test cells as stationary sources potentially subject to Title V regulates the Air Force to a greater extent than "other similar sources." There is no basis for this claim, however, since there would be no reason to differentiate between a test cell operated by the Air Force and one operated by a nongovernmental entity. As noted above, prior PSD determinations of manufacturers have taken test cell emissions into account. Also, an argument that the Air Force would be regulated to a greater extent because no nongovernmental entity operates post-installation test cells would similarly fail. In that case, there would be no "other similar sources" under Section 118(a).

If there are any questions regarding this letter, please contact Mr. Keith Goff of my staff at (404)347-5014 or contact Mr. David Savage of the Office of Regional Counsel at (404)347-2641.

Sincerely yours,

/s/

Brian Beals
Chief
Source Evaluation Unit
Air Enforcement Branch
Air, Pesticides, and Toxics
Management Division

Enclosures

cc: Erich O. Hart
Department of the Air Force

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