

BEFORE THE ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:
World Color Press
Applicant

PSD Appeal No. 88-4

IEPA ID Nos. PSD-1988-IL-1, 2, & 3

DESIGNATION OF ISSUES

By order dated May 5, 1988, and pursuant to 40 CFR 124.19(b), notice was given of the Agency's decision to review several prevention of significant deterioration (PSD) permit determinations made by the Illinois Environmental Protection Agency (IEPA) for World Color Press. These permit determinations would authorize World Color Press to construct six heatset web offset printing presses at three locations in Illinois. The Agency's notice observed that the best available control technology (BACT) determinations for these permits appeared to be

^{1/} The complete text of the statutory definition of BACT states:

The term "best available control technology" means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel Combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants which will exceed the (continued...)

flawed. No issues for review were designated in the May 5th order; instead, a separate request for information was made informally, to aid in deciding what course of action to follow in exercising the Agency's review authority under 40 CFR 124.19(b). I am now formally designating the issues to be briefed on review of IEPA's permit determinations.

Although IEPA concluded that World Color Press had met all applicable requirements of the federal PSD regulations (as well as applicable State requirements), it appears that IEPA determined, incorrectly, that an alleged absence of significant photochemical reactivity of the facilities' VOC emissions was an "environmental impact" that would justify less stringent emission limitations, particularly in view of the added monetary costs associated with more stringent control technologies. I rejected similar reasoning in a subsequent case, Columbia Gulf Transmission Company, PSD Appeal No. 88-11 (June 21, 1989), where I held that negligible impacts of NOx

1/ (...continued) emissions allowed by any applicable standard established pursuant to section 7411 [new source standards] or 7412 "hazardous pollutant standards] of this title. 42 U.S.C. §7479(3).

2/ See letter dated February 7, 1989, from the Agency's Chief Judicial Officer to the Director, Illinois Environmental Protection Agency (IEPA); Response of IEPA, dated March 23, 1989; Response of World Color Press, dated April 14, 1989.

emissions on ambient air quality did not, by themselves, justify using less than the most effective control technology available. As explained in the decision:

BACT is defined in the Clean Air Act as an "emission limitation" set by the permit issuer, based on the "maximum degree of reduction" that can be achieved for each regulated pollutant, on a case by case basis, after "taking into account energy, environmental, and economic impacts and other costs." 42 U.S.C. 7479(3). The latter clause is in the BACT definition to temper the stringency of the technology requirements whenever one or more of the specified "collateral" impacts -- energy, environmental, or economic -- renders use of the most effective technology in- appropriate. As explained by Senator Edmund S. Muskie, the principal architect of the Clean Air Act amendments of 1977:

One objection which has been raised to requiring the use of the best available pollution control technology is that a technology demonstrated to be applicable in one area of the country is not applicable at a new facility in another area because of difference [sic] in feedstock material, plant configuration or other reasons. For this and other reasons, the committee voted to permit emission limits based on best available technology on a case-by-case judgment at the State level. This flexibility should allow such differences to be accommodated and still maximize the use of improved technology.

Senate Debate on S.252 (June 8, 1977), reprinted in 3 Senate Committee on Environment And Public Works, A Legislative History of the Clean Air Act Amendments of 1977 at 729 (Comm. Print August 1978) (Congressional Research Service, Serial No. 95-16). In other words, the collateral impacts clause operates primarily as a safety valve whenever unusual circumstances specific to the facility make it appropriate to use less than the most effective technology. The permit applicant must install the most effective technology if it fails to demonstrate to the satisfaction of the permit issuer that such unusual circumstances exist.

Id. at 4-6 (footnotes omitted).

The permit issuer in Columbia Gulf was the Kentucky Department of Air Quality, which had determined that the modelled negligible impact of the proposed facility on air quality was an environmental impact that could be factored into the BACT analysis to justify using less than the most effective

technology to control NOx emissions. The Department reasoned that the negligible benefits to ambient air quality were outweighed by the additional economic costs associated with NOx control, estimated at \$2,121.00 for each additional ton of NOx removed. This argument was rejected as being without merit:

It gives no effect to the primary purpose of the collateral impacts clause, which, as the legislative history indicates, is to focus on local impacts that constrain the source from using the most effective technology. For example, if the most effective technology would impose exceptional demands on local water resources, so that use of the technology would have adverse impacts on the environment, then, under those circumstances, the applicant would have a sound basis for foregoing use of the most effective technology in favor of some less water-intensive technology. This would be a "water resources" equivalent of a "feedstock" or "plant configuration" constraint referred to by Senator Muskie.

In the present case, the Department and the applicant have not demonstrated the existence of any environmental impacts that would constrain or even remotely circumscribe the applicant's ability to use the most effective technology. The negligible air quality impact of the proposed NOx emissions is clearly not a constraint on implementing the most effective technology. Because it is not a constraint, the modelled impact of the proposed facility's NOx emissions on air quality should not be considered for purposes of making the BACT determination.

Id. at 7-8 (footnotes omitted).

It was further explained in *Columbia Gulf* that the structure of the Clean Air Act supports the foregoing interpretation. Specifically, the PSD provisions of the Act make regulatory distinctions between air quality impact analyses and technology analyses, and a permit applicant must satisfy the requirements of both categories to obtain a permit.

Section 165(a)(3) of the Act, 42 USC 7475(a)(3), addresses the direct impact of regulated pollutants on ambient air quality by requiring an applicant for a PSD permit to

demonstrate that the proposed facility will not cause or contribute to a violation of national ambient air quality standards or PSD increments, whereas section 165(a)(4) of the Act, 42 USC 7475(a)(4), is concerned exclusively with BACT, which is principally a technology-forcing measure that is intended to foster rapid adoption of improvements in control technology. Both of these provisions of the Clean Air Act must be satisfied by an applicant seeking a PSD permit, and compliance with one provision does not relieve or lessen an applicant's burden of complying fully with the other. Thus, even though Columbia Gulf's NOx emissions will not cause a violation of ambient air quality standards in contravention of section 165(a)(3) of the Act, it must still satisfy the BACT technology requirements imposed by section 165(a)(4).

Id. at 8-9 (footnote omitted).

In the present instance, it appears that World Color Press and IEPA are attempting to justify the use of less than the most effective technology for control of VOC emissions by employing the same faulty reasoning that the permit applicant and the permit issuer used in Columbia Gulf. Accordingly, in setting this case for briefing, World Color Press and IEPA shall address the issue raised by the Columbia Gulf decision, and shall show cause why the permit determination should not be remanded to IEPA for revision of the BACT determination in accordance with Columbia Gulf. World Color Press and IEPA shall file their briefs within thirty (30) days of the date of this order.

As directed by 40 CFR 124.10, IEPA shall give public notice of the May 5th order and of the instant notice, making provision for the submission of comments (or briefs) by the public within thirty (30) days of publication of notice.

See Notice of Decision to Review Permits at 3 (May 5, 1988); also 40 CFR 124.19(c) and 124.10(a)(1)(iv).

So ordered.

/s/

William K. Reilly

Administrator

Dated: June 7, 1990

3/ IEPA made its determination pursuant to a delegation of authority from the U.S. Environmental Protection Agency, Region V, Chicago, Illinois. Because of the delegation, IEPA's authority to issue PSD permits is subject to the review provisions of the applicable EPA regulations, 40 CFR §124.19 (1989), and any permit it issues will be an EPA-issued permit for purposes of federal law. 40 CFR §124.41; 45 Fed. Reg. 33413 (May19,1980).

