

COMINCO 21 OCT  
12/21/99

# Model Clearinghouse Information Storage and Retrieval System

## Record Information Report

Record Number: 00-X -01 Fiscal Year: 1900 Region: 10 Last Update:  
Name: Cominco-Oct 99 12/21/99

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State(s): ALASKA  
Pollutant(s): PM-10  
Regulation(s): PSD  
Source(s): Mine  
Model(s): UNSPECIFIED  
Subject(s): Ambient Air  
Urban/Rural: Rural Only  
Oral/Written: Oral  
Terrain: Low Terrain (below stack height)  
Guideline: Not Relevant  
Database: Not Relevant  
Involvement: Review and Comment

### Record Comments:

Background Information and definition of issues:

From: JOHN SILVASI

To: RTPMAINHUB:R10HUB:RTPMAINHUB:DCWIC01:DCOGC:DCOGC.D...

Date: 10/20/99 5:17am

Subject: "Ambient air" questions -Reply -Reply -Reply -Reply -Reply -Reply

Mike,

I'll fax you two items that may shed some, but not a lot of, light. One is a  
3/20/87 memo

(concerning a proposed Wyoming rule) from Christine Phillips, a region VIII  
branch chief, to

Irwin Dickstein, the region VIII air division director, indicating that the  
particular land acquisition

in the Powder River Basin seemed to constitute a dispersion technique under  
section 123. The

second is a 4/27/87 memo from Darryl Tyler, the director of CPDD in OAQPS to  
Irwin Dickstein

cautioning region VIII not to automatically find that land acquisition in  
general is a dispersion

technique under section 123. I believe Region VIII subsequently responded to  
the Wyoming, but

I do not have the final letter; I only have a draft, and the draft did not  
mention the sect. 123 issue.

Also, Sharon Reinders has asked Ellen Baldridge of the Model Clearinghouse whether any land acquisition issues have been raised in that forum. We will forward any additional information if it becomes available.  
We hope this helps!

John Silvasi

>>> MICHAEL PROSPER 10/19/99 05:27pm >>>

I wasn't trying to suggest, John, that we develop specific criteria in some sort of guidance document. I was only wondering if there were some earlier docs around that disclosed how we analyzed and thought about this issue in light of the CAA provisions. For instance, there is an OGC memo drafted during the Kennecott Copper situation that argues we could consider such land acquisitions as dispersion techniques. Although the memo was never finalized, it is that sort of analysis that would be instructive and useful even as we consider cases when they arise on an individual basis. My point is it's not clear that we've really ever resolved --even just among ourselves-- whether the Agency believes land acquisitions of this type should indeed not be allowed to excuse companies from NAAQS ambient air requirements whenever there's evidence they are undertaken to circumvent the act, and what are the legal and policy theories we would rely upon to determine that's what's happening. And, unfortunately, this Cominco Red Dog mine case appears to squarely raise this issue.

>>> JOHN SILVASI 10/19/99 03:17pm >>>

Mike--I recommend that we continue to handle questions related to section 123 (like land acquisition) on a case by case basis. Not only would specific criteria be difficult to develop that would cover foreseeable future cases adequately, but it provides job security for us old timers (just kidding about the latter).

--John S.

>>> SHARON REINDERS 10/19/99 02:59pm >>>

I have many old memos on ambient air generally related to modeling. There is a 1987 memo noting toleration of land acquisition to solve modeled violations for two cases which I recall are

the two you mentioned. Yet this memo goes on to say that EPA has not formulated criteria for

when this is OK and not a dispersion technique. So this takes us to 1987.

>>> MICHAEL PROSPER 10/19/99 12:16pm >>>

I do agree, John, in general with all you say. And you should know that I've been talking with

Julie about their situation off and on, which includes forwarding to her some of the memos you

reference. However, as you say, the tough part with ambient air is dealing with the individual

cases as they arise. With respect to this same facility, we "punted" several years back on the last

issue, i.e., whether the employees are to be considered "the public" when not engaged on

company duties even though their off-duty residence is located w/in company property. As I

recall, we made vague noises about the issue being addressed by OSHA regs. even though, at the

time, that wasn't really all that clear. The other key point, John, that Julie is trying to get a handle

on is this issue regarding continuing land acquisition by a facility apparently to evade regulation.

As best I can tell from my files, the 2 previous instances seem to have been the Kennecott Copper

one in Utah, and the Westvaco plant in PA(?). Also, I know that when Dave Hawkins was here

he had initiated discussions in the early 80s about expanding the definition in 50.1(e) to "get at"

this problem, and then decided against it. What I don't have in my files is any evidence of what

we decided the proper "answer" was and/or developed any guidance about how to go about

deciding.

>>> JOHN SILVASI 10/19/99 10:43am >>>

Juliane,

Dave Stonefield & I have answered a number of questions concerning EPA's definition of

ambient air over the years. 40 CFR 50.1(e) reads, "Ambient air means that portion of the

atmosphere, external to buildings, to which the general public has access."

That definition has

remained unchanged in the CFR since 1971.

That definition has been interpreted by EPA in a number of letters and

memorandums over the

years. One of the more important letters was one of December 19, 1980 from

then-Administrator

Douglas Costle to Sen. Jennings Randolph, Chairman, Committee on Environment and Public

Works, US Senate. It read in part, "... the exemption from ambient air is available only for the atmosphere over land owned or controlled by the source and to which public access is precluded

by a fence or other physical barriers. EPA will continue to review individual situations on a

case-by-case basis to ensure that the public is adequately protected and that there is no attempt by

sources to circumvent the requirement of Section 123 of the Clean Air Act."

As you note, there have been cases in the past where a source's acquisition of additional land to

which public access is precluded has been allowed, so we do review such situations on a

case-by-case basis. I do not believe mere posting of no trespassing or private property

signs--such as what the Alaska company is relying on currently--would constitute a fence or other

physical barrier under our definition and policy.

The Alaska situation is further complicated, however, by the fact that even if the company

precludes what we normally consider public access (e.g., access by persons who are not

employees of the source who are working) by a fence or other physical barrier, it would not

protect the employees when they are not working. I do not recall whether we faced a situation

where a source's own employees on their own time could be exposed to concentrations above the

level of the standards. It is not clear to me whether such employees have protection under the

Clean Air Act or under the Occupational Safety and Health Act. I suspect OSHA may have a

case history of decisions of when OSHA rules do and do not apply; I know recently on national

news this issue arose in the context of housing for migrant agricultural workers, but I seem to

recall that situation dealt with State workplace rules. Based on the thrust of past decisions we

have made, however, I agree with your assessment that residential areas of employees should be

considered ambient air. For instance, because such employees would presumably have friends or

family visiting, it appears to me that such locations should have protection under the Clean Air Act.

Mike Prosper--do you share this point of view?

--John Silvasi (919-541-5666)

>>> JULIANE MATTHEWS 10/18/99 01:14pm >>>

I'm not sure which of you in OAQPS is the right contact for this now so I'm sending this message to all three of you.

We are dealing with the State of Alaska and the Cominco Red Dog lead and zinc mine in Alaska

as it relates to a proposed amendment to the company's PSD permit.

There are a number of issues relating to the company's ambient air boundary- 1) whether or not

public access is effectively precluded (the mine is in a remote part of Alaska but the boundary is

not fenced and the State is only requiring 'access prohibited" type of signs at a few key locations)

2) the boundary is very large (6000 meters by 7500 meters by 2500 meters by 9000 meters- which

I think convert to about 3.7 miles by 4.7 miles by 1.5 miles by 5.6 miles) It appears that the

company has expanded the boundary periodically when they have had difficulty meeting the

NAAQS and increment with a smaller boundary. The area includes lands owned by the State, an

Alaska native consortium and possibly DOI.

3) Cominco employees live on site and we believe are member of the general public when they are

off duty. Their housing and recreation areas are inside the boundary.

4) there are a number of associated modeling issues tied to the boundary location.

I am wondering what the agency position is regarding land acquisition as a dispersion or control

technique under section 123 of the Clean Air Act. Can the company just keep expanding their

boundary when they find they will exceed the NAAQS with a smaller boundary? I've heard that

EPA may have allowed it two times in the past but don't know any of the details.

We are meeting with Alaska and Cominco on Thursday up in Anchorage to discuss these issues.

I'd love to talk with whichever of you is appropriate before then or hear any thoughts you have.

My number is 206 553-0163.

Thanks a lot.

CC: RTPMAINHUB:R10HUB:RTPMAINHUB:DCWIC01:DCOGC:DCOGC.D...

Summary of C/H Comments and Discussions:

From: Dean Wilson

To: PETERS-WARREN

Date: 10/21/99 1:24pm

Subject: "Ambient air" questions -Reply -Reply -Reply -Reply -Reply -Reply  
-Forwarded  
-Reply

Hi Warren--My reading of the long string of communications is that there are 2 ambient air issues

involved in the AK case. One is the issue of land acquisition. History has it on this issue that it is

case-by-case. I don't know that there is very much documentation on the past cases. The one

that I am particularly aware of is the Luke pulp mill case in MD, back in the early 80's. In this

case the company bought up and fenced a hillside where there were high concentration estimates.

EPA did not step in and say no to this action--in the end the SIP was approved with no receptors

on the purchased land. Joe Tikvart can maybe provide some more details; he was directly

involved in the meetings with Region III where this was discussed.

On the land acquisition issue in AK, Rob Wilson called me a couple of weeks ago seeking

historical guidance. I pointed to the SO2 Guideline and that the issue has always been

case-by-case. Following, this morning Sharon Reinders called me on the same issue, asking for

historical Model Clearinghouse experience with the issue. I again pointed out that it is case by

case, as suggested in the SO2 G/L, and suggested that she do a search on MCHISRS for the

subject "ambient air" for specific historical cases.

The other issue is whether company housing is considered ambient air. We have answered the

question several times in the past to the affirmative. For example see C/H records 83-II-04 and

97-VII-02. The difference between most if not all of the historical cases and the AK case is that

the historical cases mostly dealt with base housing on military reservations where both the

employee and his family live, whereas the AK case may (I'm not sure of the facts) only be

employees.

Other C/H records that I found to be mildly interesting and maybe somewhat relevant are

88-II-15 and 94-IV-05.

If anyone has problems finding the MCHISRS records, I can LAN or fax them.

I didn't try to cc this message to everyone on the string of communications.

Some of them I don't

even know. I assume that you or Sharon or Rob can forward as needed.

dean

CC: RTP3.RTMU258.REINDERS-SHARON, R10SEA1.R0HELENS.WIL...

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Follow Up from OAQPS NSR group

From: DAN DEROECK

To: R10SEA1.R0HELENS.MATTHEWS-JULIANE

Date: 10/21/99 11:26am

Subject: "Ambient air" questions -Reply -Forwarded

I was asked to respond to your "ambient air" issues. I have read the response provided by Dave

Stonefield and Mike Prosper and I am in basic agreement with that response. In question 3, it

sounds like the workers are permanently housed on the property. I don't think this is comparable

to the temporary housing situation on drilling rigs. It would also seem likely that the employees'

families are there as well. If that is the case, it would be difficult to argue that the public is

precluded from having access to the property.

You also referenced some modeling questions associated with the land issue (question #4).

Please provide more detail and I will try to work through them with our modelers. I would note

that EPA policy does acknowledge some differences in the way we select receptors for modeling

the NAAQS vs. the PSD increments.

CC: karen, RTMU258.HELMS-TOM, RTP10.RTPSTD.PETERS-WARR...