



U.S. Environmental Protection Agency Applicability Determination Index

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Category: NSPS
EPA Office: Region 5
Date: 06/30/2003
Title: Applicability to Replacement of Individual Conveyors
Recipient: Frank Prager
Author: George Czerniak

Subjects: Part 60, Y, Coal Preparation Plants

References: 60.14
60.15
60.2
60.250(a)
60.251(g)

Abstract:

Q1: Does the replacement of an individual coal conveyor constitute construction or reconstruction of an affected facility or must one view the conveyors collectively as a group when determining if the replacement or construction of an individual conveyor constitutes the construction or reconstruction of an affected facility?

A1: Each conveyor must be evaluated individually to determine if the replacement of a single conveyor creates an affected facility subject to Part 60, Subpart Y. Based on the wording of the regulation, each conveyor is viewed individually. This determination confirms an earlier determination on this issue, and was also based on previous determinations concerning the applicability of Subpart Y.

Q2: When evaluating applicability of Subpart Y to coal processing and conveying equipment at a coal preparation plant, does one include all coal preparation equipment as a whole (system) or does one view each piece of processing and conveying equipment as a separate affected facility?

A2: The NSPS General Provisions in Subpart A define affected facility as any apparatus to which a standard is applicable. In general, when U.S. EPA seeks to regulate a process as a whole the regulation will refer to a system or facility or will use the term "all" when describing the equipment that is part of the affected facility. Because Subpart Y defines coal processing and conveying equipment to be any machinery and because U.S. EPA did not identify coal processing and conveying equipment as a system, the affected facility is each individual coal conveyor.

Letter:

6-30-03
(AE-17J)

Frank P. Prager, Assistant General Counsel
Xcel Energy
1225 17th Street, Suite 900
Denver, Colorado 80202-5533

Re: NSPS Subpart Y Applicability to Xcel Energy, Alan King Facility

Dear Mr. Prager:

This letter is in response to your letter of February 4, 2002, in which you requested that the United States Environmental Protection Agency (U.S. EPA) reconsider a formal New Source Performance Standards (NSPS) - Subpart Y applicability determination it issued to the Minnesota Pollution Control Agency in a letter dated December 27, 2001. The determination concerned the potential applicability of NSPS - Subpart Y to the Flite Coal Conveyor replacement project at the Xcel Energy (Xcel), Allen S. King Generating Plant, in Bayport, Minnesota. Please note that this response only addresses the issue of NSPS Subpart Y applicability and does not address the applicability of other regulations including New Source Review, the federally approved State Implementation Plan, and other NSPS standards or requirements.

In your letter dated February 4, 2002, you make several assertions to support your position that the affected facility designated under NSPS Subpart Y as "coal processing and conveying equipment (including breakers and crushers)" must include all "coal preparation plant equipment as a whole." For example, you assert that at "no point do the regulations state . . . that each piece of processing and conveying equipment should be viewed as separate . . . [affected facilities]."

The NSPS General Provisions set forth at 40 C.F.R. Subpart A, 60.2, define "affected facility" as "any apparatus to which a standard is applicable." (Emphasis added.) The designation of affected facilities under NSPS Subpart Y at 40 C.F.R. 60.250 includes "coal processing and conveying equipment." NSPS Subpart Y at 40 C.F.R. 60.251(g) defines "coal processing and conveying equipment" as "any machinery used to reduce the size of coal or to separate coal from refuse, and the equipment used to convey

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coal to or remove coal and refuse from machinery. This includes, but is not limited to, breakers, crushers, screens, and conveyor belts." (Emphasis added.)

In general, where EPA seeks to regulate a process as a whole, or seeks to define a process or certain objects as a whole, the NSPS regulations will refer to the objects in the collective, such as describing the objects or process as a "system" or a "facility," or will use the term "all" in describing those objects. For example, the NSPS Subpart Y regulations designate "coal storage systems" and also "coal transfer and loading systems" as affected facilities, and defines them, respectively, as "any facility used to store coal" and as "any facility used to transfer and load coal for shipment." (Emphasis added.) Thus, under these designations, all coal storage equipment is treated collectively as one affected facility, and, correspondingly, all coal transfer and loading equipment used for shipping is treated collectively as one affected facility.

In contrast, NSPS Subpart Y identifies "coal processing and conveying equipment" as the affected facility. (Emphasis added.) Significantly, NSPS Subpart Y does not designate this affected facility as a "coal processing and conveying system." Correspondingly, NSPS Subpart Y, in defining this affected facility, refers to "any machinery" (emphasis added). NSPS Subpart Y does not define this affected facility as "any facility used to process or convey coal." Thus, it is clear from the plain language and context of NSPS Subpart Y that EPA did not intend to regulate all "coal processing and conveying equipment" as one collective affected facility.

Xcel also believes that U.S. EPA's position, as expressed in the December 27, 2001 letter to MPCA, is not logical because it would result in a situation where the NSPS is applicable to certain individual conveyors that had been replaced while the other equipment would remain exempt. Indeed, U.S. EPA's position is that there are a number of affected facilities at a coal preparation plant and it is possible for some of them to be subject to the Subpart Y NSPS while other facilities at the same plant are not subject to the Subpart Y NSPS. For example, one thermal dryer at a coal preparation plant could be subject to the NSPS while an adjacent older thermal dryer might not be subject to the NSPS. The logic of U.S. EPA's position arises from a basic premise of NSPS, which is, that new or modified sources of air pollution have the greatest flexibility to incorporate emission reduction technology. It should be noted that under certain NSPS standards certain companies have addressed the juxtaposition of existing and affected sources by simply using the emission

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controls required to meet the NSPS standard at both their affected and existing facilities.

Your letter also discusses U.S. EPA Region 5's position on the April 16, 1998, letter from EPA Region IV regarding a Carolina Power and Light plant. As we indicated in our December 27, 2001 letter, we acknowledge that this applicability determination could have been written with greater clarity. For example, the determination refers to a "coal conveying system" as being defined in the regulation - when, in fact, NSPS Subpart Y neither refers to nor defines such a term. However, U.S. EPA Region 5 does agree with Region IV's determination in relation to its finding that certain coal conveyors are subject to the requirements of NSPS Subpart Y, while other conveyors may, or may not, be subject to the requirements of NSPS Subpart Y. In reference to certain other coal conveyors that the company asserted were not subject to NSPS Subpart Y, Region IV's determination states that "if coal conveyors 6, 12A, 12B, 13A, and 13B were constructed after October 24, 1974, they are also affected facilities subject to Subpart Y." (Emphasis added.) In other words, although the determination refers to an undefined "coal conveying system," in fact, the Region IV determination does not treat the conveyors as one collective affected facility.

This position is also reflected in the abstract for the Region IV applicability determination, which states: "What portion of the coal conveying system is Subject to Subpart Y at a coal preparation plant?" This question can only be asked if individual conveyors can be subject to the Subpart Y NSPS.

Finally, if the Region IV determination were to reflect the position you attribute to it, that is, that all "coal processing and conveying equipment" must be treated as one affected facility, then Region IV would have analyzed the determination in a different manner. For example, rather than looking at the installation dates of individual conveyors, the determination would have discussed the construction costs and installation dates of all conveyors and processing equipment under a reconstruction or capital expenditure analysis.

U.S. EPA's letter of December 27, 2001, did not make a final determination regarding the applicability of the Subpart Y NSPS to the Xcel Energy, Alan King facility. U.S. EPA continues to believe that the appropriate way to determine applicability in this situation is to look at each conveyor that was replaced and determine if each conveyor was new, modified or reconstructed. The information provided by Xcel appears to indicate that each conveyor was entirely reconstructed. As a result, it appears that each individual conveyor is subject to NSPS Subpart Y.

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If there are any questions concerning this letter, please contact Jeffrey Bratko of my staff at (312) 886-6816 or via e-mail to Bratko.Jeffrey@EPA.mail

Sincerely yours,

George T. Czerniak, Chief
Air Enforcement and Compliance Assurance Branch

cc: Betsy Randt, MPCA