



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 18 2008

THE ADMINISTRATOR

MEMORANDUM

TO: Regional Administrators

FROM: Stephen L. Johnson, Administrator

RE: EPA's Interpretation of Regulations that Determine Pollutants Covered By Federal Prevention of Significant Deterioration (PSD) Permit Program.

INTRODUCTION

In this memorandum, I am establishing an interpretation clarifying the scope of the EPA regulation that determines the pollutants subject to the federal Prevention of Significant Deterioration (PSD) program under the Clean Air Act (CAA or Act). Under Title I, Part C of the Act, the PSD program preconstruction permit requirement applies to any new major stationary source or modified existing major stationary source of regulated air pollutants located in an area that is either attaining the National Ambient Air Quality Standards (NAAQS) or unclassifiable. Under the federal PSD permitting regulations, only newly constructed or modified major sources that emit one or more "regulated NSR pollutants," as that term is defined in 40 C.F.R. 52.21(b)(50), are subject to the requirements of the PSD program, including the requirement to install the best available control technology (BACT) for those regulated NSR pollutants that the facility emits in significant amounts. This memorandum contains EPA's definitive interpretation of 40 C.F.R. 52.21(b)(50) and is intended to resolve any ambiguity in subpart (vi) of that paragraph, which includes "any pollutant that otherwise is subject to regulation under the Act." As of the date of this memorandum, EPA will interpret this definition of "regulated NSR pollutant" to exclude pollutants for which EPA regulations only require monitoring or reporting but to include each pollutant subject to either a provision in the Clean Air Act or regulation adopted by EPA under the Clean Air Act that requires actual control of emissions of that pollutant.

As a matter of practice, EPA has not historically applied the PSD program to pollutants that are subject only to monitoring and reporting requirements. EPA may mandate monitoring and reporting by regulation to gather information about emissions for several purposes, including establishing emissions baselines or informing decisions regarding whether to establish controls or limitations for a particular pollutant. Although EPA has not required that PSD permits contain emissions limitations for pollutants subject only to monitoring and reporting requirements, the EPA Environmental Appeals

Board (EAB or Board) recently determined that prior EPA actions are insufficient to establish a binding interpretation that section 52.21(b)(50) covers only pollutants subject to regulations that require actual control of emissions. *In re: Deseret Power Electric Cooperative*, PSD Appeal No. 07-03 (EAB Nov. 13, 2008). The Board's decision has contributed to uncertainty regarding the scope of the PSD program. Permitting authorities, applicants, and other interested parties do not currently know whether pollutants for which EPA has only established regulatory requirements to monitor and report emissions are covered by the PSD program and whether sources must consider these pollutants when assessing whether they are major sources that must apply for a PSD permit.

I respect the EAB decision in *Deseret*, which was thorough, thoughtful, and based on the permitting record before the Board. This memorandum is not intended to supersede the Board's decision, which was issued in accordance with authority delegated to the EAB by the EPA Administrator. *See* 40 C.F.R. § 124.2; 40 C.F.R. § 124.19; 57 Fed. Reg. 5320 (Feb. 13, 1992). The purpose of this memorandum is to build on the Board's *Deseret* opinion and address ambiguity in EPA's regulations that remains after the EAB concluded the Agency did not previously establish the interpretation that pollutants subject solely to monitoring or reporting requirements are not "regulated NSR pollutants" that require emissions limitations based on levels that can be achieved using BACT. *Deseret* slip op. at 9. This memorandum is intended to reduce ambiguity by setting forth an initial interpretation of EPA's regulation at 40 C.F.R. § 52.21(b)(50).

The EAB encouraged EPA offices to consider whether to undertake an action of nationwide scope to address the interpretation of the phrase "subject to regulation under the Act," which is used in the regulatory definition of "regulated NSR pollutant." *See Deseret* slip op. 63-64. This memorandum is intended to accomplish that purpose, thus relieving individual EPA Regional Offices of the burden of resolving an issue which affects the entire national permitting program. Immediate issuance of this interpretation of EPA's regulation is needed to ensure the continuing operation of the federal PSD permitting program and to resolve ambiguity and reduce confusion among permitting authorities, the regulated community, and other interested stakeholders. This memorandum reflects my considered judgment and explains existing regulatory requirements. The interpretation adopted in this memorandum is consistent with the historic practice of the Agency and with prior statements by Agency officials, including the Administrator, the EAB, and the General Counsel. EPA has not previously issued a definitive interpretation of the definition of "regulated NSR pollutant" in section 52.21(b)(50) or an interpretation of the phrase "subject to regulation under the Act" that addressed whether monitoring and reporting requirements constitute "regulation" within the meaning of this phrase.

The interpretation in this memorandum applies to all PSD permitting actions by EPA Regions (and delegated States that issue permits on behalf of EPA Regions), under the federal PSD permitting program governed by 40 C.F.R. § 52.21. I request that the Regional Offices implement the attached interpretation immediately in federal PSD permitting actions. In addition, Regional Offices should take immediate steps to inform

delegated States of this interpretation. I also encourage Regional Offices to promptly communicate this interpretation to state and local agencies that implement EPA-approved PSD programs under their State Implementation Plans.¹

I. BACKGROUND ON THE EAB'S *DESERET* DECISION AND THE NEED FOR THIS CLARIFICATION OF THE PSD REGULATIONS

A. The *Deseret* Decision

On November 13, 2008, the EAB issued a decision in *In re Deseret Power Electric Cooperative*, PSD Appeal No. 07-03 (EAB 2008). The case involved an appeal of a PSD permit that Region 8 had issued on August 30, 2007, to Deseret Power Electric Cooperative (Deseret) authorizing it to construct a new waste-coal-fired electric generating unit near its existing Bonanza Power Plant, in Bonanza, Utah. The Board issued an order and opinion remanding the permit because it found that Region 8 erroneously believed it was required to follow a historic agency interpretation concerning the scope of the phrase "subject to regulation" used in the regulatory definition of the term "regulated NSR pollutant," 40 C.F.R. 52.21(b)(50), and the Clean Air Act (section 165 and 169).² The Board found that the permitting record failed to set forth "sufficiently clear and consistent articulations of an Agency interpretation to constrain the authority" of the Region in the manner explained in the Region's response to public comments. The Board also considered additional Agency documents cited in the briefs submitted by various parties and concluded that these Agency actions also were insufficient to unequivocally establish the specific interpretation of the phrase "subject to regulation" that Region 8 believed it was bound to apply in issuing the permit.

¹ The EPA regulation setting forth PSD program requirements for State Implementation Plans also includes the same definition of this term at 40 C.F.R. § 51.166(b)(49). Because the same language is used in this regulation, Regional Administrators may also apply the interpretation described in this memorandum prospectively when reviewing and approving new submissions for approval or revision of state plans. Because the EAB determined that the interpretation adopted in this memorandum was not previously established by the Agency, this interpretation does not apply retroactively to prior approvals of State Plans by EPA Regional Offices. To the extent approved State Implementation Plans contain the same language as used in 40 C.F.R. § 52.21(b)(50) or 40 C.F.R. § 51.166(b)(49), States may interpret that language in state regulations in the same manner reflected in this memorandum.

² The statute and regulation use similar but not identical language. The regulation defines a regulated NSR pollutant to include "Any pollutant that otherwise is subject to regulation under the Act" and requires BACT for "each regulated NSR pollutant." 40 C.F.R. §§ 52.21(b)(50), (j). The Clean Air Act requires BACT for "each pollutant subject to regulation under this Act." CAA §§ 165(a)(4), 169. The United States Code refers to "each pollutant regulated under this chapter," which is a reference to Chapter 85 of Title 42 of the Code, where the Clean Air Act is codified. See 42 U.S.C. §§ 7475(a)(4), 7479(3). For simplicity, this memorandum generally uses "the Act" and the Clean Air Act section numbers rather than the U.S. Code citation.

More specifically, the primary issue before the Board was whether the permit had to include BACT limits for carbon dioxide (CO₂) under the definition of a “regulated NSR pollutant” and statutory language in sections 165 and 169 that make the BACT requirement applicable to “each pollutant subject to regulation” under the Act. The Petitioner (Sierra Club) argued that this statutory language was unambiguous and subject to only one interpretation as a matter of law, leaving the Agency, and hence the Region, no discretion to interpret the phrase. Petitioner argued that the act of promulgating a “regulation” in the Code of Federal Regulations that required power plants to monitor and report, but not control or otherwise limit, CO₂ emissions clearly rendered CO₂ a pollutant “subject to regulation” for purposes of the PSD program and thus required that the PSD permit in that case contain an emissions limitation for CO₂.³

Region 8 and the Office of Air and Radiation (OAR), represented by Regional Counsel and the Office of General Counsel, argued that the statutory phrase “subject to regulation under this Act” is ambiguous and therefore subject to reasonable interpretation by the Agency. Moreover, the offices contended that EPA had historically interpreted the phrase “subject to regulation” to include only those pollutants “subject to a statutory or regulatory provision that requires actual control of emissions of that pollutant,” thus excluding pollutants (like CO₂) for which only monitoring is required. The Region and OAR argued that Region 8 followed this longstanding interpretation and thus properly did not include BACT limits for CO₂ in the PSD permit for Deseret.

The Board rejected Petitioner’s argument that the Act compelled only one interpretation of the phrase “subject to regulation” and found “no evidence of a Congressional intent to compel EPA to apply BACT to pollutants that are subject only to monitoring and reporting requirements.” *Deseret* slip op. at 63. Thus, the Board agreed with the Region and OAR that the statutory phrase “subject to regulation under this Act” is ambiguous. However, as discussed above, the Board also concluded that the Region’s reason for not including a BACT limit for CO₂ in the permit – that it was bound by a historic interpretation of the phrase “subject to regulation” – was not supported by the administrative record for the permit. *Id.* Thus, the Board remanded the permit to the Region to “reconsider whether or not to impose a CO₂ BACT limit in light of the Agency’s discretion to interpret, consistent with the CAA, what constitutes a ‘pollutant subject to regulation under this Act.’” *Id.*⁴ The EAB also encouraged EPA offices to consider whether to undertake an action of nationwide scope to address the interpretation of the phrase “subject to regulation under the Act.” *Id.* at 63-64.

B. Implications of the *Deseret* Decision for the PSD Permitting Program

³ The appeal also involved the question of whether the monitoring regulations that EPA issued pursuant to section 821 of the Clean Air Act Amendments of 1990 were issued or are enforceable under the Clean Air Act. That issue is not addressed in this memorandum.

⁴ The Board rejected Petitioners’ other challenge to the permit based on the alternatives analysis for the permit. *Id.* at 21-23.

As a result of the Board's decision, states, regulatory agencies, industry and the public would benefit from clarification regarding how EPA interprets this key phrase "subject to regulation" in the PSD program's regulatory definition of "regulated NSR pollutant." Currently, roughly 275 sources obtain PSD permits nationwide per year. Approximately 50 of them obtain PSD permits issued by EPA or delegated states implementing the federal PSD program at 40 C.F.R. § 52.21. The remainder are issued under approved State Implementation Plans. The *Deseret* decision has led to confusion for sources applying for PSD permits under 40 C.F.R. § 52.21 because they currently do not know if they should include a BACT analysis with their PSD permit application for carbon dioxide or any other pollutant for which only monitoring regulations exist. The Board's decision has also caused confusion among delegated permitting agencies which are unsure how EPA interprets its regulations, which they are implementing on EPA's behalf.

Moreover, as discussed in detail below, because the term "regulated NSR pollutant" is found in the definition of "major stationary source" at 40 C.F.R. § 52.21(b)(1)(i)(a), there is also confusion as to which sources must apply for PSD permits, since newly constructed or modified "major stationary sources" must obtain PSD permits. There is currently uncertainty regarding the pollutants that must be considered when determining major source status. Thus, while the *Deseret* case decision was about whether a major stationary source obtaining a PSD permit based on its emissions of other pollutants was required to install BACT for an additional pollutant, it has created questions for hundreds of thousands of smaller sources that must determine whether they are "major sources" that must obtain PSD permits if they experience a major modification or construct a new facility. This confusion potentially extends to source categories that have never had to obtain PSD permits in the past.

Given the confusion resulting from the Board's conclusion that the documents relied on by the Region and OAR did not establish a "sufficiently clear and consistent articulation of an Agency interpretation" of "subject to regulation," *id.* at 37, the Agency believes that the best path forward is to establish a clear interpretation of its regulations at this time. Immediate issuance of this interpretation is appropriate to ensure consistent implementation of the PSD program by Regions and delegated states, and to eliminate ambiguity and confusion among permitting authorities, the regulated community, and other stakeholders. As discussed in more detail below, the Agency may adopt this first clear, binding interpretation in this memorandum because the EAB held that documents cited by the Region and OAR had not established an interpretation and the interpretation set forth in this memorandum is consistent with, and a further elaboration of, those prior statements on the matter. The Agency's exercise of its discretion to interpret what constitutes a pollutant subject to regulation is detailed below.

II. EPA'S INTERPRETATION OF THE TERM "REGULATED NSR POLLUTANT" IN 40 C.F.R. § 52.21(b)(50)

EPA interprets the definition of “regulated NSR pollutant” in 40 C.F.R. § 52.21(b)(50) to exclude pollutants for which EPA regulations only require monitoring or reporting but to include each pollutant subject to either a provision in the Clean Air Act or regulation promulgated by EPA under the Clean Air Act that requires actual control of emissions of that pollutant.⁵ This interpretation is supported by the language and structure of the regulation and sound policy considerations. Furthermore, this interpretation is consistent with past practice in the PSD permitting program, EPA’s prior statements regarding pollutants⁶ subject to the PSD program, and is permissible under the Clean Air Act.

A. Language and Structure of 40 C.F.R. § 52.21(b)(50) Support Limiting Its Applicability To Pollutants That Must be Controlled Under Clean Air Act Regulations

The structure and language of EPA’s definition of “regulated NSR pollutant” at 40 C.F.R. 52.21(b)(50) supports an interpretation that it covers only those pollutants subject to a statutory or regulatory provision that requires actual control of emissions of that pollutant. The portions of the definition pertinent to this memorandum read as follows:

Regulated NSR pollutant, for purposes of this section, means the following:

⁵ Congress could require control of emissions through a statutory provision that directly imposes actual controls or limitations on a particular pollutant or that requires EPA to write regulations to control or limit particular pollutants. As discussed further below, in the latter circumstance, EPA does not interpret the PSD requirements to apply to such a pollutant until EPA promulgates the regulation required by the Act.

⁶ This memorandum does not seek to further define the specific nature or scope of any individual “pollutant” that is subject to such controls. Any ambiguity as to whether some part, component, or constituent of a substance or category of substances is controlled under a regulation should be resolved in the context of interpreting the individual rule that gives rise to the issue. *See, e.g.*, Regulating Greenhouse Gas Emissions Under the Clean Air Act, Advance Notice of Proposed Rulemaking (“ANPR”), 73 Fed. Reg. 44354 (July 30, 2008) at 44420-421 (describing the various consequences that could arise given the definition of the “pollutant” that EPA may establish in a regulation of one or many greenhouse gases). For example, in adopting the New Source Performance Standard (NSPS) for municipal solid waste (MSW) landfills, EPA was explicit that it was regulating only MSW landfill emissions collectively, and not the individual components of those emissions. 56 Fed. Reg. 24468, 24470 (May 30, 1991) (“The pollutant to be regulated under the proposed standards and guidelines is “MSW landfill emissions.”); *id.* at 24474 (“The EPA views these emissions as a complex aggregate of pollutants which together pose a threat to public health and welfare based on the combined adverse effects of the various components. . . . The EPA thus views the complex air emission mixture from landfills to constitute a single designated pollutant.”).

- (i) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator. * * *
- (ii) Any pollutant that is subject to any standard promulgated under section 111 of the Act.
- (iii) Any Class I or II substance subject to a standard promulgated or established by title VI of the Act;
- (iv) Any pollutant that otherwise is subject to regulation under the Act;

40 C.F.R. § 52.21(b)(50), as amended, 73 Fed. Reg. 28321 (May 16, 2008). The definition also excludes hazardous air pollutants from the PSD program in accordance with section 112(b)(6) of the Act and discusses a transition period established in 2008 for addressing condensable particulate matter.

As reflected above, the first three parts of the definition describe pollutants that are subject to regulatory requirements that mandate control or limitation of the emissions of such pollutants.⁷ 40 C.F.R. § 52.21(b)(50)(i)-(iii). Consistent with the text of the Act, the fourth part of the definition of “regulated NSR pollutant” covers “[a]ny pollutant that otherwise is subject to regulation under the Act.” 40 C.F.R. § 52.21(b)(50)(iv).

Dictionary definitions illustrate that the term “regulation” (used in the fourth part of the definition) is susceptible to more than one meaning. This term can be used to describe a rule contained in a legal code, such as the Code of Federal Regulations, or the act or process of controlling or restricting an activity. The primary meaning of the term “regulation” in Black’s Law Dictionary (8th Ed.) is “the act or process of controlling by rule or restriction.” However, an alternative meaning in this same dictionary defines the term as “a rule or order, having legal force, usu. issued by an administrative agency or local government.” The primary meaning in Webster’s dictionary for the term “regulation” is “the act of regulating; the state of being regulated.” Merriam-Webster’s Collegiate Dictionary 983 (10th ed. 2001). Webster’s secondary meaning is “an authoritative rule dealing with details of procedure” or “a rule or order issued by an executive authority or regulatory agency of a government and having the force of law.” Webster’s also defines the term “regulate” and the inflected forms “regulated” and “regulating” (both of which are used in Webster’s definition of “regulation”) as meaning “to govern or direct according to rule” or to “to bring under the control of law or constituted authority.” *Id.* In the context of construing the Act, the EAB observed in the *Deseret* case that a plain meaning could not be ascertained from looking solely at the word “regulation.” The Board reached this conclusion after considering the dictionary definitions of the term “regulation” cited above. *Deseret* slip op. at 28-29.

The interpretation of the phrase “subject to regulation” in section 52.21(b)(50)(iv) that EPA is adopting in this memorandum is directly supported by the primary meaning of the term “regulation” used in the dictionaries described above. Each of these definitions uses the word “control” or incorporates it through reference to a definition of

⁷ Class I or II substances are specific categories of ozone depleting emissions.

a similar word. Furthermore, in construing similar language in the Act, the EAB recognized that “subject to regulation” may be read to mean “subject to control” by virtue of a regulation or otherwise. *Deseret* slip op. at 33.

Furthermore, the placement of the word “regulation” after the phrase “subject to” in the context of the fourth part of the definition supports reading section 52.21(b)(50)(iv) to describe an act or process rather than a rule in a code. The use of the singular “regulation” without an article (such as “a” or “the”) preceding the word is more naturally read to describe an “act or process,” which supports the application of the meaning from Black’s Law Dictionary (8th Ed.) that emphasizes “controlling by rule or restriction.” EPA did not choose to use the plural “regulations” or an article before the word, which would have produced language such as “subject to regulationS under the Act” or “subject to A regulation under the Act.” A regulation that used these phrases (instead of the one EPA chose) would be more consistent with the dictionary meanings that describe a regulation as a “rule” such as would be contained in the Code of Federal Regulations.

Likewise, the combination of the general language in the fourth subpart with more specific provision in the first three subparts of the regulation is meaningful. Each of the identified categories is a class of regulations that require actual control or limitation of emissions of pollutants and none involve only monitoring and reporting of pollutant emissions. The use of the word “otherwise” in front of phrase “subject to regulation” establishes a link between the first three parts of the definition and the fourth, suggesting that the four parts of the definition should be read in concert. Specifically, the placement of the fourth part of the definition after the first three parts identifying regulations that require controls supports reading the fourth part to cover the same type of regulatory requirements addressed in the first three parts of the definition.

Courts have recognized that “[w]here general words follow the enumeration of particular classes of things, the general words are most naturally construed as applying only to things of the same general class as those enumerated.” *See American Mining Congress v. U.S. EPA*, 824 F.2d 1177, 1189 (D.C. Cir. 1987). Accordingly, the general language including pollutants “otherwise subject to regulation,” as used in the fourth part of the regulated NSR pollutant definition, can be read to apply to the same general class of pollutants enumerated in the first three parts of the definition -- pollutants that are subject to a promulgated regulation requiring actual control of a pollutant.

In the *Deseret* opinion, the EAB declined to apply this principle (known in legal terms the *ejusdem generis* canon of interpretation) in the absence of any analysis or statement of intent in the preamble to the 2002 rulemaking in which EPA adopted the definition of the term “regulated NSR pollutant.” Slip Op. at 45-46. EPA has prepared this memorandum, in part, to provide the analysis and statement of intent that were lacking in the record of the *Deseret* permit. For the policy reasons discussed in this memorandum, EPA reads the definition of “regulated NSR pollutant” to apply only to the same general class of regulated pollutants as those enumerated in the first three parts of the definition. Since the phrase “subject to regulation” does not have a clear meaning, as

the Board recognized in interpreting the statutory text of the Act in the *Deseret* opinion, it then follows, with this additional analysis and statement of intent regarding the regulation, that the principle of *ejusdem generis* can be applied to the general language in section 52.21(b)(50)(iv) of EPA's PSD regulations.

B. Important Policy Considerations Support The Interpretation Adopted Here

I believe that EPA's various responsibilities under the Clean Air Act are most effectively implemented by making PSD emissions limitations applicable when the Agency promulgates a regulation restricting pollutant emissions based on a considered judgment by the Administrator (or the Congress) that particular pollutants should be subject to control or limitation. Requiring such limitations automatically for pollutants that are only subject to data gathering and study would frustrate EPA's ability to accomplish several objectives of the Clean Air Act. The Agency's interpretation of the scope of the PSD program set forth in this memorandum remains broad, covering any pollutant subject to control through regulations established under the Act that apply in a particular area. However, this broad application of the PSD program should not be without reasonable boundaries that make the NSR program and other Act programs effective, yet manageable, for EPA and the states to administer.

The administration of emissions control programs under the Act requires reasoned decision-making that is often informed by review of emissions data. Section 114(a)(1) of the Act authorizes the Administrator to require various persons to gather and report emissions data for a number of purposes. 42 U.S.C. § 7414(a)(1). These include developing an implementation plan or emissions standards for specific source categories under sections 111, 112 or 129 of the Act; determining if any person is in violation of any standard or requirement of an implementation plan or emissions standard; or "carrying out any provision" of the Act. The latter may include information gathering for research under provisions of the Act that direct or authorize EPA research on various matters. Although there are exclusions in section 114(a)(1) regarding certain title II requirements applicable to manufacturers of new motor vehicle and motor vehicle engines, section 208 of the Act authorizes the gathering of information related to those areas. 42 U.S.C. § 7542.

An interpretation of the PSD regulations that makes the substantive requirements of the program applicable to individual pollutants based solely on monitoring and reporting requirements (contained in regulations established under section 114 or other authority in the Act) would lead to the perverse result of requiring emissions limitations under the PSD program while the Agency is still gathering the information necessary to conduct research or evaluate whether to establish controls on the pollutant under other parts of the Act. This would frustrate the Agency's ability to gather information using section 114 and other authority and make informed and reasoned judgments about the need to establish controls or limitations on individual pollutants. If EPA interpreted the requirement to establish emissions limitations based on BACT to apply solely on the basis of a regulation that requires collecting and reporting emissions data, the mere act of

gathering information would essentially dictate the result of the decision that the information is being gathered to inform (whether or not to require control of a pollutant).

I prefer an interpretation that allows the Agency to first assess whether there is a justification for controlling emissions of a particular pollutant under relevant criteria in the Act. This interpretation permits the Agency to provide notice to the public and an opportunity to comment when a new pollutant is proposed to be regulated under one or more programs in the Act. It also promotes the orderly administration of the permitting program by providing an opportunity for EPA to develop regulations to manage the incorporation of a new pollutant into the PSD program, for example, by promulgating a significant emissions rate (or *de minimis* level) for the pollutant when it becomes regulated. See 40 C.F.R. § 52.21(b)(23). Furthermore, an interpretation that preserves the Agency's ability to gather information to inform the Administrator's judgment regarding the need to establish controls on emissions without automatically triggering such controls in no way limits the Agency's authority to require controls on emissions of a particular pollutant when the Administrator determines they are warranted. This interpretation preserves the Administrator's authority to require control of individual pollutants through emissions limitations or other restrictions under various provisions of the Act, which would then trigger the requirements of the PSD program for any pollutant addressed in such an action.

Although this issue has been raised in the context of CO₂ emissions, EPA's interpretation of whether PSD requirements are triggered by monitoring and reporting requirements has broader implications. While the timing of this memorandum was influenced by the uncertainty in the PSD program concerning whether permits must contain emissions limitations for CO₂ and whether additional smaller sources must now apply for permits when they construct or modify, the adoption of this interpretation is also necessary to preserve EPA's ability to collect emissions data on other pollutants for research and other purposes such as evaluating the need for emissions controls or limitations. The current concerns over global climate change should not drive EPA into adopting an unworkable policy of requiring emissions controls under the PSD program any time that EPA promulgates a rule under the Act that requires a source to gather or report emissions data under the Act for any pollutant. This consideration is the same whether the substance at issue is CO₂ or other substances that may emerge and require evaluation to inform a reasoned decision concerning whether controls should be established for such substances under the Clean Air Act. Furthermore, as discussed above, the interpretation adopted here in no way limits EPA's ability to make a considered judgment that controls on a particular pollutant are warranted under the criteria in other parts of the Act and thereby invoke the requirements of the PSD program for that particular pollutant.

C. This Interpretation is Consistent with the Agency's Past Practice and Statements

The interpretation adopted in this memorandum is consistent with the historic practice of the Agency and with prior statements by Agency officials, including the Administrator, the EAB, and the General Counsel.

As a matter of practice, EPA has not issued PSD permits containing emissions limitations for pollutants that are only subject to monitoring and reporting requirements. PSD permits issued by the Agency (and delegated states authorized to issue federal permits on EPA's behalf) have only contained emissions limitations for pollutants subject to regulations requiring actual control of emissions. EPA staff have reviewed permits issued under this program and have not identified any federal PSD permits that establish limitations on the emissions of pollutants that were only subject to monitoring and reporting requirements established under the Act at the time the permit issued. Since 1993, EPA has had regulations in place requiring monitoring and reporting of carbon dioxide emissions. *See Acid Rain Program: General Provisions and Permits, Allowance System, Continuous Emissions Monitoring, Excess Emissions and Administrative Appeals (final rule)*, 58 Fed. Reg. 3590 (Jan. 11, 1993). I am not aware of any PSD permits containing emissions limitations for carbon dioxide issued by either the Agency or its delegates since that time. During at least part of this time period, EPA made clear that it considered CO₂ to be an air pollutant under the Act. *See Memorandum from Jonathan Z. Cannon, General Counsel to Carol M. Browner, Administrator, entitled EPA's Authority to Regulate Pollutants Emitted by Electric Power Generation Sources (April 10, 1998) ("Cannon Memo")*.

In *Deseret*, the EAB expressed some doubt as to whether this had been EPA's practice based on the lack of any specific evidence of this practice in the record of the *Deseret* permit. Slip op. at 53-54. In the absence of a definitive statement (which the EAB found did not exist) that monitoring and reporting regulations alone do not trigger substantive PSD requirements, one must look to individual permits issued under the federal PSD program to identify this practice. The record of permits compiled to support this memorandum is sufficient to demonstrate that EPA has not in practice issued PSD permits establishing emissions limitations for pollutants that are subject to only monitoring and reporting requirements.

Furthermore, the EAB observed that broad statements in the 1998 memorandum cited above by the Agency's then General Counsel suggest that the Agency has not, as a matter of practice, treated carbon dioxide as a "regulated" pollutant under any provisions of the Act, including those establishing the PSD program. Slip op. at 53-54. The Cannon memorandum described SO₂, NO_x, mercury, and CO₂ emitted into the ambient air as pollutants within the terms of the Act, but found that only SO₂, NO_x, and mercury were "already regulated" under the Act. *Id.* The General Counsel noted that "[w]hile CO₂ emissions are within the scope of EPA's authority to regulate, the Administrator has made no determination to date to exercise that authority under the specific criteria provided under any provision of the Act." *Id.* At the time of this statement, EPA had already promulgated regulations requiring recordkeeping and monitoring of CO₂ emissions. *See* 58 Fed. Reg. 3590 (Jan. 11, 1993).

The EAB also observed that in 1978 EPA initially articulated an interpretation of the phrase "subject to regulation under this Act," as used in sections 165 and 169 of the Act. *Deseret* slip op. at 39, 52. In the preamble to the 1978 Federal Register notice

promulgating the initial PSD regulations after the 1977 Amendments to the Act, Administrator Costle said the following:

“[S]ubject to regulation under this Act” means any pollutant regulated in Subchapter C of Title 40 of the Code of Federal Regulations for any source type. This then includes all criteria pollutants subject to NAAQS review, pollutants regulated under the Standards of Performance for new Stationary Sources (NSPS), pollutants regulated under the National Emissions Standards for Hazardous Air Pollutants (NESHAP), and all pollutants regulated under Title II of the Act regarding emissions standards for mobile sources.

43 Fed. Reg. 26388, 26397 (June 19, 1978);⁸ *see also* 42 Fed. Reg. 57479, 57481 (Nov. 3, 1977) (same interpretation reflected in proposed rule).

The interpretation set forth today is not inconsistent with the preamble statements made by Administrator Costle in 1978 because the specific categories of regulations identified in the second sentence of the passage quoted above are all regulations that require control of pollutant emissions. In addition, the interpretation in the 1978 preamble said only that the PSD BACT requirement applies to “any pollutant regulated in Subpart C of Title 40 of the Code of Federal Regulations,” but it did not amplify the meaning of the term “regulated in.” The EAB observed in a footnote to the *Deseret* opinion that one could argue that the 1978 interpretation meant that any type of provision relating to a pollutant (including a monitoring or reporting requirement) that was promulgated in subchapter C would trigger PSD requirements for that pollutant, but one could also argue that this statement applied only to the then-current Subpart C and not necessarily to future additions to that Subchapter. *Deseret* slip op. at 42, n. 43. However, even if the 1978 interpretation is construed to apply to future additions to subchapter C, it is still not clear that a monitoring or reporting requirement added to subchapter C would make that pollutant “regulated in” subchapter C because of the alternative meanings of the term regulation, regulate, and regulated discussed earlier. Thus, the Agency’s 1978 interpretive statement on the meaning of “pollutant subject to regulation under this Act” did not specifically address the issue of whether monitoring or reporting requirement makes a pollutant “regulated in” the described part of the Code of Federal Regulations.

The interpretation adopted here (that pollutants subject to the PSD BACT requirement are only those pollutants for which the Agency has established regulations requiring actual controls on emissions) is also not contradicted by other Agency statements regarding the pollutants subject to the PSD program reflected in rulemakings, memoranda, and opinions of the EAB. OAR and Region 8 previously believed that these Agency actions had established a controlling interpretation that the PSD BACT requirement applies only to pollutants for which a statute or regulation required actual

⁸ Hazardous air pollutants are no longer covered by the PSD program due to an exclusion adopted in the 1990 Amendments to the Act. 42 U.S.C. § 7412(b)(6).

control of emissions.⁹ However, the Board did not agree that these statements had conclusively established this interpretation. The Board observed that the mere absence of inconsistency between these prior statements and the interpretation followed by Region 8 in issuing the *Deseret* permit was insufficient to establish that interpretation as controlling. Slip Op. at 48. Nevertheless, the Board’s analysis in *Deseret* illustrates the Agency’s previous statements in rulemakings, memorandum, and EAB decisions are not inconsistent with the interpretation adopted in this memorandum.

D. This Interpretation is Permissible Under the Clean Air Act

This interpretation of the regulations is not precluded by the Act, and indeed is supported by reading the PSD provisions of the Act in the context of other provisions of the Act that require emissions controls and authorize collection of emissions data to inform a decision to establish such controls. In the *Deseret* case, the EAB concluded that the phrase “subject to regulation under this Act” used in the Act was ambiguous and susceptible to both interpretations advocated by the parties in that case. Slip Op. at 28-35. In this discussion, the Board concluded that the terms of the statute do not preclude reading “subject to regulations under this Act” to mean “subject to control” by virtue of a regulation or otherwise. *Id.* at 33.

The language in sections 165(a)(4) and 169(3) of the Clean Air Act requiring technology-based emissions limitations for “each pollutant subject to regulation under the Act” is permissibly construed in context to call for emissions limitations under the PSD program only for those pollutants that are otherwise subject to controls on emissions based on an express EPA determination or Congressional directive that such control is appropriate. Given that this language appears in a section 165(a)(4) – a provision that requires actual controls on emissions – it is reasonable to conclude that Congress intended EPA to apply such controls to the pollutants that are controlled under other provisions of the Act. The fact that Congress specified in the Act that BACT could be no less stringent than NSPS and other control requirements under the Act indicates that Congress expected BACT to apply to pollutants controlled under these programs. See 42 U.S.C. § 7479(3).

Given the way Congress drafted sections 165(a)(4) and 169(3) of the Act, it is apparent that Congress intended for EPA to determine the applicability of the BACT requirement on the basis of decisions to regulate particular pollutants under other parts of the Act. Other provisions in the Act that authorize the Administrator to establish emissions limitations or controls on emissions provide criteria for the exercise of the Administrator’s judgment to determine which pollutants or source categories to regulate. Many of the criteria in the Act applicable to a determination by the Administrator to regulate pollutants or source categories are based on public health or welfare. See e.g.,

⁹ This understanding was the basis for the Agency’s observations regarding when greenhouse gases would become “subject to regulation” that were contained in the recently-issued Advance Notice of Proposed Rulemaking on the use of the Clean Air Act to regulated greenhouse gas emissions. See ANPR, 73 Fed. Reg. at 44420 and n.96.

42 U.S.C. § 7408(a)(1)(A); 42 U.S.C. § 7411(b)(1)(A); 42 U.S.C. § 7521(a)(1). Thus, it follows that Congress likewise expected that pollutants would only be regulated for purposes of the PSD program after the Administrator has promulgated regulations requiring control of a particular pollutants on the basis of a considered judgment applying the applicable criteria in the Act, after EPA promulgates regulations on the basis of Congressional mandate that EPA establish controls on particular pollutants, or after Congress itself directly imposes actual controls on a particular pollutant.

Furthermore, Congress authorized EPA to gather emissions data under section 114 and other provisions of the Act for various purposes, including informing decisions to establish controls on emissions. 42 U.S.C. § 7414(a). The enactment of this provision is evidence that Congress generally expected that EPA would gather emissions data prior to establishing plans to control emissions or developing emissions limitations. Congress also included in section 307(d)(9) of the Act, which establishes a requirement for reasoned decision-making by authorizing courts to reverse Agency action that is arbitrary or capricious. 42 U.S.C. § 7607(d)(9). Considering the PSD provisions in the context of these other sections in the Act that authorize gathering emissions data and require reasoned decision-making, it is fully consistent with Congressional design to decline to require BACT limitations for pollutants that are not yet controlled but only subject to data collection and study.

E. Timing, Form, and Scope of Regulations That Invoke PSD Program Requirements.

Because the first three parts of the definition of “regulated NSR pollutant” apply to a standard “promulgated” under various provisions of the Act, EPA interprets the fourth part of the definition to also apply to a pollutant upon promulgation of a regulation that requires actual control of emissions. Thus, EPA does not consider a pollutant to be “subject to regulation” until the Agency has promulgated a regulation that requires control of emissions of that pollutant. We do not interpret the fourth part of the definition to apply at the time of an endangerment finding or other determination that may be a prerequisite to issuing control requirements under certain provisions of the Act. For example, it is the promulgation of a NAAQS under section 109, not the listing of a pollutant under section 108 which is based in part on an endangerment finding, that makes a pollutant a “regulated NSR pollutant” under the first prong of 40 C.F.R. 52.21(b)(50)(i). Similarly, it is the promulgation of a standard under section 111, not the listing of a source category based on an endangerment finding, that makes a pollutant a “regulated NSR pollutant” under the second prong. 40 C.F.R. 52.21(b)(50)(ii). This approach makes sense because decisions not made until promulgation of the final regulations establishing the control requirements for a pollutant often are relevant to decisions EPA makes regarding implementation of the PSD program for that pollutant. . For example, until EPA issues the NSPS for a source category listed under section 111(b)(1)(A), EPA has not made a final decision regarding how to identify or define the pollutant(s) that will be regulated by the NSPS. *See, e.g.,* Municipal Solid Waste Landfills NSPS, 61 Fed. Reg. 9905, 9912 (1996) (“Today’s rulemaking under section 111(b) establishes a new classification of pollutants subject to regulation under the CAA:

“MSW landfill emissions.”). Indeed, EPA has promulgated PSD regulations for newly regulated pollutants concurrently with an NSPS in the past. *See id.*

The categories of regulations described in the first three parts of the definition of “regulated NSR pollutant” indicate that a requirement to control emissions of a pollutant can have more than one form. This can include a direct emissions limitation, such as the NSPS, or ambient standards, such as the National Ambient Air Quality Standards that limit emissions upon promulgation through the PSD permitting criteria. *See CAA* § 165(a)(3); 40 C.F.R. § 52.21(k)(1). The NAAQS also require development of emissions limitations or other restrictions on emissions in state plans for attaining those standards. Furthermore, EPA has recognized that pollutant emissions may also be controlled through restrictions on the production and import of substances that can be released into the atmosphere. However, because information gathering requirements do not impose any restriction on the release of a pollutant into the air, the Agency does not interpret these types of regulations in isolation to make a pollutant subject to regulation. When monitoring and reporting requirements are developed to facilitate enforcement of a regulation requiring control of pollutant emissions, the control requirement triggers the PSD requirements, not the monitoring provisions established to ensure compliance with that control requirement.

Furthermore, when an individual pollutant must be controlled under a regulation contained in the State Implementation Plan of a single state, EPA does not interpret section 52.21(b)(50) to require regulation of that pollutant under the PSD program nationally or in other states that have not determined the need to regulate that pollutant to protect the NAAQS in that other state. Several parties have argued in briefs to the EAB and public comment on PSD permits that EPA’s approval of regulations applicable only in an individual state makes pollutants regulated in only that state subject to the PSD program in other states. However, the establishment of State Implementation Plans under the Act reflects the principle of “cooperative federalism” on which the Act is based. *See Ellis v. Gallatin Steel Co.*, 390 F.3d 461, 467 (6th Cir. 2004). While Congress allowed individual states to create some regulations that are more stringent than federal regulations to apply within its borders, 42 U.S.C. § 7416, Congress did not allow individual states to set national regulations that impose those requirements on all other states. *See State of Connecticut v. U.S. EPA*, 656 F.2d 902, 909 (2d Cir. 1981) (finding that while a state is free to adopt air quality standards more stringent than required by the NAAQS or other federal law provisions, Congress “carefully drafted” the Act to preclude those stricter requirements from applying to other states.). Consistent with this legal precedent, EPA does not interpret section 52.21(b)(50) of the regulations to make CO₂ “subject to regulation under the Act” for the nationwide PSD program based solely on the regulation of a pollutant by a single state in a SIP approved by EPA.

The latter aspect of this interpretation is consistent with one previously adopted by EPA when promulgating its regulations addressing the application of the New Source Review program to PM_{2.5} and its precursors. 73 Fed. Reg. 28321, 28330 (May 16, 2008). That rule provides an option for individual states to regulate ammonia as a PM_{2.5} precursor under the non-attainment NSR program for a particular PM_{2.5} non-attainment

area after making a demonstration that ammonia emissions are a significant contributor to that area's ambient PM2.5 concentrations. EPA explained in that rule that if this option were invoked by one state, such an action would not make ammonia subject to the NSR program nationally or in other areas for which this demonstration had not been made. *Id.* EPA described this interpretation in the notice of proposed rulemaking and public comments on the rule did not contain any objections to this interpretation. 70 Fed. Reg. 65984, 66036 (Nov. 1, 2005); 73 Fed. Reg. at 28330.

III. PUBLIC PARTICIPATION CONSIDERATIONS

I am mindful of the significant public interest in this issue and the benefit of receiving public input on this question. However, administrative agencies are authorized to issue interpretations of this nature that clarify their regulations without completing a public comment process, and I believe that such action is warranted in this case for the reasons discussed earlier. As described above, immediate clarification of this issue is necessary to resolve confusion concerning whether certain sources should be seeking PSD permits and whether permits already under review must require limitations on pollutants subject only to monitoring and reporting requirements. The PSD permitting program has effectively become inoperative until EPA addresses this issue. A prolonged delay of permit reviews would contravene EPA's obligation under section 165(c) of the Clean Air Act to process PSD permit applications in a timely manner.

EPA's authority to make rules and interpret them derives from the Clean Air Act, and section 307(d) of the Clean Air Act and the Administrative Procedure Act (APA) establish procedures for our exercise of rulemaking authority and exceptions to those procedures. Under one provision of the APA, 5 U.S.C. 553(b)(A), interpretative rules are exempt from notice and comment requirements. Section 307(d) of the Clean Air Act establishes procedures for, among other things, "the promulgation or revision of any regulations under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality and protection of visibility)." However, that section of the CAA states clearly that it "shall not apply in the case of any rule or circumstance referenced to in subparagraphs (a) or (b) of subsection 553(b) of Title 5." Thus, section 307(b) of the Clean Air Act preserves the Agency's authority to establish interpretations of regulations promulgated under the Act without engaging in a notice and comment rulemaking process that is otherwise required for the promulgation and revision of PSD regulations. However, the adoption of an interpretation in this manner does not preclude subsequent action by the Agency to solicit public input on the interpretation.

An interpretative document is one that explains or clarifies, and is consistent with, existing statutes or regulation. *National Family Planning and Reproductive Health Ass'n v. Sullivan*, 979 F.2d 227, 236-37 (D.C. Cir. 1992). This memorandum explains and clarifies the meaning of the definition of "regulated NSR pollutant" in section 52.21(b)(50) of the existing NSR regulations, and does not alter the meaning of the definition in any way that would be inconsistent with the terms of the regulation. This interpretation explains that in applying the regulation, EPA will use a common meaning of the term "regulation" to describe the act or process of controlling or restricting an

activity. The term “regulation” is susceptible to this reading without any change to the language in the rule. Furthermore, section 52.21(b)(50) enumerates specific categories of regulations that each require control of emissions of a pollutant before using general language that may be read, in accordance with accepted principles of legal interpretation, to refer to items with the same characteristics as the enumerated items. This reading is not inconsistent with the existing language in the regulation, and it is permissible under the Clean Air Act.

Although I believe it is appropriate under the circumstances to establish this interpretation without a public comment process, the public has recently had two opportunities to present their views to the Agency on this issue. First, on November 21, 2007, the EAB granted review in the *Deseret* case on the issue of whether a PSD permit must contain an emissions limitation for carbon dioxide and provided the opportunity for interested persons to submit amicus briefs. *Deseret*, Order Granting Review, PSD Appeal No. 07-03. Region 8 informed the public of the Board’s decision to grant review and the opportunity to submit amicus briefs through publication of a notice in several newspapers and by directly mailing the notice to those persons who received a mailed notice of the draft PSD permit. Notification of Public Notice of Grant of Review, PSD Appeal No. 07-03 (Dec. 18, 2007). One individual, twelve environmental organizations, and eight states joined in amicus briefs presenting reasons why they believed the Agency should support Sierra Club’s position and establish emissions limitations on carbon dioxide in permits. Three businesses (including the permit applicant) and twenty-four organizations (representing industry sectors and other interests) joined in briefs to the Agency presenting arguments for not requiring emissions limitations on carbon dioxide in permits at this time. Second, on July 30, 2008, in the *Federal Register*, EPA described what the Agency believed at the time to be its established interpretation of the PSD regulations in the Advanced Notice of Proposed Rulemaking on options for addressing greenhouse gas emissions under the Clean Air Act. 73 Fed. Reg. at 44400, 44420, 44498. The ANPR noted that this interpretation was under review by the EAB in the *Deseret* case. 73 Fed. Reg. at 44400. Thirteen entities submitted comments on the ANPR that included their views on whether the current PSD regulations require emissions limitations for greenhouse gases.

In developing this memorandum, I have considered the amicus briefs submitted to the EAB and public comments on the ANPR. Thus, although EPA is not taking comment on this memorandum, this memorandum has already been informed by public views on the issued covered here. Many of the public submissions EPA has received advocate that the Agency should use the Clean Air Act to address greenhouse gas emissions, including using the PSD program immediately to require new sources to mitigate their emissions. Thus, many parties advocate that EPA should interpret the PSD regulation as broadly as possible in order to achieve the end result of requiring limitations on carbon dioxide emissions immediately for new and modified major sources. Other parties that submitted their views to the Agency recommend that EPA proceed more cautiously and consider the significant implications of applying the PSD program to carbon dioxide and any other pollutant that EPA may wish to study before establishing limits on such pollutant in PSD permits.

With the ANPR, EPA is taking the next step in responding to the Supreme Court's decision in *Massachusetts v. EPA*. I believe the ANPR process is the appropriate forum for addressing the larger questions of whether greenhouse gas emissions endanger public health or welfare and whether EPA should utilize authorities contained in the Clean Air Act to regulate such emissions. The interpretation set forth in this memo addresses only the narrow question of whether EPA should require emissions limitation under the PSD program at the same time the Agency or Congress determines that is necessary to study the nature and extent of emissions of a particular pollutant. My determination that emissions limitations should not be required under the PSD program on the basis of monitoring and reporting requirements alone does not reflect a decision on the larger question of whether EPA's authority under the Clean Air Act should be used to address greenhouse gas emissions. If the Agency determines, after completing the process started by the ANPR, that it should establish controls for greenhouse gas emissions under the Clean Air Act, the interpretation established here would require PSD permits to contain limitations on carbon dioxide when, and if, EPA promulgates regulations establishing those controls.

Furthermore, several members of the public are concerned about authorizing additional sources of carbon dioxide to construct out of concern that once built, such sources will forever emit carbon dioxide without limitation. However, the permitting of new sources without limitations on carbon dioxide at present does not foreclose limitation of such emissions in the future, if the Agency ultimately determines that control of such emissions is warranted after considering all of the implications of such an action through the process started with the ANPR.

Some stakeholders argued that EPA should apply PSD to pollutants that are only monitored or reported because requiring a source to report emissions of a pollutant can provide an incentive for that source to reduce its emissions of the pollutant. While I recognize that monitoring and reporting requirements may sometimes have this effect, such requirements are primarily intended to gather information and do not ensure that any source will in fact control emissions. As stated above, I believe that a pollutant should not become subject to mandatory emissions limitations under the PSD program until the Administrator (or Congress) has decided that such pollutants should be directly controlled by regulation. The concerns discussed above about predetermining the result of the information gathering exercise are not changed by the fact that some sources might be motivated to voluntarily reduce emissions because of a mandatory disclosure of the nature and extent of their emissions.

Since some Courts have limited an Agency's ability to change an established, authoritative interpretation of a regulation without engaging in a notice and comment rulemaking, the EAB in the *Deseret* case questioned whether subsequent EPA memoranda could change the interpretation set forth in the 1978 preamble. Slip op. at 52 (citing *Alaska Professional Hunters Ass'n v. FAA*, 177 F.3d 1030, 1033-34 (D.C. Cir. 1999); *Paralyzed Veterans of Am v. D.C. Arena L.P.*, 117 F.3d 579, 586 (D.C. Cir. 1997)). However, these court decisions have also recognized that an Agency has the

flexibility to establish an initial interpretation of a regulation without engaging in a notice and comment process. Furthermore, these cases do not necessarily require a rulemaking procedure when the Agency seeks to change its interpretation of a statute.

I have evaluated the Agency's 1978 interpretation in light of the Board's analysis in *Deseret* to determine whether the interpretation announced in this memorandum would amount to a change in the 1978 interpretation that requires a notice and comment process. As explained above, my conclusion is that the 1978 interpretation did not specifically address the issue discussed in this memorandum. That interpretation said only that the PSD BACT requirement applies to "any pollutant regulated in Subpart C of Title 40 of the Code of Federal Regulations," but it did not amplify the meaning of the term "regulated in." As discussed earlier, it follows from the EAB's analysis in *Deseret* and the various dictionary meanings of "regulation" and "regulate" that the phrase "regulated in" used in the 1978 preamble is ambiguous.

Furthermore, the 1978 interpretation was an interpretation of the statutory language and did not address the regulatory language that we now construe in this interpretative memorandum. The 1978 statement referred to the language in the statute which said "pollutant subject to regulation under this Act." The 2002 regulation I am interpreting here uses the phrase "pollutant that otherwise is subject to regulation under the Act" in a clause that appears among a list of specific types of regulations under the Act that invoke the requirements of the PSD program. As discussed above, the Agency interprets the language in section 52.21(b)(50)(iv) in context with other parts of that definition.

Thus, I do not believe the Agency's 1978 interpretative statement regarding the scope of the BACT requirement or the Board's opinion in *Deseret* precludes the Agency from issuing this interpretation of section 52.21(b)(50). The interpretation adopted in this memorandum is based on a reasonable reading of the terms of the regulation, is consistent with past Agency practice, and is not precluded by the Clean Air Act. Furthermore, for the reasons discussed above, it is not sound policy to trigger mandatory emissions limitation under the PSD program on the basis of rules designed for information gathering.



Stephen L. Johnson, Administrator