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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

MEMORANDUM

Subject: EPA's Authority to Issue DCOs after
December 31, 1982

Date: July 19, 1983

From: William F. Pedersen, Jr.
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Air, Noise and Radiation Division (LE-132A)

To: Michael S. Alushin
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This memorandum responds to your request for advice whether the Clean Air Act authorizes the issuance of delayed compliance orders ("DCOs") under Section 113(d)(1) and (4) after December 31, 1982. It concludes that, given statutory silence, EPA may reasonably continue issuing such orders.¹

DISCUSSION

Section 113 of the Clean Air Act provides no express time limit to EPA's authority to issue DCOs. The absence of a stated time limit suggests that EPA's authority is not limited in time. Concededly, other considerations-- primarily ones relating to statutory context and legislative history--suggest a contrary conclusion. These considerations are not so persuasive, however, as to compel such a conclusion. EPA may reasonably assume that it may exercise its authority to issue DCOs, which is discretionary, in a manner calculated to further the goals of the Clean Air Act.

The conclusion of this memorandum that EPA may continue to issue DCOs is applicable to all criteria pollutants including those pollutants for which states may demonstrate compliance by 1987.

¹ As used here, the term "issue" includes EPA's authority to approve of object to state-issued orders submitted as DCOs. This memorandum does not address EPA's authority to issue orders under Section 113(d)(3) or (5).