



SOURCE AGGREGATION DEVELOPMENTS IN THE OIL AND GAS INDUSTRY

A&WMA GULF COAST CHAPTER

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OUTLINE

- Background
- EPA's Guidance Memorandums
- EPA's Interpretive Letters
- Recent Source Determination Developments

BACKGROUND

- Ability to aggregate multiple operations into single major source permit, depends on definition of “stationary source” under PSD/NSR and Title V permitting programs.
- “Stationary source” is defined as:
 - Any building, structure, facility, or installation which emits or may emit a regulated air pollutant.
- Nitrous oxides and sulfur dioxides are typical pollutants emitted from oil and gas operations

TEST FOR AGGREGATION

(EPA MUST ANSWER “YES” TO EACH)

1. Are the sources located on one or more “contiguous or adjacent” properties?
2. Are the sources under common control of the same person (or persons under common control)?
3. Do the sources belong to a single major industrial grouping (i.e., all have the same two-digit Standard Industrial Code prefix)?
 - Exploration and production share SIC code – “13”

TWO ADDITIONAL CONSIDERATIONS

Aggregation must also:

1. Comport with “common sense notion of a plant”
2. Fit within the ordinary meaning of “building, structure, facility or installation.”

EPA'S GUIDANCE MEMORANDUMS

William Wehrum Memorandum (1/12/07)

- Physical proximity is most important factor in determining adjacency
- “Adjacent” facilities are those “separated by no more than a short distance”

Gina McCarthy Memorandum (9/22/09)

- Included “functional interrelatedness” as a significant factor for adjacency
- Decisions are made on case-by-case basis

EPA'S INTERPRETIVE LETTERS

- Not precedential, but useful as informal guidance
- Many disregard plain meaning of “contiguous or adjacent” as part of three part test
- EPA has done so when the facilities are “functionally interdependent”
 - (i.e. one source is a “support facility” for another source that engages in a “primary activity”)

EPA'S INTERPRETIVE LETTERS

- EPA has stated that facilities are “adjacent” if:
 1. Materials are routinely transferred between them by a physical link (i.e. pipeline or railway)
 2. Whether production processes are split between the facilities (i.e. one produces an intermediate product that requires further processing at the other facility)

RECENT SOURCE DETERMINATION DEVELOPMENTS

- **Summit Petroleum Corp. v. EPA (6th Cir. 2012)**
 - EPA claimed that natural gas sweetening plant and sour gas wells (connected by pipeline) constituted a single source for Title V permitting.
 - Wells were located over 43 square miles between 500 to 8 miles of plant.
 - Plant or wells alone would emit 100 tons per year.

RECENT SOURCE DETERMINATION DEVELOPMENTS

- **Summit Petroleum Corp. v. EPA (6th Cir. 2012)**
 - EPA argued:
 - Facilities were “located on ... adjacent properties”
 - Although “physically independent” they were “truly interrelated”
 - Summit argued:
 - Functionally relatedness was contrary to plain meaning of “adjacent”
 - Court’s holding
 - Court agreed with Summit and held that adjacent was unambiguous
 - Remanded to EPA to reconsider in light of holding

EPA'S RESPONSE TO SUMMIT CASE

Stephen Page Memorandum (12/21/12)

- EPA will only apply Summit to states within the 6th Circuit (Michigan, Ohio, Tennessee and Kentucky)
- Will continue to apply “functional interrelatedness” elsewhere

National Environmental Development v. EPA (3/25/13)

- Claims the Page Memorandum is final agency action
- Creates highly subjective policy that results in regulatory uncertainty
- Arbitrary and capricious to issued three memorandums in five years interpreting “adjacent” without notice and comment rulemaking

QUARTER-MILE TEST FOR ADJACENCY

- Pennsylvania Dep't of Env'tl. Protection Guidance for Performing Single Stationary Source Determinations for Oil and Gas Industries, at 4-6 (Oct. 12, 2011)
- Oklahoma Dep't of Env'tl. Quality, Permitting and Collected Facilities, at 3 (Feb. 9, 2012)
- Louisiana Dep't of Env'tl. Quality, Interpretation of Contiguous for Oil and Gas Production Facilities (June 16, 2006)
- Tex. Commission on Env'tl. Quality, Definition of Site Guidance, at 1 (Aug. 2010).
 - However, Health & Safety Code § 382.051964 applies aggregation relative only to sources eligible for permit by rule and standard permit.
 - Guidance has not been revised based upon new law.

QUESTIONS?

