

# EPA Pushes to Aggregate Oil and Gas Wells and Related Facilities for Air Permitting

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In two recent actions, EPA has signaled that it may be pushing for aggregating oil and gas activities under the Prevention of Significant Deterioration (PSD) and Title V Operating Permit programs. On September 22, 2009, EPA's Assistant Administrator for Air and Radiation notified all EPA Regions that she was withdrawing the agency's January 2007 source aggregation memo that stated individual oil and gas sites normally need not be combined for permitting purposes. Then, on October 8, 2009, the EPA Administrator signed an order finding that the Colorado Department of Public Health and Environment (CDPHE) had not adequately explained its failure to aggregate commonly owned gas wells with a compressor station for PSD and Title V purposes. The order also found that CDPHE must further analyze all wells and other activities operated by the permittee in the Wattenberg field and determine whether they must be combined into a single source. These actions signal that many more oil and gas operations might be identified as PSD and Title V major sources.

The definition of "source" under PSD and Title V has its roots in the case of *Alabama Power v. Costle*, 636 F.2d 323 (D.C. Cir. 1979), and the PSD regulations that followed. In *Alabama Power*, the Court struck down EPA's PSD definition of a "source" as too broad. It held that the meaning of "source" was limited by the four statutory terms, "structure, building, facility or installation," and that EPA can treat contiguous and commonly owned units as a single source only if they fit within these four statutory terms. However, EPA should define these terms broadly enough to encompass an entire plant.

In revising its PSD regulations, EPA interpreted the Court's ruling to mean that the PSD definition of "source" must approximate the common sense notion of "plant"; and avoid aggregating activities that do not fit within the ordinary meaning of "building", "structure", "facility" or "installation". 45 Fed. Reg. 52676 (August 7, 1980). To implement these purposes, EPA defined "stationary source" to mean any building, structure, facility or installation, and in turn defined those terms to have the current three-pronged meaning of activities which (1) belong to the same two-digit SIC Code; (2) are under the control of the same company; and (3) are located on one or more contiguous or adjacent properties. EPA made clear in the preamble that it did not intend "source" to encompass activities that would be many miles apart along a long-line operation such as a pipeline or electrical power line.

In the intervening three decades, EPA has issued numerous guidance memos, sometimes determining that facilities that are three or six or twenty miles apart are "adjacent" and therefore part of a single source. These determinations sometimes are based on physical connections such as pipelines or rail lines, and sometimes based on the extent to which the facilities are interdependent or share employees or support functions. Given that the common meaning of "adjacent" is related to proximity, it is not clear why the agency applies these dependency and functional factors.

It was not until January of 2007 that EPA issued source aggregation guidance for oil and gas activities. Alluding to the particular circumstances of oil and gas operations, William Wehrum, EPA's Acting Assistant Administrator for Air and Radiation, stated that, for this industry, the primary factor in determining whether commonly operated activities should be aggregated is proximity, not operational dependence. He stated it would not be reasonable to aggregate well sites and other production field activities that occur over large geographical distances, and concluded that permitting authorities generally should treat individual surface sites as separate sources unless they are physically adjacent or separated by no more than a short distance, such as a city block. Under this memo, most oil and gas activities would be separate, minor sources.

EPA's withdrawal of this memo and its order to the CDPHE reopen the source aggregation issue for oil and gas operations and signal that there may be new enforcement and permitting challenges for the industry. Initial permitting and permit modifications for aggregated major sources would require determinations of Best Available Control Technology, and modeling for PSD increment consumption and visibility impacts in national parks and wilderness areas, as well as emission offsets in nonattainment areas such as the Wattenberg field. The additional strain on air agencies could slow issuance of permits and raise new roadblocks to oil and gas development.

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