

Single Stationary Source Determinations for Oil and Gas Industries

There are significant gas exploration and extraction activities occurring in the commonwealth within the Marcellus Shale and other formations. As a result, there are permitting issues related to whether the air emissions from exploration, extraction or production activities should be aggregated, or combined, to determine whether the emissions from these stationary sources constitute a “major stationary source” or “major facility” for purposes of the Prevention of Significant Deterioration (PSD), Pennsylvania nonattainment New Source Review (NSR) and Title V permitting programs. DEP’s interim final technical guidance for performing single stationary source determinations for Oil and Gas industries is meant to provide guidance to permitting staff in making these determinations.

What is a Single Source Determination?

Single source determinations for oil and gas operations are conducted by air quality permitting authorities to determine if multiple stationary contamination sources should be treated as separate sources or as a single source. If the aggregated emissions from two or more air contamination sources reach major source applicability thresholds, they would be subject to additional air quality permitting requirements under the PSD, Pennsylvania nonattainment NSR and the Title V permitting programs if the sources meet certain regulatory criteria.

What are the Regulatory Criteria?

For purposes of determining the applicability of PSD or Title V permitting requirements, federal court case law and regulations provide that a “facility” is defined as all the pollutant-emitting activities which: (1) belong to the same industrial grouping; (2) are located on one or more contiguous or adjacent properties; and (3) are under the control of the same person. If two or more air contamination sources are above the major source thresholds and meet the three-part regulatory criteria, the sources are considered single air contamination sources for PSD and Title V permitting purposes (See 40 CFR Section 52.21 and 25 Pa. Code Sections 121.1 and 127.83). Permit writers must analyze each of the criteria to determine if the stationary sources should be treated as a single major source.

Single source determination for Pennsylvania nonattainment NSR is a two-part test that considers whether a “facility” as defined in 25 Pa. Code Section 121.1 is an “air contamination source or combination of air contamination sources located on one or more contiguous or adjacent properties, and is owned and operated by the same person under common control.” If two or more air contamination sources are above the major source threshold and meet the two-part criteria, the sources will be treated as a single facility for nonattainment NSR permitting purposes in accordance with 25 Pa. Code Chapter 127, Subchapter E (relating to new source review).

These regulatory criteria should be considered on a case-by-case basis for oil and gas operations in Pennsylvania when determining if multiple air contamination sources or facilities should be treated as a single stationary source for NSR, PSD or Title V permitting purposes.

Same Industrial Groupings

Under the PSD and Title V permitting programs, pollutant-emitting activities are considered to be part of the same industrial grouping if they have the same first two-digit Standard Industrial Classification (SIC) code. In addition, a support facility is considered to be part of the same industrial grouping as that of the primary facility it supports even if the support facility has a different two digit SIC code, as defined in 40 CFR Part 52.21(b)(6). Support facilities are typically those that “convey, store or otherwise assist in the production of the principal product.”

Contiguous or Adjacent Properties

DEP’s interim final technical guidance relies on the plain meaning of the words from the court case and the regulations and the plain meaning of the words “contiguous” or “adjacent,” which mean the distance or spatial relationship between locations. This view is consistent with and faithful to the regulatory terms “structure, building, facility or installation” and the concept from the federal court case and regulations of the “common sense notion of a plant.” Over time, certain EPA letters and informal opinions, but not regulations, have transformed the concept of “contiguous” and “adjacent” to mean “interdependent.” This interpretation is not consistent with the federal case, the regulations or the meaning of the words “contiguous” or “adjacent.” Spatial distance, not interdependence alone, is the overarching factor in determining whether sources shall be aggregated. Similar approaches have been taken in Texas and, most recently, West Virginia.

The definitions of the terms contiguous or adjacent do not specify distance. DEP will, however, apply a “common sense notion” of source for single source determinations. Properties located a quarter mile or less apart will be treated as contiguous or adjacent properties for PSD, nonattainment NSR and Title V applicability determinations. Single source determinations for properties located beyond this quarter-mile range will be considered on a case-by-case basis. The application of the quarter-mile “rule of thumb” takes the “common sense approach” to aggregation issues and does not aggregate pollutant-emitting activities that, as a group, would not fit within the ordinary meaning of a “structure, building, facility or installation.” That is, the proximity focus of the analysis should guide the permit reviewer in determining whether two sources should be treated as one plant.

Sources under the Common Control of the Same Person

Common control can be established when both facilities are owned by the same parent company or a subsidiary of the parent company. Common control may also be established if an entity, such as a corporation, has decision-making authority over the operation of a second entity through a contractual agreement or voting interest.

Does this Guidance Impact Other Aspects of DEP’s Air Regulatory Program Applicable to the Oil and Gas Sector?

No. The interim final technical guidance does not impact the already robust state air regulatory program we have for this industry. For example, our program includes tools such as plan approvals, operating permits and general permits that regulate air emissions in this sector. New sources, including some natural gas processing operations, are required by state law to apply stringent Best Available Technology air emissions control techniques, which prevent, reduce or control emissions to the maximum degree possible.

For more information, visit www.depweb.state.pa.us.