

Comment and Response Document concerning the Pennsylvania Department of Environmental Protection's interim final technical guidance entitled *Guidance for Performing Single Stationary Source Determinations for Oil and Gas Industries* (ID: 270-0810-006) – October 6, 2012

On Wednesday, October 12, 2011, the Pennsylvania Department of Environmental Protection (“PADEP”, “DEP, or “Department”) issued interim final technical guidance DEP ID: 270-0810-006 entitled *Guidance for Performing Single Stationary Source Determinations for Oil and Gas Industries*. Notice of the interim final guidance was published in the *Pennsylvania Bulletin* on October 22, 2011 (41 Pa.B. 5719). The public comment period closed November 21, 2011. The Department received comments from 366 commentators.

The interim final guidance is intended to assist Department air program permitting staff in making single source determinations for oil and gas industries in this Commonwealth. Single source determinations arise when air contamination sources under common control are located on one or more contiguous or adjacent properties. These determinations will be made in the Commonwealth on a fact-specific and case-by-case basis, applying the "common sense notion of plant." The interim final guidance applies to case-by-case analyses conducted by the Department's air program permitting staff when determining whether stationary sources should be considered a single source for applicable permitting requirements including Prevention of Significant Deterioration (“PSD”), nonattainment New Source Review (“NSR”) and Title V.

This document summarizes the comments received during the public comment period. Each public comment is listed with the identifying commentator number for each commentator that made the comment. A list of the commentators, including name and affiliation (if any) can be found at the beginning of this document.

## COMMENTATORS LIST

| #  | Name                                       | Organization   | Email   | Address   |
|----|--|--|---|---|
| 1  | Louis D. D'Amico                           | PIOGA  | Lisa@pioga.org  | 115 VIP Drive<br>Suite 210<br>Wexford, PA<br>15090-7906                       |
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| 4  | Diana Esher,<br>Kathleen (Anderson)<br>Cox | EPA  | cox.kathleen@epa.gov  | US EPA - Region III,<br>1650 Arch Street<br>Philadelphia, PA 19103            |
| 5  | Joe Osborne                                | Group Against<br>Smog and Pollution  | joe@gasp-pgh.org  | Pittsburgh, PA  |
| 6  | Pamela F. Faggert                          | Dominion Resources<br>Services, Inc.   | <a href="mailto:angela.b.fitzgerald@dom.com">angela.b.fitzgerald@dom.com</a>                          | 5000 Dominion Blvd<br>Glen Allen, VA 23060                                    |
| 7  | Thomas Y. Au<br><br>Craig Holt Segall      | Sierra Club  | thomxau@gmail.com<br><br><a href="mailto:Craig.Segall@sierraclub.org">Craig.Segall@sierraclub.org</a> | Sierra Club<br>Pennsylvania Chapter -<br>P.O. Box 606<br>Harrisburg, PA 17108 |
| 8  | Beverly Braverman                          | Mountain Watershed<br>Association  | mwa@mtwatershed.com   | PO Box 408, Melcroft,<br>PA 15462   |
| 9  | Suzan Kraham<br><br>Edward Lloyd           | The Columbia<br>Environmental Law<br>Clinic,<br><br>Clean Air Council ,<br><br>American Lung<br>Association, and<br>Penn Environment | <a href="mailto:susan.kraham@law.columbia.edu">susan.kraham@law.columbia.edu</a>                      | 435 W. I 16th St.,<br>New York, NY 10027                                      |
| 10 | John P. Shimshock                          | GenOn Energy   | <a href="mailto:John.Shimshock@genon.com">John.Shimshock@genon.com</a>                                | 121 Champion Way<br>Canonsburg, PA 15317                                      |

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| 12 | Barbara G. Wickman    | AKA Energy Group, LLC                                  |  | Durango, CO 81301   |
| 13 | Ed and Vickie Oles    | Concerned Citizens                                     | .  | Ligonier, PA 15658  |
| 14 | Jan Milburn           | Westmoreland Marcellus Citizens Group                  |  |   |
| 15 | Pamela F. Faggert     | Dominion Resources Services, Inc.                      |  | Dominion Blvd Glen Allen, VA 23060                                  |
| 16 | Cynthia Walter        | Concerned Citizen                                      | <a href="mailto:cynthia.walter@email.stvincent.edu">cynthia.walter@email.stvincent.edu</a> |   |
| 17 | John A. Trallo        | Concerned Citizen                                      | <a href="mailto:jtrallo@epix.net">jtrallo@epix.net</a>                                     | Davidson Twp. Sonestown, PA   |
| 18 | Senator Mary Jo White | State Senate   | <a href="mailto:apankake@pasen.gov">apankake@pasen.gov</a>                                 | Harrisburg, PA  |
| 19 | Kathryn Z. Klaber     | MSC – Marcellus Shale Coalition                        | <a href="mailto:kklaber@marcelluscoalition.org">kklaber@marcelluscoalition.org</a>         | 4000 Town Center Blvd Suite 310<br>Canonsburg, PA 15317             |
| 20 | Grover Campbell       | Chesapeake Energy Corporation                          | <a href="mailto:Cara.Maschmeier@chk.com">Cara.Maschmeier@chk.com</a>                       |   |
| 21 | John R Jacus          | MarkWest Liberty Midstream & Resources, LLC (MarkWest) | <a href="mailto:John.Jacus@dgsllaw.com">John.Jacus@dgsllaw.com</a>                         |   |
| 22 | Jeff Zimmerman        | Damascus Citizens for Sustainability                   | <a href="mailto:jjzimmerman@comcast.net">jjzimmerman@comcast.net</a>                       | Zimmerman & Associates<br>13508 Maidstone Lane<br>Potomac, MD 20854 |
| 23 | Elaine Lapp           | Concerned Citizen                                      |  | Lancaster, PA 17603   |

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| 24       | Carla L. Suszkowski,<br>P.E.  | Range Resources –<br>Appalachia, LLC  |              | 380 Southpointe Blvd<br>Suite 300<br>Canonsburg, PA 15317   |
| 25       | Julie Betik                   | Anadarko Petroleum<br>Corporation     |              | P.O. BOX 1330<br>Houston, Texas   |
| 26       | Stephanie Catarino<br>Wissman | American Petroleum<br>Institute (API) |              |   |
| 27       | Bonita C. Hoke                | The League of<br>Women Voters         |              | 226 Forster Street<br>Harrisburg, PA<br>17102-3220  |
| 28       | Linda M. Melvin,<br>CPCU      | Concerned Citizen                     |              | Factoryville (Fleetville),<br>PA 18419  |
| 29       | James E. Rosenberg            | Concerned Citizen                     |              | Grindstone, PA 15442  |
| 30       | Mark Szybist                  | Penn Future                           |              | 15 Public Square Suite<br>101 Wilkes-<br>Barre, PA 18701  |
| 31       | Emily Krafjack                | Wyoming County<br>Courthouse          |              | Community, Municipal<br>& Environmental<br>Liaison<br>Wyoming County<br>Courthouse<br>Courthouse Square<br>Tunkhannock, PA<br>18657 |
| 32       | M. Lauver                     | Concerned Citizen                     |              |   |
| 33       | Frank Varano                  | Concerned Citizen                     |              |   |
| 34       | Robert Cross                  | Concerned Citizen                     |              |   |
| 35       | Elizabeth Lala Zeitlyn        | Concerned Citizen                     |              |   |
| 36       | Betsy Jones                   | Concerned Citizen                     |              |   |

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| 37 | Richard Ide                   | Concerned Citizen |       |                             |
| 38 | Sam & Nancy McCaughey         | Concerned Citizen |       | Wellsboro, PA 16901         |
| 39 | John Cooper                   | Concerned Citizen |       | Lewisburg PA 17837          |
| 40 | Seamus O'Ceallaigh            | Concerned Citizen |       | Montrose, PA 18801          |
| 41 | BlazeCee@aol.com              | Concerned Citizen |       | Cogan Station, PA 17728     |
| 42 | Brooke Woodside               | Concerned Citizen |       | Williamsport, PA 17701      |
| 43 | Garrett Socling               | Concerned Citizen |       | Jersey Shore, PA 17740      |
| 44 | Wayne Chudleigh               | Concerned Citizen |       | Union Dale, PA 18470        |
| 45 | Carol & Bill Henning          | Concerned Citizen |       |                             |
| 46 | Ralph Kisberg                 | Concerned Citizen |       | Williamsport, PA 17701      |
| 47 | Vera Scroggins                | Concerned Citizen |       | Brackney, PA 18812          |
| 48 | Stephen and Christina Henning | Concerned Citizen |       |                             |
| 49 | Charlie & Barbara             | Concerned Citizen |       |                             |
| 50 | Lynn Senick                   | Concerned Citizen |       | Montrose, PA 18801          |
| 51 | Iris Marie Bloom              | Concerned Citizen |       | Philadelphia, PA 19143-3416 |
| 52 | Kevin Heatley                 | Concerned Citizen |       | Hughesville, PA 17737       |

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| 53       | Dr. Grant and Mrs.<br>Jessica Krow | Concerned Citizen   |              | Philadelphia, PA 19129         |
| 54       | Dorothy and Gerhard<br>Heinsohn    | Concerned Citizen   |              | Myersville, MD<br>21773-8401   |
| 55       | Dr. Richard A. Gosser              | Concerned Citizen   |              | Ligonier, PA 15658             |
| 56       | Shary and Gary Skoloff             | Concerned Citizen   |              | Susquehanna, PA 18847          |
| 57       | Alan Wildfeuer                     | Concerned Citizen   |              | Kimberton, PA 19442            |
| 58       | Allison Barnes                     | Concerned Citizen   |              | Exton, PA 19341                |
| 59       | Andrea Frankowski                  | Concerned Citizen   |              | Clarks Summit, PA<br>18411     |
| 60       | Anne MacDougall                    | Concerned Citizen   |              | Ligonier, PA 15658             |
| 61       | Arlene Mercurio                    | Concerned Citizen   |              | New Kensington, PA<br>15068    |
| 62       | Audrey Simpson                     | Concerned Citizen   |              | Shavertown, PA<br>18708-9669   |
| 63       | Barbara Clifford                   | Concerned Citizen   |              | Montrose, PA 18801             |
| 64       | Boris Dirnbach                     | Concerned Citizen   |              | Philadelphia, PA<br>19151-2507 |
| 65       | Brian Choplick                     | Concerned Citizen   |              | Philadelphia, PA 19143         |
| 66       | Bruce Lundrigan                    | Concerned Citizen   |              | Williamsport, PA 17701         |
| 67       | Carol Kuniholm                     | Concerned Citizen   |              | Exton, PA 19341                |
| 68       | Carol Durrwachter                  | Concerned Citizen   |              | Laporte, PA 18626              |

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| 69       | Charles Younger   | Concerned Citizen   |              | Dushore, PA 18614          |
| 70       | Charles Gerlach   | Concerned Citizen   |              | New Albany, PA 18833       |
| 71       | Chester Smolenski | Concerned Citizen   |              | Murrysville, PA 15668      |
| 72       | Chris Pugliese    | Concerned Citizen   |              | West Chester, PA 19380     |
| 73       | Christy Milburn   | Concerned Citizen   |              | Pittsburgh, PA 15232       |
| 74       | Christina Arlt    | Concerned Citizen   |              | Philadelphia, PA 19146     |
| 75       | Colleen Meehan    | Clean Water Org     |              | Philadelphia, PA 19146     |
| 76       | Constance Welsh   | Concerned Citizen   |              | Coudersport, PA 16915      |
| 77       | David Eldredge    | Concerned Citizen   |              | Lansdowne, PA 19050        |
| 78       | David Robinson    | Concerned Citizen   |              | Philadelphia, PA 19125     |
| 79       | David McGeehan    | Concerned Citizen   |              | Pittsburgh, PA 15204       |
| 80       | Debra Borowiec    | Concerned Citizen   |              | Upper Burrell, PA<br>15068 |
| 81       | Denise Watreas    | Concerned Citizen   |              | Waynesburg, PA 15370       |
| 82       | Denis Robitaille  | Concerned Citizen   |              | Ligonier, PA 15658         |
| 83       | Dennis Paluselli  | Concerned Citizen   |              | Export, PA 15632           |
| 84       | Diane Gallagher   | Concerned Citizen   |              | Philadelphia, PA 19103     |

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| 85       | Dorothy Bassett      | Concerned Citizen   |              | Midway, PA 15060                 |
| 86       | Dorrie Gilbert       | Concerned Citizen   |              | Philadelphia, PA 19103           |
| 87       | Dr. Thomas Jiunta    | Concerned Citizen   |              | Shavertown, PA 18708             |
| 88       | Eli Rubinstein       | Concerned Citizen   |              | Elkins Park, PA 19027            |
| 89       | Ellen C. Morton      | Concerned Citizen   |              | New Kensington, PA<br>15068      |
| 90       | Florence Echtman     | Concerned Citizen   |              | Wynnewood, PA 19096              |
| 91       | Fran DeMillion       | Concerned Citizen   |              | Kennett Square, PA<br>19348-2592 |
| 92       | Francine Cohen       | Concerned Citizen   |              | Havertown, PA 19083              |
| 93       | Gabriel Farrell      | Concerned Citizen   |              | Philadelphia, PA 19143           |
| 94       | Gerrie Schmidt       | Concerned Citizen   |              | Philadelphia, PA 19147           |
| 95       | Heidi Hiteshue       | Concerned Citizen   |              | Clifton Heights, PA<br>19018     |
| 96       | Heidi Asmussen       | Concerned Citizen   |              | New Alexandria, PA<br>15670      |
| 97       | Henry & Elaine Frank | Concerned Citizen   |              | Philadelphia, PA<br>19153-2225   |
| 98       | Mary Jane Hyde       | Concerned Citizen   |              | Lewisburg, PA 17837              |
| 99       | Jack Malinowski      | Concerned Citizen   |              | Philadelphia, PA 19119           |
| 100      | Jane Longdon         | Concerned Citizen   |              | Murrysville, PA 15668            |



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| 101      | Jane Uptegrove   | Concerned Citizen   |              | Philadelphia, PA 19119   |
| 102      | Janie Richardson | Concerned Citizen   |              | Jersey Shore, PA 17740   |
| 103      | Jeffrey Shuben   | Concerned Citizen   |              | Philadelphia, PA 19114   |
| 104      | Jennifer Tobin   | Concerned Citizen   |              | Philadelphia, PA 19130   |
| 105      | Jerry Lee Miller | Concerned Citizen   |              | Lancaster, PA 17601      |
| 106      | Joanne Fiorito   | Concerned Citizen   |              | Tunkhannock, PA<br>18657 |
| 107      | John Sidorovich  | Concerned Citizen   |              | Staten Island, NY 10301  |
| 108      | John Yesenosky   | Concerned Citizen   |              | Garards Fort, PA 15334   |
| 109      | Joyce Hinnefeld  | Concerned Citizen   |              | Bethlehem, PA 18017      |
| 110      | Judith Campsey   | Concerned Citizen   |              | Claysville, PA 15323     |
| 111      | Julie Schwartz   | Concerned Citizen   |              | Berwyn, PA 19312         |
| 112      | Katherine Lopez  | Concerned Citizen   |              | Lansdowne, PA 19050      |
| 113      | Kathleen Bishop  | Concerned Citizen   |              | Pittsburgh, PA 15203     |
| 114      | Kelley Maloney   | Concerned Citizen   |              | Pittsburgh, PA 15218     |
| 115      | Louise Mockaitis | Concerned Citizen   |              | Philadelphia, PA 19130   |

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| 116      | Louise Francis   | Concerned Citizen   |              | Philadelphia, PA 19147 |
| 117      | Lynn Schoeninger | Concerned Citizen   |              | Montrose, PA 18801     |
| 118      | Madeline Rawley  | Concerned Citizen   |              | Doylestown, PA 18901   |
| 119      | Mark Schmerling  | Concerned Citizen   |              | Bryn Athyn, PA 19009   |
| 120      | Matthew ONeill   | Concerned Citizen   |              | Kempton, PA 19529      |
| 121      | Melissa Zeserson | Concerned Citizen   |              | Swarthmore, PA 19081   |
| 122      | Michael Morell   | Concerned Citizen   |              | Havertown, PA 19083    |
| 123      | Michael Bastion  | Concerned Citizen   |              | Troy, PA 16947         |
| 124      | Mitchell Struble | Concerned Citizen   |              | Philadelphia, PA 19146 |
| 125      | Mitchell Collier | Concerned Citizen   |              | Glenside, PA 19038     |
| 126      | Nancy Wottrich   | Concerned Citizen   |              | New Milford, PA 18834  |
| 127      | Nancy Weissman   | Concerned Citizen   |              | Philadelphia, PA 19119 |

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| 128      | Pamela Poholsky    | Concerned Citizen   |              | Murrysville, PA 15668          |
| 129      | Patricia Townsend  | Concerned Citizen   |              | Clarks Summit, PA<br>18411     |
| 130      | Patricia Costa     | Concerned Citizen   |              | Philadelphia, PA 19104         |
| 131      | Pauline Wagner     | Concerned Citizen   |              | Mechanicsburg, PA<br>17055     |
| 132      | Priscilla Mattison | Concerned Citizen   |              | Bryn Mawr, PA<br>19010-1561    |
| 133      | Richard Yanock     | Concerned Citizen   |              | Washington, PA 15301           |
| 134      | Rick Humphreys     | Concerned Citizen   |              | Mannington, WV 26582           |
| 135      | Rima Synnestvedt   | Concerned Citizen   |              | Huntingdon Valley, PA<br>19006 |
| 136      | Robert Mulvihill   | Concerned Citizen   |              | Pittsburgh, PA 15236           |
| 137      | Robert F. Williams | Concerned Citizen   |              | Troy, PA 16947                 |
| 138      | Ronald Nordstrom   | Concerned Citizen   |              | Rector, PA 15677               |

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| 139      | Rosanne Yesenosky | Concerned Citizen   |              | Carmichaels, PA 15320          |
| 140      | Rosemary Fielding | Concerned Citizen   |              | Sewickley, PA 15143            |
| 141      | Rosemary Trump    | Concerned Citizen   |              | Murrysville, PA 15668          |
| 142      | Scott Spangler    | Concerned Citizen   |              | Ligonier, PA 15658             |
| 143      | Sidney Goldstein  | Concerned Citizen   |              | Philadelphia, PA 19118         |
| 144      | Sondra Cholach    | Concerned Citizen   |              | Bensalem, PA 19020             |
| 145      | Susannah Edmonds  | Concerned Citizen   |              | Haverford, PA 19041            |
| 146      | Suzanne Zlotnick  | Concerned Citizen   |              | Huntingdon Valley, PA<br>19006 |
| 147      | Talia Abramovitz  | Concerned Citizen   |              | Bryn Mawr, PA 19010            |
| 148      | Tamara Williams   | Concerned Citizen   |              | Clarks Summit, PA<br>18411     |
| 149      | Tanya Striedieck  | Concerned Citizen   |              | Punxsutawney, PA<br>15767      |
| 150      | Timothy Devaney   | Concerned Citizen   |              | Ridley Park, PA 19078          |

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| 151      | Victoria Switzer      | Concerned Citizen   |              | Dimock, PA 18816       |
| 152      | Vincent Sortman       | Concerned Citizen   |              | Williamsport, PA 17701 |
| 153      | Warren Hoffman        | Concerned Citizen   |              | Philadelphia, PA 19107 |
| 154      | Wendy Lynne Lee       | Concerned Citizen   |              | Bloomsburg, PA 17815   |
| 155      | Willa Paterson        | Concerned Citizen   |              | Pittsburgh, PA 15206   |
| 156      | William Granche       | Concerned Citizen   |              | Ridgway, PA 15853      |
| 157      | Andy & Paula Pollak   | Concerned Citizen   |              | Murrysville, PA 15668  |
| 158      | Art and Deb LaNoue    | Concerned Citizen   |              | Sycamore, PA 15364     |
| 159      | Brian McCauley        | Concerned Citizen   |              | Media, PA 19063        |
| 160      | Christine Waanders    | Concerned Citizen   |              | Ardmore, PA 19003      |
| 161      | Dominick Difilippo    | Concerned Citizen   |              | West Grove, PA 19390   |
| 162      | Edward & Mary Mack    | Concerned Citizen   |              | Martinsburg, PA 16662  |
| 163      | Giacomo DeAnnuntis    | Concerned Citizen   |              | Philadelphia, PA 19128 |
| 164      | John & Doreen Tillman | Concerned Citizen   |              | Montrose, PA 18801     |

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| 165      | Kathleen O'Donnell     | Concerned Citizen   |              | Philadelphia, PA 19143 |
| 166      | Kenneth Schoeninger    | Concerned Citizen   |              | Montrose, PA 18801     |
| 167      | Lisa Graves-Marcucci   | Concerned Citizen   |              | Pittsburgh, PA 15236   |
| 168      | Lois Johnson-Hammerman | Concerned Citizen   |              | Philadelphia, PA 19104 |
| 169      | Patricia Valentine     | Concerned Citizen   |              | Ulysses, PA 16948      |
| 170      | Rev. Ricky Phillips    | Concerned Citizen   |              | New Columbia, PA 17856 |
| 171      | Rosalyn Robitaille     | Concerned Citizen   |              | Ligonier, PA 15658     |
| 172      | Susan Corson-Finnerty  | Concerned Citizen   |              | Elkins Park, PA 19027  |
| 173      | Adam Eyring            | Concerned Citizen   |              | Philadelphia, PA 19119 |
| 174      | Aida Berzins           | Concerned Citizen   |              | Upper Darby, PA 19082  |
| 175      | Al Guarente            | Concerned Citizen   |              | Media, PA 19063        |
| 176      | Alex Lyakhov           | Concerned Citizen   |              | Oneonta, NY 13820      |

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|----------|---------------|---------------------|--------------|--------------------------------|
| 177      | Alex Bomstein | Concerned Citizen   |              | Philadelphia, PA 19107         |
| 178      | Alice Zinnes  | Concerned Citizen   |              | Milanville, PA 18443           |
| 179      | Alice Somers  | Concerned Citizen   |              | Gaines, PA 16821               |
| 180      | Allen Uhler   | Concerned Citizen   |              | New Kensington, PA<br>15068    |
| 181      | Amber Kuleck  | Concerned Citizen   |              | Emporium, PA 15834             |
| 182      | Amber Nolder  | Concerned Citizen   |              | Luthersburg, PA 15848          |
| 183      | Amy Arendas   | Concerned Citizen   |              | Ligonier, PA 15658             |
| 184      | Andrew Mramor | Concerned Citizen   |              | Philadelphia, PA 19125         |
| 185      | April Jackman | Concerned Citizen   |              | Ligonier, PA 15658             |
| 186      | B. Arrindell  | Concerned Citizen   |              | Milanville, PA 18443           |
| 187      | Barry Blust   | Concerned Citizen   |              | Glenmoore, PA 19343            |
| 188      | Brenda Rezvan | Concerned Citizen   |              | Arlington, VA 22207            |
| 189      | Brenda Byrne  | Concerned Citizen   |              | Philadelphia, PA<br>19147-3227 |

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|----------|---------------|---------------------|--------------|----------------------------|
| 190      | Bridget Coyne | Concerned Citizen   |              | Ligonier, PA 15658         |
| 191      | Bruce Pearson | Concerned Citizen   |              | Philadelphia, PA 19103     |
| 192      | Brynn Schmitt | Concerned Citizen   |              | Mansfield, PA 16933        |
| 193      | Carole Rubley | Concerned Citizen   |              | Wayne, PA 19087            |
| 194      | Carolyn Wells | Concerned Citizen   |              | Montrose, PA 18801         |
| 195      | Carol Seeley  | Concerned Citizen   |              | Brookhaven, PA 19015       |
| 196      | Craig Sautner | Concerned Citizen   |              | Montrose, PA 18801         |
| 197      | D.A. Chadder  | Concerned Citizen   |              | Villanova, PA 19085        |
| 198      | Daniel Safer  | Concerned Citizen   |              | Philadelphia, PA 19104     |
| 199      | David Plank   | Concerned Citizen   |              | New Milford, PA 18834      |
| 200      | David Powell  | Concerned Citizen   |              | Mechanicsburg, PA<br>17050 |
| 201      | Dean Marshall | Concerned Citizen   |              | Benton, PA 17814           |



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| 202      | Debra Coyle   | Concerned Citizen   |              | Philadelphia, PA 19139        |
| 203      | Deirdre Kane  | Concerned Citizen   |              | Pittsburgh, PA 15201          |
| 204      | Denise Coyle  | Concerned Citizen   |              | Washington, PA 15301          |
| 205      | Diana Hulboy  | Concerned Citizen   |              | Philadelphia, PA 19128        |
| 206      | Donald Bane   | Concerned Citizen   |              | Eldred, PA 16731              |
| 207      | Donna Worden  | Concerned Citizen   |              | Shinglehouse, PA 16748        |
| 208      | Eileen Doyle  | Concerned Citizen   |              | Philadelphia, PA 19143        |
| 209      | Elaine Cohen  | Concerned Citizen   |              | Upper Darby, PA<br>19082-3607 |
| 210      | Ellen A Smith | Concerned Citizen   |              | Montrose, PA 18801            |
| 211      | Erica Moses   | Concerned Citizen   |              | Genesee, PA 16923             |
| 212      | Eugene Bolter | Concerned Citizen   |              | Ligonier, PA 11530            |
| 213      | Ford Shankle  | Concerned Citizen   |              | McDonald, PA 15057            |

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| 214      | Fran Harkins      | Concerned Citizen   |              | Munhall, PA 15120      |
| 215      | Fritz-Mauer Jossi | Concerned Citizen   |              | Ardmore, PA 19003      |
| 216      | Gail Massey       | Concerned Citizen   |              | Philadelphia, PA 19143 |
| 217      | Gary Troutman     | Concerned Citizen   |              | Roulette, PA 16746     |
| 218      | Gay Thistle       | Concerned Citizen   |              | Waynesburg, PA 15370   |
| 219      | Grace Bergin      | Concerned Citizen   |              | Du Bois, PA 15801      |
| 220      | Gregory Sinn      | Concerned Citizen   |              | Pittsburgh, PA 15208   |
| 221      | Greg Spevak       | Concerned Citizen   |              | Mill Valley, CA 94941  |
| 222      | Heather Davis     | Concerned Citizen   |              | Philadelphia, PA 19119 |
| 223      | Holly Austin      | Concerned Citizen   |              | Smethport, PA 16749    |
| 224      | Jack Milburn      | Concerned Citizen   |              | Ligonier, PA 15658     |

| <b>#</b> | <b>Name</b>       | <b>Organization</b> | <b>Email</b> | <b>Address</b>              |
|----------|-------------------|---------------------|--------------|-----------------------------|
| 225      | James Jones       | Concerned Citizen   |              | Roulette, PA 16746          |
| 226      | James Manuel      | Concerned Citizen   |              | Shippensburg, PA<br>17257   |
| 227      | Janet Burgan      | Concerned Citizen   |              | Equinunk, PA 18417          |
| 228      | Jane Cyphers      | Concerned Citizen   |              | Milanville, PA 18405        |
| 229      | Janet Filante     | Concerned Citizen   |              | Philadelphia, PA 19119      |
| 230      | Janis Johnson     | Concerned Citizen   |              | Pittsburgh, PA 15215        |
| 231      | Jay Sweeney       | Concerned Citizen   |              | Dalton, PA 18414            |
| 232      | Jean Barker       | Concerned Citizen   |              | Kennett Square, PA<br>19348 |
| 233      | Jess Walcott      | Concerned Citizen   |              | Langhorne, PA 19047         |
| 234      | Jodi Borello      | Concerned Citizen   |              | Washington, PA 15301        |
| 235      | Joe Guthrie       | Concerned Citizen   |              | Murrysville, PA 15668       |
| 236      | John Trallo 17758 | Concerned Citizen   |              | Sonestown, PA               |

| <b>#</b> | <b>Name</b>       | <b>Organization</b> | <b>Email</b> | <b>Address</b>              |
|----------|-------------------|---------------------|--------------|-----------------------------|
| 237      | John Johnson      | Concerned Citizen   |              | Philadelphia, PA 19151      |
| 238      | Jonathan Huff     | Concerned Citizen   |              | Roulette, PA<br>16746-0253  |
| 239      | Juliane Arena     | Concerned Citizen   |              | Sharon, PA 16146            |
| 240      | Julian Horner     | Concerned Citizen   |              | Philadelphia, PA 19119      |
| 241      | Julie Edgar       | Concerned Citizen   |              | Topton, PA 19562            |
| 242      | Julie Brady       | Concerned Citizen   |              | Philadelphia, PA 19104      |
| 243      | Karen Bernard     | Concerned Citizen   |              | Glenshaw, PA 15116          |
| 244      | Karen Davis       | Concerned Citizen   |              | Warren, PA 16365            |
| 245      | Karl Pietrzak     | Concerned Citizen   |              | Wynnewood, PA 19096         |
| 246      | Katherine Simpson | Concerned Citizen   |              | Lafayette Hill, PA<br>19444 |
| 247      | Kelly Finan       | Concerned Citizen   |              | Hop Bottom, PA 18824        |
| 248      | Kelly Riley       | Concerned Citizen   |              | Hatfield, PA 19440          |
| 249      | Kristin Jaros     | Concerned Citizen   |              | Philadelphia, PA 19126      |
| 250      | Kris DeBolt       | Concerned Citizen   |              | Drexel Hill, PA 19026       |
| 251      | Laurel Gulla      | Concerned Citizen   |              | Canonsburg, PA 15317        |

| <b>#</b> | <b>Name</b>   | <b>Organization</b> | <b>Email</b> | <b>Address</b>              |
|----------|---------------|---------------------|--------------|-----------------------------|
| 252      | Laura Melly   | Concerned Citizen   |              | Philadelphia, PA 19118      |
| 253      | Libal Steve   | Concerned Citizen   |              | Little Meadows, PA<br>18830 |
| 254      | Linda Blythe  | Concerned Citizen   |              | Philadelphia, PA 19104      |
| 255      | Lori Palermo  | Concerned Citizen   |              | Gouldsboro, PA 18424        |
| 256      | LT Atkinson   | Concerned Citizen   |              | Somerset, PA 15501          |
| 257      | Mara Wolfgang | Concerned Citizen   |              | Philadelphia, PA 19119      |
| 258      | Marc Levine   | Concerned Citizen   |              | New Alexandria, PA<br>15670 |
| 259      | Marian Szmyd  | Concerned Citizen   |              | Jeannette, PA<br>15644-1230 |
| 260      | Marie Hobbie  | Concerned Citizen   |              | Clarks Summit, PA<br>18411  |
| 261      | Marvin Meyer  | Concerned Citizen   |              | Wayne, PA 19087             |
| 262      | Mary Rooney   | Concerned Citizen   |              | Allentown, PA 18103         |
| 263      | Mary Hrenda   | Concerned Citizen   |              | Morrisville, PA 19067       |
| 264      | Mary Heston   | Concerned Citizen   |              | Sabinsville, PA 16943       |
| 265      | Matt Connolly | Concerned Citizen   |              | Philadelphia, PA 19129      |
| 266      | Melian McKee  | Concerned Citizen   |              | Williamsport, PA 17701      |
| 267      | Mervyn Kline  | Concerned Citizen   |              | Philadelphia, PA 19115      |

| <b>#</b> | <b>Name</b>       | <b>Organization</b> | <b>Email</b> | <b>Address</b>             |
|----------|-------------------|---------------------|--------------|----------------------------|
| 268      | Michael Poll      | Concerned Citizen   |              | Bryn Mawr, PA 19010        |
| 269      | Michael Zuckerman | Concerned Citizen   |              | Philadelphia, PA 19104     |
| 270      | Michelle Robinson | Concerned Citizen   |              | Malvern, PA 19355          |
| 271      | Mika Tsekoura     | Concerned Citizen   |              | Philadelphia, PA 19103     |
| 272      | Mike Hadden       | Concerned Citizen   |              | Port Allegany, PA<br>16743 |
| 273      | Molly Karpin      | Concerned Citizen   |              | Philadelphia, PA 19104     |
| 274      | Najeem Al Balushi | Concerned Citizen   |              | Villanova, PA 19085        |
| 275      | Nancy Baith       | Concerned Citizen   |              | Ligonier, PA 15658         |
| 276      | Naomi Teppich     | Concerned Citizen   |              | Damascus, PA 18415         |
| 277      | Nick Lindow       | Concerned Citizen   |              | Baltimore, MD 21211        |
| 278      | Nicole Stern      | Concerned Citizen   |              | Santa Fe, NM 87507         |
| 279      | Paul Parker       | Concerned Citizen   |              | Avella, PA 15312           |
| 280      | Phyllis Carr      | Concerned Citizen   |              | Lake Lynn, PA 15451        |
| 281      | Poune Saberi      | Concerned Citizen   |              | Philadelphia, PA 19146     |
| 282      | Poune Saberi      | Concerned Citizen   |              | Philadelphia, PA 19146     |
| 283      | Rebecca Roter     | Concerned Citizen   |              | Kingsley, PA 18826         |

| <b>#</b> | <b>Name</b>   | <b>Organization</b> | <b>Email</b> | <b>Address</b>              |
|----------|---------------|---------------------|--------------|-----------------------------|
| 284      | Renee Mazza   | Concerned Citizen   |              | Sewell, NJ 08080            |
| 285      | Robert Gaynor | Concerned Citizen   |              | New Hope, PA 18938          |
| 286      | Robert Snyder | Concerned Citizen   |              | Philadelphia, PA 19143      |
| 287      | Ronald Gulla  | Concerned Citizen   |              | Canonsburg, PA 15317        |
| 288      | Sandra Brown  | Concerned Citizen   |              | Holbrook, PA 15341          |
| 289      | Scott Minster | Concerned Citizen   |              | Bradenville, PA 15620       |
| 290      | Scott Spencer | Concerned Citizen   |              | Philadelphia, PA 19128      |
| 291      | Sherri Laster | Concerned Citizen   |              | McMurray, PA 15317          |
| 292      | Stephen Luffy | Concerned Citizen   |              | Latrobe, PA 15650           |
| 293      | Susan Shaak   | Concerned Citizen   |              | Reading, PA<br>19606-2335   |
| 294      | Susan Warren  | Concerned Citizen   |              | Morris, PA 16938            |
| 295      | Susan Bloch   | Concerned Citizen   |              | Philadelphia, PA 19119      |
| 296      | Susan Sussman | Concerned Citizen   |              | Harrisburg, PA 17110        |
| 297      | Tanya Seaman  | Concerned Citizen   |              | Philadelphia, PA 19146      |
| 298      | Terri Davin   | Concerned Citizen   |              | Waynesburg, PA 15370        |
| 299      | Thomas Nelson | Concerned Citizen   |              | Lansdowne, PA<br>19050-1304 |

| <b>#</b> | <b>Name</b>   | <b>Organization</b> | <b>Email</b> | <b>Address</b>            |
|----------|---------------|---------------------|--------------|---------------------------|
| 300      | Thomas Conway | Concerned Citizen   |              | Ligonier, PA 15658        |
| 301      | Tim Schlitzer | Concerned Citizen   |              | Arnot, PA 16911           |
| 302      | Tucker Hill   | Concerned Citizen   |              | Etters, PA 17319-9774     |
| 303      | Valerie Dorn  | Concerned Citizen   |              | Folcroft, PA 19032        |
| 304      | Virgini Emer  | Concerned Citizen   |              | West Chester, PA<br>19380 |
| 305      | Vivian Schatz | Concerned Citizen   |              | Philadelphia, PA 19119    |
| 306      | Walter Tsou   | Concerned Citizen   |              | Philadelphia, PA 19119    |
| 307      | Wanda Guthrie | Concerned Citizen   |              | Murrysville, PA 15668     |
| 308      | William Smith | Concerned Citizen   |              | Clearville, PA 15535      |
| 309      | William Henry | Concerned Citizen   |              | Clinton, PA 15026         |
| 310      | William Ewing | Concerned Citizen   |              | Philadelphia, PA 19119    |
| 311      | William Campi | Concerned Citizen   |              | Media, PA 19063           |
| 312      | A. Knizner    | Concerned Citizen   |              | Delmont, PA 15626         |
| 313      | Amy Roholt    | Concerned Citizen   |              | Brooklyn, NY 11228        |
| 314      | Amy Gross     | Concerned Citizen   |              | Philadelphia, PA 19119    |
| 315      | Anne Coyne    | Concerned Citizen   |              | Ligonier, PA 15658        |



| <b>#</b> | <b>Name</b>    | <b>Organization</b> | <b>Email</b> | <b>Address</b>               |
|----------|----------------|---------------------|--------------|------------------------------|
| 316      | Brian Fink     | Concerned Citizen   |              | Philadelphia, PA 19130       |
| 317      | Cary Bohl Sent | Concerned Citizen   |              | Murrysville, PA 15668        |
| 318      | Cheryl Lee     | Concerned Citizen   |              | South Park, PA 15129         |
| 319      | Claire Cox     | Concerned Citizen   |              | State College, PA 16801      |
| 320      | Daryl Ezzo     | Concerned Citizen   |              | Newtown, PA 18940            |
| 321      | Deb Kibbe      | Concerned Citizen   |              | Harrison Valley, PA<br>16927 |
| 322      | Earl Fraim     | Concerned Citizen   |              | Forksville, PA 18616         |
| 323      | Gina Kirk      | Concerned Citizen   |              | Bryn Mawr, PA 19010          |
| 324      | Jan Kiefer     | Concerned Citizen   |              | Scottsdale, PA 15683         |
| 325      | Jason Rash     | Concerned Citizen   |              | Media, PA 19063              |
| 326      | Jim Kosa       | Concerned Citizen   |              | Pipersville, PA 18947        |
| 327      | Jim Dalton     | Concerned Citizen   |              | Media, PA 19063              |
| 328      | Joan McKee     | Concerned Citizen   |              | Williamsport, PA 17701       |
| 329      | John Smith     | Concerned Citizen   |              | McDonald, PA 15057           |
| 330      | John Davin     | Concerned Citizen   |              | Waynesburg, PA 15370         |
| 331      | Jon Pope       | Concerned Citizen   |              | Brooklyn, NY 11238           |

| <b>#</b> | <b>Name</b> | <b>Organization</b> | <b>Email</b> | <b>Address</b>                |
|----------|-------------|---------------------|--------------|-------------------------------|
| 332      | Judy Evans  | Concerned Citizen   |              | Export, PA 15632              |
| 333      | Karen Eble  | Concerned Citizen   |              | Huntingdon Valley, PA 19006   |
| 334      | Kimm Tynan  | Concerned Citizen   |              | Philadelphia, PA 19143        |
| 335      | Kirby Bell  | Concerned Citizen   |              | Philadelphia, PA 19147        |
| 336      | Lee Hood    | Concerned Citizen   |              | Philadelphia, PA 19145        |
| 337      | Lin Ruff    | Concerned Citizen   |              | Ligonier, PA 15658            |
| 338      | Mary Allen  | Concerned Citizen   |              | Williamsport, PA 17701        |
| 339      | Mimi Lang   | Concerned Citizen   |              | Bethlehem, PA 18017           |
| 340      | Nina Ward   | Concerned Citizen   |              | Washington, PA 15301          |
| 341      | Paula Lim   | Concerned Citizen   |              | Pittsburgh, PA 15236-2028     |
| 342      | Paul Roden  | Concerned Citizen   |              | Yardley, PA 19067             |
| 343      | Ruth A Rin  | Concerned Citizen   |              | Wynnewood, PA 19096           |
| 344      | Ryan Smith  | Concerned Citizen   |              | Columbia Crossroads, PA 16914 |
| 345      | Ted Reed    | Concerned Citizen   |              | Philadelphia, PA 19103        |
| 346      | Winnie Chu  | Concerned Citizen   |              | Brooklyn, NY 11204            |
| 347      | Ann Law     | Concerned Citizen   |              | Apalachin, NY 13732           |

| <b>#</b> | <b>Name</b>                  | <b>Organization</b> | <b>Email</b> | <b>Address</b>                |
|----------|------------------------------|---------------------|--------------|-------------------------------|
| 348      | Ed Woll                      | Concerned Citizen   |              | Auburn, PA 17922              |
| 349      | Guy No                       | Concerned Citizen   |              | Philadelphia, PA 19101        |
| 350      | B. Arrindell                 | Concerned Citizen   |              | Manville, PA 18443            |
| 351      | Denis Robitaille             | Concerned Citizen   |              | Ligonier, PA                  |
| 352      | Marc Levine                  | Concerned Citizen   |              |                               |
| 353      | Peggy King                   | Concerned Citizen   |              |                               |
| 354      | John Yesenosky               | Concerned Citizen   |              | Garards Fort, PA              |
| 355      | Debbie Borowiec              | Concerned Citizen   |              | Upper Burrell, PA             |
| 356      | combatfx@comcast.net<br>***  | Concerned Citizen   |              |                               |
| 357      | Dr. John Michael<br>Atherton | Concerned Citizen   |              |                               |
| 358      | April Jackman                | Concerned Citizen   |              |                               |
| 359      | Andy Pollak                  | Concerned Citizen   |              |                               |
| 360      | Pamela Poholsky              | Concerned Citizen   |              | Murrysville PA 15668          |
| 361      | Theresa Mondello             | Concerned Citizen   |              | Easton, PA 18042              |
| 362      | Beth Dillenbeck              | Concerned Citizen   |              | Clarks Summit, PA<br>18411    |
| 363      | Henry Berkiowitz             | Concerned Citizen   |              | Sabinsville, PA<br>16943-9749 |

| #   | Name           | Organization  | Email                   | Address                                     |
|-----|----------------|---|-------------------------|---|
| 364 | Susan Kraham   | Columbia<br>University School of<br>Law Environmental<br>Law Clinic | skraha@law.columbia.edu | 435 West 116th Street<br>New York, NY 10027 |
| 365 | Sam Goldstein  | Concerned Citizen   |                         | Merion, PA 19066                            |
| 366 | Jane Prettyman | Concerned Citizen   |                         | Philadelphia, PA 19103                      |

## COMMENTS/RESPONSES

**1. Comment:** The commentator supports the development of stationary source determination guidance that relies on the plain meaning of contiguous and adjacent as part of case-by-case determinations. (1)

**Response:** The Department appreciates the commentator's support for the development of this guidance.

**2. Comment:** The commentator requests that the guidance address how the Department will ensure that the implementation of the guidance is consistent across the various regions. The use of a quarter mile separation between facilities as a rule of thumb for the determination of "contiguous or adjacent" is a useful tool to help guide the regulated community when making stationary source determinations and evaluating whether facilities should be considered contiguous or adjacent. This rule of thumb would prevent aggregating multiple facilities throughout a large geographic area based solely on a shared pipeline. Such aggregation stretches functional dependency beyond the plain meaning of contiguous and adjacent. (1)

**Response:** The Department's guidance address applies to all regions of the Commonwealth. Should the Department determine that the guidance is not being implemented consistently across the Commonwealth additional direction will be provided as appropriate and necessary. Nevertheless, the administration remains committed to ensuring regional consistency throughout this Commonwealth.

**3. Comment:** The commentator does not support "daisy-chaining" of multiple facilities together into a contiguous grouping that would otherwise not be grouped. (1)

**Response:** The Department agrees. "daisy-chaining" of sources will typically not occur. However, each determination will be made on a case-by-case basis. The term "daisy-chain" is colloquial in nature and typically means items connected in a series. This term is instructive in nature to assist air quality permit staff when making a case-by-case determination in determining if sources are considered contiguous or adjacent.

**4. Comment:** The commentator expressed concern for health and welfare of the citizens and requested that the rescinded policy be reinstated. (2)

**Response:** Like the commentator, the Department is also concerned for the health and safety of children and families. The Department believes that the revised guidance document is protective of public health and welfare and allows for the development of the natural gas industry in a safe and effective manner.

**5. Comment:** The commentator supports the Department's effort to develop a guidance document to create consistency and predictability in the performance of single stationary source PSD and NSR permitting determinations for the oil and gas industries. Inconsistent interpretation and application of applicable federal and state regulations can create uncertainty that hinders efficient investment and planning decisions. The proposed Guidance Document,

with the suggested revisions, will increase permitting efficiency by allowing operators to provide at the outset the information that PADEP will review as part of the permit process, reducing delays from additional information requests. The guidance will create consistency across the regions, ensuring permit requirements remain the same throughout Pennsylvania. (3, 25)

**Response:** The Departments agrees and appreciates the commentator's support.

**6. Comment:** The commentator is concerned that the Guidance Document also includes a discussion of a third factor – "whether there is a contract for service relationship between the two companies or if a support/dependency relationship exists" – that can also be used to determine whether common control exists. The commentator urges that PADEP revise the Proposed Guidance to clarify that the primary focus of the common ownership and control analysis should be on the first two factors i.e., common ownership and common control, and that contracts for service or support/dependency relationships are only relevant if they rise to the level of creating decision-making authority for one source over another. (3, 25)

**Response:** The Department has modified the guidance as follows:

There may be a number of other ways to assist in determining whether a common control relationship exists. First, common control can be established by ownership. Second, common control can 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. If common control is not established by the first two ways, then one should next look at whether there is a contract for service relationship between the two companies or if a support/dependency relationship exists between the two companies in order to determine if a common control relationship exists.

This modification should alleviate some of the concerns of the commentator. But it needs to be reiterated that the guidance is a broad framework as to how the Department will make single source determinations. Companies are free to, and encouraged to, share any and all relevant information in order to ensure that the Department makes the proper determination.

**7. Comment:** The document is described as interim guidance to assist staff in making source determinations in the oil and gas industry. Please clarify the term "interim." The document itself does not provide any sunset provisions and the nature of the guidance would imply that this is not a temporary approach to regulating this source category. (4)

**Response:** The intent of the interim final technical guidance document is to provide the air quality staff with guidance on making single source determinations between the time that this document was published until the time when this document is finalized.

**8. Comment:** The disclaimer states that the policies and procedures in this guidance document supplement existing requirements. It also states in the second paragraph that this document establishes the framework within which the PADEP will exercise its administrative discretion in the future. The latter statements indicate that PADEP is intending to change the manner in which regulations that have been adopted as part of the state

implementation plan (“SIP”) and that are now federal law will be implemented. This is problematic. As noted in *Safe Air for Everyone v EPA*, 488 F.3d 1088, 1097 (9th Cir. 2007), the SIP is federal law, not state law, once EPA has approved it. As the Court stated in *Safe Air*, “the state’s interpretation of the regulations incorporated into the SIP, even if binding as a matter of state law, is not directly dispositive of the meaning of the SIP.” *Id.* (4)

**Response:** The Department disagrees. The technical guidance document is not a regulation and is not intended to change any regulations that were adopted. Regulations establish a “binding norm” that agencies, regulated entities, and the courts are bound to follow. The intent of this guidance document is just that, to provide guidance. It is not a regulation. The disclaimer is clear on this point which reads – “[n]othing in the policies or procedures shall affect regulatory requirements.”

**9. Comment:** The disclaimer statement also states that “The policies and procedures herein are not adjudication or a regulation. There is no intent on the part of PADEP to give the rules in these policies that weight or deference.” It is unclear which “rules” the latter sentence is referring to since this document is not a rule or regulation. If “rules” pertain to the regulations cited in the interim guidance, then those “rules” do have weight and deference even if the policies and procedures outlined in the interim guidance do not. (4)

**Response:** In the context of this disclaimer the term “rules” refers to the guidance document itself and not to any regulations cited within the document. This language has been used by the Department for many years and no problems have occurred with this usage.

**10. Comment:** In the introduction statement, the document provides the reasoning for writing this guidance. EPA appreciates that the diffuse nature of the oil and gas extraction, processing, and transmission industry sectors prove challenging when making aggregation determinations. Nevertheless, the regulatory definitions used for single source determination apply to facilities in all industry sectors. *See* Memorandum, dated September 22, 2009 from Ms. Gina McCarthy, Assistant Administrator for Office of Air and Radiation (withdrawing January 12, 2007 guidance memorandum entitled “Source Determinations for Oil and Gas Industries”). (4)

**Response:** The Department developed the interim guidance to address specific issues that have arisen in the oil and gas industry. The guidance is specific to that industry and does not address and is not to be applied to other industries. The Department has reviewed the McCarthy memo. This interim guidance was developed because the McCarthy memo retracts previously clear guidance that applied to the oil and gas industry. The interim technical guidance document was developed to provide DEP staff guidance on single source determinations for the oil and gas industry. The document is not broadly applicable to all industries in Pennsylvania.

**11. Comment:** The last sentence of the paragraph states that “If two or more air contaminant sources are above the major source threshold and meet the three-part test under this latter definition, the sources should be treated as a single air contaminant source for PSD and Title V purposes.” The phrase in bold text [...“**are above the major source threshold and...**”] is incorrect and may not be what PADEP intended given the State’s history with respect to source aggregation. (4)

**Response:** The commentator is correct. This is not what the Department intended. The aggregation requirements apply to all sources regardless of their individual status as a major, minor, or synthetic minor source. A clarification will be made to this language.

**12. Comment:** In the second paragraph of this section, the interim guidance document claims that the preamble to the PSD regulations states that:

"EPA stated that to be a "source" for the purposes of PSD program, an activity must (1) carry out reasonably the purposes of the PSD program; (2) approximate a common sense notion of "plant"; and (3) avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of "building," "structure," "facility," or "installation".

PADEP is incorrect in attributing those criteria to EPA and misinterprets the nature of EPA's statements in the preamble. (4)

**Response:** The Department disagrees. The preamble to the federal rule published at 45 FR 52676 (August 7, 1980) specifically states that: "In EPA's view, the December opinion of the court in *Alabama Power* sets the following boundaries on the definition for PSD purposes of the component terms of "source": (1) it must carry out reasonably the purposes of PSD; (2) it must approximate a common sense notion of "plant"; and (3) it must avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of "building," "structure," "facility," or "installation." Consequently, this language is directly attributable to EPA and there is no misinterpretation by the Department.

**13. Comment:** EPA adopted the definitions for "stationary source" and "building, structure, facility, or installation" that appear in 40 C.F.R. Section 52.21 and used these three criteria in determining the source determination definitions contained in section 52.21. PADEP incorrectly concludes that "these three criteria (from *Alabama Power*) should also be addressed in analyzing whether a group of pollutant-emitting activities....should be grouped together as a single air contaminant source." While these criteria may be helpful to consider when applying the regulatory definitions to the specific facts of a case-by-case source determination, the *Alabama Power* criteria are neither additional regulatory criterion that must be addressed nor should they always serve as a dispositive element of the source determination. (4)

**Response:** The Department agrees that the three criteria identified by the EPA in its preamble published at 45 FR 52676 are neither additional regulatory language nor dispositive, but are useful to consider in applying the regulatory definitions.

**14. Comment:** This interim guidance under the heading "Application of These Regulatory Requirements to Natural Gas Air Contaminant Sources in Pennsylvania" should clarify in this paragraph that sources may be aggregated as a single source regardless of their major or minor source status. If sources are aggregated and reach major source emission thresholds when aggregated, then they would have additional requirements under NSR and Title V programs. (4)

**Response:** The Department agrees and has made that clarification.



**15. Comment:** Under the heading “Sources belonging to the same industrial grouping” the second and third paragraphs in this section seem to presume that a support relationship will always exist in aggregation determinations in the oil and gas source category. It may be clearer for the guidance to state that where the SIC code is different for two sources, staff need to determine if a support relationship exists. If such a relationship does exist, then the two remaining factors must be considered, but if not, the analysis ends and the emissions should not be considered one source. Conversely, if it is clear that all activities related to development of oil and gas will always be within the same two-digit SIC code, then that may provide the needed clarity. (4)

**Response:** The Department has revised the guidance to clarify that where SIC codes are different for two sources, permit writers should determine if a support relationship exists.

**16. Comment:** In the second paragraph in this same section, the interim guidance states that whether sources are contiguous or adjacent or under common control should be evaluated "using the common sense notion of what constitutes a plant or single source." EPA disagrees with this statement to the extent it is imposing additional criteria for such determinations. EPA considered "common sense notion of a plant" when developing the three-prong test for "source" in the 1980 Preamble but did not include it as a separate and distinct regulatory criteria. Any further analysis of the "common sense notion" may be instructive while evaluating the facts of a particular case but should not be given the weight of an added criterion. (4)

**Response:** The Department does not suggest that the “common sense notion of a plant” is an additional regulatory requirement. It is merely another interpretative guidance tool that air quality permit reviewers may use in evaluating the facts. It is instructive in nature and will be used as such.

Moreover, the genesis of the three aggregation criteria, set forth in 40 C.F.R. §52.21(b)(6), is the 1979 case entitled *Alabama Power v. Costle*, 636 F.2d 323 (D.C. Circuit 1979). This case created the framework for analyzing aggregation of emissions from two or more facilities, and prompted EPA to promulgate new aggregation regulations at 40 C.F.R. §52.21(b)(6). Moreover, in the preamble to the new aggregation regulations, EPA stated that, to be a “source” for the purposes of the PSD program, an activity must: (1) carry out reasonably the purposes of PSD program; (2) approximate a common sense notion of “plant;” and (3) avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of “building,” “structure,” “facility,” or “installation.” See 45 Fed. Reg. 52676, 52693 (August 7, 1980). Additionally in *Summit Petroleum Corporation v. U.S. EPA*, 2012 U.S. App. LEXIS 16345, 42 ELR 20167, (August 7, 2012) the U.S. Court of Appeals for the Sixth Circuit found that EPA's determination that the physical requirement of adjacency can be established through mere functional relatedness is unreasonable and contrary to the plain meaning of the term "adjacent." As a result, the courts and the preamble provide guidance on how to interpret the terms “contiguous and adjacent.”

**17. Comment:** Under the heading “Sources located on one or more contiguous or adjacent properties”: in the third paragraph of this section, the interim guidance extrapolates the definitions found in The American Heritage Dictionary of the English Language for

"contiguous" and "adjacent" to mean that "The concept of contiguous or adjacent looks at whether the properties associated with the air contaminant source is abutting to, or is close-by, property associated with another air contamination source." EPA disagrees with this extrapolation to the extent it attempts to incorporate a new definition of "property." PADEP defines "property" in this interim guidance as "the surface areas on which a stationary source has been located, including any immediate area graded or cleared for such stationary sources." See page 6, paragraph 4 in the interim guidance document. PADEP has not indicated where either PADEP's or EPA's historical implementation of the definition of source has relied on this definition of "property" to be dispositive of whether sources should be aggregated. Furthermore, this definition of "property" is at odds with the plain meaning of the word in the American Heritage Dictionary of the English Language. Finally, this new definition of "property" is not included in the SIP or in PADEP's regulations. While EPA believes whether or not air emission sources are on "close-by" properties may be instructive in an aggregation analysis, it cannot be dispositive without a reasoned case-by-case analysis considering relevant facts in a specific case. (4)

**Response:** The guidance document is not a regulation and therefore cannot create or extrapolate new regulatory definitions. Neither Pennsylvania nor federal regulations define the terms "contiguous" or "adjacent" or place any definitive restrictions on how distant two emission units can be and still be considered located on contiguous or adjacent properties for the purposes of a single source determination. Moreover, the intent of the technical guidance document is not to establish a definition of the term "property." The use of the dictionary definition, like the use of EPA guidance on this issue, is instructive, and not dispositive, in making single source determination decisions. However, the Department will delete this factor from the guidance to avoid any confusion. This determination, like all others, will be made on a case-by-case basis.

**18. Comment:** In paragraph 4 of this section PADEP states that with respect to the oil and gas extraction industry, "Such expansive operations would not comport with the 'common sense notion of a plant' and that sources spread over 'a large geographic area' is inconsistent with the terms 'contiguous or adjacent properties'." EPA disagrees with the interim guidance to the extent it is determining that aggregation should never occur where there are "expansive operations" or where sources are spread over an undefined "large geographical area." Adding such further requirements on sources with respect to proximity would be contrary to federal law. EPA has stated in several source determinations that proximity is one factor to be considered and may be dispositive where supported with a reasoned decision given all circumstances of a particular case. In other words, it is a case-by-case determination. (4)

**Response:** The Department disagrees with the commentator's interpretation of this section. The Department is not saying that expansive operations over a large geographical area would never be considered contiguous or adjacent. All single source determinations are made on a case-by-case basis. This approach is consistent with the McCarthy Memo and other EPA guidance on this issue. For instance, in response to a comment on how far apart activities must be in order to be treated separately, the EPA said that the Agency can answer that question only through case-by-case determinations. One commentator to the EPA on its PSD rule asked, however, whether the EPA would treat a surface coal mine and an electrical generator separated by 20 miles and linked by a railroad as one "source," if the mine, the generator, and the railroad were all under common

control. The EPA confirmed that it would not. First, the mine and the generator would be too far apart. Second, each would fall into a different two-digit SIC category. Nevertheless all single source determinations will be conducted on a case-by-case basis.

**19. Comment:** In paragraph 5 of this section, PADEP correctly notes that EPA does not include a bright line test for determining whether distance should be a dispositive factor in the decision to aggregate sources. In fact, in the Preamble to the 1980 rules that are cited by PADEP in this interim guidance, we stated that "EPA is unable to say precisely at this point how far apart activities must be in order to be treated separately. The Agency can answer that question only through case-by-case determinations" (45 FR 52695). This has been EPA's consistent approach to aggregation since the 1980 PSD regulations were promulgated, and this was the approach when EPA approved Pennsylvania's PSD regulations as a SIP revision in 1987. On January 12, 2007, Acting Assistant Administrator, Mr. William Wehrum, issued guidance specifically for the oil and gas industries, which attempted to add some bright line distance criteria to EPA's historical implementation of the meaning of stationary source. However, the Agency withdrew that guidance in a memo released on September 22, 2009, titled "Withdrawal of Source Determinations for Oil and Gas Industries" and signed by Assistant Administrator, Ms. Gina McCarthy, which also reaffirmed that source determinations must rely on "the fundamental criteria for making source determinations as specified in our existing NSR regulations, explained in the preamble to our 1980 promulgation of those regulations and demonstrated through historical practice in making source determinations in these programs." (4)

**Response:** The Department agrees that single source determinations need to be made on a case-by-case basis. During the fact specific analysis, properties located a quarter mile or less apart should be considered contiguous or adjacent properties for PSD, nonattainment NSR, and Title V applicability determinations. Properties located beyond this quarter mile range would only be considered contiguous or adjacent on a case-by-case basis.

**20. Comment:** In paragraph 6 of this section PADEP states that EPA's non-binding memoranda are instructive but not dispositive and that the plain meaning of the terms "contiguous" and "adjacent" should be the dispositive factor when determining whether sources should be aggregated. As previously stated herein, these terms must be evaluated on a case-by-case basis, applying specific facts to the regulatory definition to determine the scope of the source. The plain meaning of these terms may be instructive but cannot be presumed to be dispositive in all cases. (4)

**Response:** The Department disagrees that the regulatory terms "contiguous" or "adjacent" are instructive, but not dispositive. These terms as well as the other portions of the three-part regulatory criteria to determine whether emissions from two or more facilities should be aggregated and treated as a single source are dispositive. What are not dispositive, but instructive, are guidance documents and other tools that may shed light on how this three-part test should be applied. Each single source determination, which is based on the regulatory criteria, will be conducted on a case-by-case basis.

**21. Comment:** PADEP again uses "the common sense notion of a plant" in paragraph 7 to explain how the federal definition of a stationary source in 40 C.F.R. Section 52.21 should be interpreted. As noted previously, the DC Circuit opinion in *Alabama Power* directed EPA to revise its definition of stationary source to "approximate a common sense notion of plant." EPA did so by adopting the definition of "building, structure, facility, or installation" to mean all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control." In other words, the federal definition is the common sense notion of "plant." Consequently, any effort to add to the definition in 40 C.F.R. Section 52.21 would be going beyond federal law and the Pennsylvania SIP. (4)

**Response:** The Department disagrees that it is trying to add regulatory language to any definitions in 40 CFR § 52.21 or to Pennsylvania regulations. Under Pennsylvania law guidance documents do not and cannot have the effect of law. A guidance document is just that, a document which serves as guidance. Nothing in this document effects any regulatory requirements. The use of the term "common sense notion of a plant" within this guidance document is merely a tool to assist air quality permitting staff in making case-by-case single source determinations and is not an additional regulatory criterion.

The genesis of the three aggregation criteria, set forth in 40 C.F.R. §52.21(b)(6), is the 1979 case entitled *Alabama Power v. Costle*, 636 F.2d 323 (D.C. Circuit 1979). This case created the framework for analyzing aggregation of emissions from two or more facilities, and prompted EPA to promulgate new aggregation regulations at 40 C.F.R. §52.21(b)(6). Moreover, in the preamble to the new aggregation regulations, EPA stated that, to be a "source" for the purposes of the PSD program, an activity must: (1) carry out reasonably the purposes of PSD program; (2) approximate a common sense notion of "plant;" and (3) avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of "building," "structure," "facility," or "installation." See 45 Fed. Reg. 52676, 52693 (August 7, 1980). Additionally in *Summit Petroleum Corporation v. U.S. EPA*, 2012 U.S. App. LEXIS 16345, 42 ELR 20167, (August 7, 2012) the U.S. Court of Appeals for the Sixth Circuit found that EPA's determination that the physical requirement of adjacency can be established through mere functional relatedness is unreasonable and contrary to the plain meaning of the term "adjacent." As a result, both the courts and the preamble provide guidance on how to interpret the terms "contiguous and adjacent."

**22. Comment:** PADEP uses the phrase "true to the actual decisional and regulatory direction" in paragraph 8 in describing how some states have used a quarter mile to define when sources are presumptively contiguous or adjacent. The meaning of this phrase is unclear in that the footnotes refer to guidance documents, not regulations, issued by Texas, Louisiana, and Oklahoma. (4)

**Response:** The Department agrees and has revised the document accordingly.

**23. Comment:** PADEP states in paragraph 6 that EPA's reliance on interdependence may be instructive but is not dispositive in making source determinations. Footnote 21 in PADEP's interim guidance would indicate that, in fact, the guidance documents issued by Texas, Louisiana

and Oklahoma also consider interdependence dispositive where sources are located more than a quarter mile apart. It is unclear why PADEP would agree with these states with respect to a presumption of proximity to aggregate sources (i.e. sources less than a quarter mile apart should be aggregated) but not agree with what should be considered dispositive when sources are farther apart. (4)

**Response:** The Department does not disagree with the guidance set forth by Texas, Louisiana, and Oklahoma. None of those documents considers interdependence dispositive *per se*. Texas states that “interdependent properties located more than a quarter mile apart may also be considered contiguous.” Louisiana provides that “the permitting authority may consider sites separated by a distance greater than a quarter mile to be contiguous.” Oklahoma provides that sources outside a quarter mile distance “must be addressed on a case-by-case basis.” These states are essentially saying the same thing that the Department expresses in its guidance document. That is, sources within one quarter should be considered contiguous or adjacent. Sources outside this distance may be considered contiguous or adjacent based on a case-by-case determination.

**24. Comment:** EPA agrees with paragraph 9 in so far as a case-by-case determination is needed to determine if sources are contiguous or adjacent. EPA disagrees with some of the considerations listed in items 1 through 5. As discussed previously, EPA disagrees with Item 1 in that it attempts to define the term "property" with a dispositive definition that was not included in the SIP or in PADEP's regulations. PADEP has not explained the relevance of cleared or non-cleared land to source determinations under the Clean Air Act and Pennsylvania SIP. (4)

**Response:** The Department disagrees with the commentator that the Department is establishing regulatory definitions within the context of this guidance. Nothing in this document affects any statutory or regulatory requirements. The use of the term “property” within this guidance document is merely a tool to assist air quality permitting staff in making case-by-case single source determinations. However, to avoid any confusion over the Department’s intent, this factor is deleted from the guidance. This determination, like all others, will be made on a case-by-case basis.

**25. Comment:** EPA maintains that source aggregation should occur on a case-by-case basis. However, Pennsylvania may be able to establish a presumption that sources located within a quarter mile of each other should be aggregated to the extent you can provide a full record justifying this position. (4)

**Response:** Each case-by-case determination developed by the Department, whether the sources are within or outside of a quarter mile radius, will provide a complete record justifying the position.

**26. Comment:** EPA disagrees with the use of the term "near-by" as dispositive when determining whether sources separated by an intervening railroad, a road or other obstruction should be aggregated. As EPA has stated in source determinations, proximity may be instructive in a given analysis but is not dispositive. (4)

**Response:** The Department disagrees that the guidance document uses the term “nearby” as dispositive. The item in its entirety reads: emission units on two or more separate, but nearby, properties and separated by an intervening railroad, road, or some other obstacle may be considered contiguous or adjacent. Hence the use of the term “may” indicates a possibility that these units could be aggregated.

**27. Comment:** EPA cannot agree with the use of the statement that facilities should not be "daisy-chained", since the guidance document does not define what that term means. Regardless of how the term is defined, "daisy-chaining" may be instructive in the source determination but cannot be presumed to be dispositive in all cases. (4)

**Response:** While the term is colloquial in nature it typically means items connected in a series. This item like all the others is instructive in nature to assist air quality permit staff when making a case-by-case determination in determining if sources are considered contiguous or adjacent.

**28. Comment:** Paragraph 10 contradicts Item 6 in paragraph 9, where the interim guidance states that "properties located outside a quarter mile may be considered contiguous or adjacent on a case-by-case basis." In paragraph 10 the interim guidance states that "The application of the quarter mile or less rule of thumb.....does not aggregate pollutant emitting activities that as a group would not fit within the ordinary meaning of "building," "structure," "facility," or "installation." In other words, by only aggregating sources that are within a quarter mile of each other, it appears from this guidance document that PADEP is attempting to take a "common sense approach" to aggregation. It is unclear from these statements how a case-by-case approach will be implemented. (4)

**Response:** The Department does not believe that these statements are contradictory in nature. The quarter mile “rule of thumb” for the contiguous and adjacent factor considers all sources within the quarter mile radius as contiguous or adjacent. Anything outside that radius may be considered contiguous or adjacent on a case-by-case basis.

**29. Comment:** EPA also disagrees with the final statement in paragraph 10 that the permit reviewer should be guided by the "proximity focus of the analysis" and that "such an approach carries out the PSD program according to its legal and regulatory requirements." In fact, by making proximity the only dispositive factor to be considered in determining whether sources are adjacent or contiguous, the interim guidance appears contrary to federal law and the legal and regulatory requirements of the PSD program. (4)

**Response:** The Department disagrees that proximity is the only dispositive factor in making a single source determination. The only dispositive elements related to these types of determinations are the regulatory requirements: same industrial grouping; contiguous or adjacent; and common control. If two or more air contamination sources meet the three-part test under this latter definition, the sources should be treated as a single air contamination source.

**30. Comment:** The interim guidance has a conclusion paragraph that sets out five elements for making single source determinations. In general, EPA agrees with these steps. However, we disagree with how these steps are qualified with respect to factors that should or should not be

dispositive, and the extent to which the plain meaning of regulatory and non-regulatory terms are to be used in making source determinations. (4)

**Response:** The Department believes these items are instructive and useful in assisting air quality staff in making single source determinations.

**31. Comment:** This interim guidance, while supportive of case-by-case decisions, adds qualifiers to those decisions that conflict with federal law and the Pennsylvania SIP. Consistent with the McCarthy Memo, the Region plans to "continue to review and comment on source determinations to assure that permitting authorities conduct fully reasoned source determinations that remain consistent with existing regulatory requirements and historical permitting practice". (4)

**Response:** The Department believes that the guidance document is consistent with all federal and state regulatory requirements. The guidance document applies the regulatory language in making single source determinations. It notes that the EPA guidance may be consulted as instructive guidance, but is not dispositive. All determinations will be made on a case-by-case basis. Additionally, the Department welcomes EPA comments on single source determinations made by the Department.

**32. Comment:** The commentator indicated that the Department must ensure that a full aggregation analysis is carried out for sources located outside the quarter mile radius. The commentator presumed that sources located within a quarter mile satisfy the "contiguous or adjacent" element of the source determination test. While DEP may safely adopt a presumption that the contiguous and adjacent factor is satisfied for sources located within a quarter mile, such a policy does not eliminate the Department's duty to perform adequate case-by-case aggregation analyses when sources are greater than a quarter mile apart. This includes analyzing each of the source determination factors and providing an explanation why the sources do or do not meet the criteria for aggregation. (5)

**Response:** The Department agrees. The Department believes that the guidance provides adequate instructions on this point. A full aggregation analysis must be done for each and every single source determination conducted by the Department. That includes an analysis for those sources that are located on properties within a quarter mile radius and an analysis for those sources located on properties outside of the quarter mile radius. This analysis will be part of the permit review memo and will be part of the permit review file for public inspection.

**33. Comment:** The commentator suggested that the air permit compliance review form should be modified to require applicants to disclose additional information relevant to common control. The Department should consistently require permit applicants to provide full and accurate information regarding functional relationships and contractual agreements relevant to common control. This could be most easily achieved by amending the air permit application compliance review form to require applicants to provide information regarding contractual agreements, joint ventures, or functional dependencies relevant to common control. (5)

**Response:** The Department does not think this form should be modified. The compliance review requirements are set forth under Section 7.1 of the Air Pollution Control Act, ("APCA"),

35 P.S. §4007.1 and 25 Pa. Code §§ 127.12a and 127.412 (relating to compliance review; and compliance review forms). The Department believes that its current compliance review form requests sufficient information from all applicants and is in full conformity with the law. Any issues related to a single source determination will be made separately.

**33. Comment:** The Department must clarify that distance is measured from property boundary to property boundary when determining distance between sources. DEP should revise the guidance to clarify that distance is to be measured from each facility’s closest property boundary, not from facility center to facility center. (5)

**Response:** The Department believes that the guidance is clear on this particular point. In fact, the regulatory language under 40 CFR § 52.21(b)(6), which the Department incorporates by reference under 25 Pa. Code Chapter 127, Subchapter D (relating to prevention of significant deterioration), clearly contemplates that contiguous or adjacent is based on the properties and not on the emission units that may be part of a source located on the property. As a consequence, distance is measured from the property line of the facility or source and not from the emissions unit. This issue, like all others, will be made on a case-by-case basis.

**34. Comment:** The guidance document states that “facilities should not be ‘daisy-chained’ together to establish a contiguous grouping.” DEP provides no legal support for establishing a prohibition on “daisy-chaining” or any reasoning why a group of sources could not satisfy the common sense notion of plant. DEP should replace the term “daisy-chained sources” with “sources in a long-line operation.” (5)

**Response:** The Department believes that solely relying upon the “daisy-chaining” of sources is not a proper way to determine the contiguous or adjacent prong. A single source determination must be conducted on a case-by-case basis that includes all of the factors identified in the guidance document. The Department respectfully declines to adopt the language suggested by the commentator, since there is no meaningful distinction between the terms “daisy-chained sources” and “sources in a long-line operation.”

**35. Comment:** The commentator supports the PADEP’s issuance of this guidance document and appreciates PADEP’s efforts to provide predictable permitting decisions for similar oil and gas operations across the state based on consistent application of the facts to the three prong statutory test. The commentator requests to develop and incorporate into the guidance a list of specific factors to consider for the case-by-case analysis given the unique and expansive nature of the oil and gas industry. The commentator requests that the guidance document provide the permit writer and the industry with further information to be evaluated when common ownership is not apparent. Information to be considered when there are multiple owners of an operation would include whether the owners have voting or control rights over an operation and the nature of their operational responsibilities. (6)

**Response:** The Department appreciates the commentator’s support for this guidance document. However, the Department respectfully declines to establish a list of specific factors that need to be considered in making a case-by-case determination. A list of specific factors would belie the notion of a case-by-case determination. Each situation is unique and permit writers must be



given adequate flexibility to apply the regulatory language to the facts they analyze. Moreover, the Department believes that the factors identified in the guidance are sufficiently clear to provide permit writers and industry the assistance they need in making the correct determination. However, applicants are encouraged to give all information to the Department that would result in the proper application of the three-part regulatory test.

**36. Comment:** The commentator indicated that the PADEP must revise its proposed guidance to make clear that, while emissions sources located within quarter mile of each other will be considered “contiguous or adjacent,” sources outside those boundaries may also be so considered if they are interdependent components of the same facility. To do so, it must delete references to the “close proximity” as the dispositive factor for source determinations, including its statement that sources in a “daisy-chain” may not constitute one facility, and recognize that interdependence not only “may be considered when conducting a single source determination” but must be so considered. (7)

**Response:** The Department respectfully declines to adopt the language recommended by the commentator. All single source determinations are conducted on a case-by-case basis. The terms “contiguous” or “adjacent” are not defined in literal terms (that is, number of feet allowed between two or more sources that are physically separated from each other) or through an empirical formula. However, the guidance provides a “rule of thumb” that properties located a quarter mile or less apart are considered contiguous or adjacent properties for PSD, nonattainment NSR and Title V applicability determinations. Properties located beyond this quarter mile range may only be considered contiguous or adjacent on a case-by-case basis. Permit writers are allowed to look at interdependence and use EPA guidance, but the quarter mile radius rule of thumb provides both permit writers and industry some certainty and guide posts in deciding how single source determinations are made. In any event, all determinations are made on a case-by-case basis.

**37. Comment:** The commentator indicated that the interim final guidance, if not properly clarified, could unduly limit PADEP’s ability to address emissions from Oil and Gas Industries. The guidance explains PADEP’s position on whether to aggregate air emissions from exploration, extraction, or production activities in defining a “stationary source” and determining whether it is “major.” It emphasizes a proximity based approach for making these determinations, which is at odds with the approach directed by the EPA, and by the underlying statute. The commentator is concerned that the approach the Guidance outlines is confusing and unduly narrow. It could lead PADEP’s Air Program permitting staff to ignore factors that they must consider in determining whether multiple emissions activities constitute a single source. (7)

**Response:** The Department disagrees with the commentator. The backbone of the guidance document rests on the regulatory language under 40 CFR § 52.21(b)(6), which the Department incorporates by reference under 25 Pa. Code Chapter 127, Subchapter D and 25 Pa. Code § 121.1. This language was either developed by the EPA, as in the case 40 CFR § 52.21(b)(6), or approved by the EPA as part of Pennsylvania’s SIP, as in the case 25 Pa. Code § 121.1. Moreover, permit writers are not restricted from using EPA guidance in making case-by-case determinations. The DEP guidance was designed to provide parameters to both permit writers

and industry. While each single source determination is made on a case-by-case basis, the DEP guidance was written to ensure that permit writers consider all factors before making a decision.

**38. Comment:** The commentator indicated that the PADEP must ensure that its guidance is consistent with EPA's views on these matters. Source aggregation decisions made by EPA Regional Offices over the last thirty years concerning whether facilities are "contiguous or adjacent," generally focus on proximity, dependency or interdependence, and the existence of a physical connection, such as a pipeline, between facilities. These considerations represent how EPA determines if aggregation would comply with the common sense notion of a plant. The Law is clear that Oil and Gas Industry Source Determinations must be made on a source-by-source basis. (7)

**Response:** As previously noted the DEP guidance document is based on the regulatory language under 40 CFR § 52.21(b)(6), which the Department incorporates by reference under 25 Pa. Code Chapter 127, Subchapter D and 25 Pa. Code § 121.1. This language was either developed by the EPA, as in the case 40 CFR § 52.21(b)(6), or approved by the EPA as part of Pennsylvania's SIP, as in the case 25 Pa. Code § 121.1. All single source determinations need to be based on this regulatory language. The terms "contiguous" or "adjacent" are not defined in literal terms (that is, number of feet allowed between two or more sources that are physically separated from each other) or through an empirical formula. However, the guidance provides a "rule of thumb" that properties located a quarter mile or less apart are considered contiguous or adjacent properties for PSD, nonattainment NSR and Title V applicability determinations. Properties located beyond this quarter mile range may be considered contiguous or adjacent on a case-by-case basis. Permit writers are allowed to look at interdependence and use the EPA guidance, but the quarter mile radius rule of thumb provides both permit writers and industry some certainty and guide posts in deciding how single source determinations are made.

**39. Comment:** PADEP does not clearly address this "case-by-case" determination process. It establishes a "rule of thumb" that sources within a quarter mile of each other should be considered contiguous or adjacent, and that properties outside the quarter-mile should be considered contiguous or adjacent "on a case-by-case basis." But it does not explain how this case-by-case consideration will work. (7)

**Response:** The Department declines to provide a formula for conducting a case-by-case determination. Case-by-case source determinations represent highly fact-specific decisions, and no ready formula can be provided. In fact, a formula would be contrary to what a case-by-case determination entails. Each situation is unique, and permit writers must be given adequate flexibility to apply the regulatory language for the facts they analyze. Moreover, the Department believes that the factors identified in the DEP guidance are sufficiently clear to provide permit writers and industry the assistance they need in making the correct determination.

**40. Comment:** The commentator urges the Department to reconsider and rescind this interim technical guidance document. The previous document issued in December 2010 and rescinded in February 2011 went much further in protecting public health and safety than this new interim technical guidance. Air pollution does not depend on whether compressor stations are within one

quarter mile and are the same company and the same SIC industry code. It depends on the cumulative impacts of air contaminants. This proposed guidance will not protect public health and safety. It does not present a common sense approach. (8)

**Response:** The Department believes that the interim final guidance follows the law and provides adequate guidance for permit writers to consider applicable regulatory criteria. The previous guidance document was merely a compilation of EPA determinations and did not provide adequate guidance. The DEP has completed a short-term ambient air quality sampling initiative in the southwest, northeast and northcentral regions of Pennsylvania primarily impacted by Marcellus Shale operations. The scope of the short-term sampling effort focused on natural gas extraction stages including drilling operations, fracking operations including impoundments, the flaring of gas for production, and gas compression facilities. The results of this limited ambient air sampling initiative did not identify concentrations of any compound that would likely trigger air-related health issues associated with Marcellus Shale drilling activities. In the spring, the DEP will launch a long-term sampling project in southwestern Pennsylvania to assess air quality impacts in the region for up to twelve months.

**41. Comment:** The commentator is concerned that the Department attempts to evade the proper process by issuing guidance that drastically alters the state of aggregation law will have dramatic negative consequences for the people and the environment of the Commonwealth. The Guidance Document uses the language and procedure of a regulation, and establishes a "binding norm," and thus is only properly promulgated as a regulation. The Guidance Document does not meet any of the criteria for exemption from Pennsylvania law's broad requirement of public participation, it is an "unpublished regulation in disguise," and should therefore be declared a nullity. The agency's failure to obey the processes applicable to a regulation in the Commonwealth Documents Law and the Regulatory Review Act must not be overlooked at the expense of the air quality of the Commonwealth. (9, 364)

**Response:** The Department disagrees. The guidance document is not a regulation. As the document itself states in the disclaimer—

*The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.*

The purpose of this document is to provide guidance to assist the Department's Air Program permitting staff in making single stationary source determinations for the oil and gas industries in Pennsylvania. The document itself does not establish a "binding norm" or regulation that is binding on the Department, courts, public, or regulated entities.

**42. Comment:** The Guidance Document, contrary to the Clean Air Act, effectively terminates the state permitting authorities from aggregating any oil and gas sources that are separated by

more than a quarter of a mile and departs from the plain meaning of "adjacency" and long standing EPA interpretation of the Clean Air Act. Oil and gas operations, including explorations, production, and processing operations, consist of many pieces of equipment and practices that release a number of air pollutants known to be harmful to public health and welfare. (9)

**Response:** The Department disagrees with this commentator. The guidance document is based on the regulatory language under 40 CFR § 52.21(b)(6), which the Department incorporates by reference under Chapter 127, Subchapter D and Section 121.1. This language was either developed by the EPA, as in the case 40 CFR § 52.21(b)(6), or approved by the EPA as part of Pennsylvania's SIP, as in the case 25 Pa. Code § 121.1. Consequently the document is not inconsistent with the Clean Air Act. All single source determinations need to be based on this regulatory language. The terms "contiguous" or "adjacent" are not defined in literal terms (that is, number of feet allowed between two or more sources that are physically separated from each other) or through an empirical formula. However, the guidance provides a "rule of thumb" that properties located a quarter mile or less apart are considered contiguous or adjacent properties for PSD, nonattainment NSR and Title V applicability determinations. Properties located beyond this quarter mile range may only be considered contiguous or adjacent on a case-by-case basis. Permit writers are allowed to look at interdependence and use EPA guidance, but the quarter mile radius rule of thumb provides both permit writers and industry some certainty and guide posts in deciding how single source determinations are made.

**43. Comment:** The commentator believes the guidance is a regulation despite the disclaimer language on the guidance and the "unusual step of having a notice and comment period for a guidance document." (9)

**Response:** The commentator is incorrect about the disclaimer language and the public comment period. Both of these are required under the technical guidance development process in Pennsylvania. The Department has long established policies related to public participation in the development of technical guidance. See "Public Participation in the Development of Regulations and Technical Guidance." (Document No. 012-1920-001). Available at <http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-8309>. See also "Policy for Development and Publication of Technical Guidance." (Document No. 012-0900-001). It is through these documents, which were developed through the public comment process, that the Department establishes the standards and procedures for the drafting of other technical guidance documents and creates a uniform process for developing, approving, and distributing these documents. These documents require the DEP to add the disclaimer and have a public comment period on any guidance developed by the Department. Both documents are available at <http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-8309>.

**44. Comment:** The commentator believes that the technical guidance document must go through the regulatory process as established under the Commonwealth Documents Law and Regulatory Review Act and cite those acts and Pennsylvania case law to support their contention. (9)

**Response:** The Department disagrees. As previously noted, the guidance is not a regulation since the Department is able to exercise its discretion and deviate from it if circumstances warrant. The guidance merely assists the permitting staff in making single source determinations. Only the regulations related to that issue, and not the guidance, are dispositive. As a result, the Commonwealth Documents Law and the Regulatory Act do not apply. Only the processes under the “Public Participation in the Development of Regulations and Technical Guidance” (Document No. 012-1920-001) and “Policy for Development and Publication of Technical Guidance” (Document No. 012-0900-001) documents apply.

**45. Comment:** The commentator says that the guidance document precludes aggregation from a significant portion of the oil and gas operations, restricts its staff, creates a binding norm, and supplants prior flexible language with its own rigid definitions. (9)

**Response:** The Department disagrees. All single source determinations must be done on a case-by-case basis using the regulatory language. The guidance itself may be used by the air quality permitting staff to support their decisions. Staff may deviate from the guidance if circumstances warrant. The guidance is just a framework or outline for the exercise of the Department’s administrative discretion. Consequently, the guidance is neither binding nor rigid as suggested by the commentator.

**46. Comment:** The guidance document effectively terminates the state from aggregating any oil and gas sources that are separated by more than a quarter mile. (9)

**Response:** The Department disagrees. The guidance states that all single source determinations must be made on a case-by-case basis. Should facilities be located on separate properties that are more than a quarter mile apart, the Department may aggregate them for single source purposes based on the facts of that situation.

**47. Comment:** The commentator suggested clearly defining how the quarter mile "rule of thumb" test is performed. The guidance document notes that "properties located a quarter mile or less apart are considered contiguous or adjacent properties for PSD, Nonattainment NSR and Title V applicability determinations." Because the procedure used for determining the distance between two or more separate properties is not clearly specified in the document, the commentator recommends that the document be revised to include this procedure. The commentator suggests that the distance between the properties of interest be measured from the boundary of each property. If the shortest distances between all properties are one quarter mile or less, then those properties are considered to be "contiguous or adjacent properties for PSD, Nonattainment NSR and Title V applicability determinations." If one or more of the shortest distances are greater than one quarter mile, then these properties may only be considered contiguous or adjacent on a case-by-case basis (per the guidance document). The commentator believes that this approach is in accordance with the Department's goal to help avoid the "daisy-chaining" of properties to establish a contiguous grouping. (10)

**Response:** The Department believes that the guidance is clear on this particular point. The regulatory language under 40 CFR § 52.21(b)(6), which the Department incorporates by reference under Chapter 127, Subchapter D, clearly contemplates that contiguous or adjacent is

based on the properties and not on the emission units that may be part of a source located on the property. As a consequence, distance is measured from the property line of the facility or source and not from the emissions unit. This issue, like all others, will be made on case-by-case basis.

**48. Comment:** The commentator suggested allowing the guidance document to be referenced for all industries located in the Commonwealth. The commentator further suggested providing additional guidance concerning the criteria that should be considered in conducting case-by-case determinations. The commentator suggests that properties that do not satisfy the quarter mile rule of thumb may only be considered to be contiguous or adjacent if the properties of interest are entirely located within the boundary of the same municipality, township or borough. (10)

**Response:** The Department respectfully disagrees with this suggestion. Air permitting staff and the natural gas industry both asked for written guidance on making single source determinations for the natural gas industry. While a single source determination for any industry must be made on a case-by-case basis, this guidance is strictly limited to the oil and gas industry.

**49. Comment:** The commentator indicated that the DEP must rescind the recent order and reinstate tighter controls. The commentator urged the following be done:

DEP cannot continue to determine air quality impacts in piecemeal fashion. We need a policy that informs the public and the drillers that DEP will examine multiple sources of all pollution in the aggregate. This policy must cover a single new source of emissions and all potential related sources in the local area. (11, 350)

**Response:** The Department believes that it has a comprehensive strategy in place to determine air quality impacts and does not deal with these issues in a piecemeal fashion. The Department has a robust air quality program that regulates air quality impacts on a comprehensive basis through plan approvals, operating permits, general permits, monitoring, and enforcement. The DEP has completed a short-term ambient air quality sampling initiative in the southwest, northeast and northcentral regions of Pennsylvania primarily impacted by Marcellus Shale operations. The scope of the short-term sampling effort focused on natural gas extraction stages including drilling operations, fracking operations including impoundments, the flaring of gas for production, and gas compression facilities. The results of this limited ambient air sampling initiative did not identify concentrations of any compound associated with Marcellus Shale drilling activities that would likely trigger air-related health issues. In July 2012, the DEP launched a long-term sampling project in southwestern Pennsylvania to assess air quality impacts in the region for up to 12 months.

**50. Comment:** DEP needs to notify municipalities and the public when new sources of air pollution are installed, even if they are temporary installations. Large pieces of equipment, such as generators, compressors, and pumps generate noise and air pollution that affects local communities. (11, 350)

**Response:** This comment is outside the scope of this technical guidance. However, plan approval applicants are required to provide notice to the municipality where the air pollution source is to be located under 25 Pa. Code § 127.43a (relating to municipal notification).

**51. Comment:** DEP cannot issue exemptions from source permitting requirements where best available control technology is available to control emissions. Flaring to complete gas wells should no longer be exempt. Green or flareless completion is routinely performed in the gas industry and a determination that it is not feasible should be required before the Department exempts such emissions. (11, 350)

**Response:** This comment is outside the scope of this technical guidance. However, the Department is authorized to provide exemptions for sources of minor significance as provided under 25 Pa. Code § 127.14 (relating to exemptions).

**52. Comment:** All possible air emissions capture mechanisms must be used in gas and oil drilling—no exceptions—as Best Management Practices. (11)

**Response:** This comment is outside the scope of this technical guidance. However, the Department is authorized under Section 6.6 of the APCA and implementing regulations in 25 Pa. Code Chapter 127 to establish best available technology requirements for new sources.

**53. Comment:** The commentator supports the “common sense notion of a plant” language when considering whether facilities may be “contiguous or adjacent properties.” The commentator further supports the clarification of a distance (quarter mile) on a case-by-case basis in support of contiguous or adjacent properties and the reinforcement of the consideration of same industrial grouping and common control elements for single source determination. The commentator also supports the development of the list of suggested questions for permit reviewers in determining whether common control exists. (12)

**Response:** The Department appreciates the support. The use of the term “common sense notion of a plant” within this guidance document is merely a tool to assist air quality permitting staff in making case-by-case single source determinations. All single source determinations need to be based on the three-prong regulatory language. The terms “contiguous” or “adjacent” are not defined in literal terms (that is, number of feet allowed between two or more sources that are physically separated from each other) or through an empirical formula. However, the guidance provides a “rule of thumb” that properties located a quarter mile or less apart are considered contiguous or adjacent properties for PSD, nonattainment NSR, and Title V applicability determinations. Properties located beyond this quarter mile range may only be considered contiguous or adjacent on a case-by-case basis. Permit writers are allowed to look at interdependence and use EPA guidance, but the quarter mile radius rule of thumb provides both permit writers and industry some certainty and guide posts in deciding how single source determinations are made. The Department will continue to use the checklist it developed for common control issues for use with making these determinations from the oil and gas industries.

Moreover, the genesis of the three aggregation criteria, set forth in 40 C.F.R. §52.21(b)(6), is the 1979 case entitled *Alabama Power v. Costle*, 636 F.2d 323 (D.C. Circuit 1979). This case created the framework for analyzing aggregation of emissions from two or more facilities, and prompted EPA to promulgate new aggregation regulations at 40 C.F.R. §52.21(b)(6). Moreover, in the preamble to the new aggregation regulations, EPA stated that, to be a “source” for the

purposes of the PSD program, an activity must: (1) carry out reasonably the purposes of PSD program; (2) approximate a common sense notion of “plant;” and (3) avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of “building,” “structure,” “facility,” or “installation.” See 45 Fed. Reg. 52676, 52693 (August 7, 1980). Additionally in *Summit Petroleum Corporation v. U.S. EPA*, the U.S. Court of Appeals for the Sixth Circuit found that EPA's determination that the physical requirement of adjacency can be established through mere functional relatedness is unreasonable and contrary to the plain meaning of the term "adjacent." As a result, both the courts and the preamble provide guidance on how to interpret the terms “contiguous and adjacent.”

**54. Comment:** The commentator believes that the state does not have sufficient scientific evidence to change federal recommendations on air pollution. They argued that distance must not be the sole factor in determining pollution levels in drilling operations. The pollution from compressors, processing plants, and condensate tanks must be added together or companies will spread out operations enough so that they will be able to avoid pollution controls. (13)

**Response:** The Department is not changing federal recommendations on air pollution. EPA recommendations and guidance remain instructive on these issues. The applicable regulatory language for Title V, PSD and NSR single source permitting determinations remains dispositive. Distance is not the sole factor in making these determinations; it is only one factor in the analysis. However, if circumstances warrant, on a case-by-case basis, all sources will be aggregated for single source determination purposes.

**55. Comment:** The commentator believes that DEP’s determination will allow many small and interconnected sources to skirt regulation because they do not reach sufficient emission thresholds on their own, despite their detrimental impact on air quality when considered collectively. Due to the very nature of natural gas operations, which all produce harmful emissions, single source determinations are complex but crucial. (14)

**Response:** Single source determinations must be made for any applicable permitting decision, whether the sources would be major or minor. Consequently, minor sources will not skirt regulation. Recently, the DEP completed a short-term ambient air quality sampling initiative in the southwest, northeast and northcentral regions of Pennsylvania, the areas primarily impacted by Marcellus Shale operations. The scope of the short-term sampling effort focused on natural gas extraction stages including drilling operations, hydraulic fracturing operations including impoundments, the flaring of gas, and gas compression facilities. The results of this short-term ambient air sampling initiative did not measure concentrations of any compound associated with Marcellus Shale drilling activities that would likely trigger air-related health issues.

The Department agrees that single source determinations could be complex. That is why this guidance has been developed.

**56. Comment:** The commentator stated that the new guidance is clearly intended to help industry, departing from federal law and numerous EPA determinations by looking primarily at distance between oil and natural gas operations when making source determinations. The idea



that two pieces of equipment that are part of a single industrial process should be considered separate sources simply because they are 1,321 feet apart defies common sense. (14)

**Response:** The Department respectfully disagrees with this suggestion. Air permitting staff and the natural gas industry both asked for written guidance on making single source determinations for the natural gas industry. The guidance itself may be used by the air quality staff to support their decisions. Staff may deviate from the guidance if circumstances warrant. The guidance is a framework or outline for the exercise of the Department's administrative discretion. All determinations are made on a case-by-case basis. Additionally, staff must base their determinations on the regulatory requirements and may use EPA determinations, if they so choose.

**57. Comment:** The commentator asked who is designated to test the amount of pollution emitted from these operations. If there is no testing, there can be no basis for determining the need for improved regulation. A 2010 University of Texas air monitoring study suggests that the TCEQ ozone attainment modeling under-predicted NO<sub>x</sub> by 20 percent. Obviously, numerous smaller sources combined can produce the amount of air pollution equivalent to a major source. Our lungs do not differentiate. (14)

**Response:** This comment is outside the scope of this guidance document. However, the Department's current General Plan Approval and General Operating Permit for Natural Gas, Coal Bed Methane or Gob Gas Production or Recovery Facilities (GP-5 or General Permit) requires the owners and operators of sources to conduct source testing to demonstrate compliance with the emission limitations (including NO<sub>x</sub>) prescribed in the permit. In addition to the initial stack testing required by the General Permit, the permittee must annually, thereafter, conduct NO<sub>x</sub> emissions tests using a portable analyzer approved by the Department. The Department may alter the frequency of annual portable analyzer tests based on the results.

Moreover, and as previously noted, the DEP has completed a short-term ambient air quality sampling initiative in the southwest, northeast and northcentral regions of Pennsylvania, the areas primarily impacted by Marcellus Shale operations. The scope of the short-term sampling effort focused on natural gas extraction stages including drilling operations, hydraulic fracturing operations including impoundments, the flaring of gas, and gas compression facilities. The results of this short-term ambient air sampling initiative did not measure concentrations of any compound associated with Marcellus Shale drilling activities that would likely trigger air-related health issues. In July 2012, the DEP began a long-term sampling project in southwestern Pennsylvania to assess air quality impacts in the region for up to 12 months. The long-term study will monitor for NO<sub>x</sub> using an EPA-approved reference monitor.

**58. Comment:** The commentator stated that all gas drilling sites, and other gas operations regardless of the estimated volume of emissions, should be equipped with air monitors and the resulting data be made available on a public web site. (14)

**Response:** This comment is outside the scope of the subject matter of this guidance document. But as the issue relates to air quality generally, the DEP has completed a short-term ambient air quality sampling initiative in the southwest, northeast and northcentral regions of Pennsylvania,

the areas primarily impacted by Marcellus Shale operations. The scope of the short-term sampling effort focused on natural gas extraction stages including drilling operations, hydraulic fracturing operations including impoundments, the flaring of gas, and gas compression facilities. The results of this short-term ambient air sampling initiative did not measure concentrations of any compound associated with Marcellus Shale drilling activities that would likely trigger air-related health issues. In June 2012, the DEP began a long-term sampling project in southwestern Pennsylvania to assess air quality impacts in the region for up to 12 months. The long term study will monitor for NO<sub>x</sub> using an EPA-approved reference monitor.

All monitored areas of the Commonwealth attained the federal 1997 8-hour ozone National Ambient Air Quality Standard (“NAAQS”) of 0.08 parts per million (“ppm”) or 84 parts per billion (“ppb”) by the prescribed attainment dates; the majority of these ozone monitored areas are also measuring attainment of the 2008 8-hour ozone NAAQS of 0.075 ppm or 75 ppb. Where feasible, DEP is now collecting ozone ambient data year-round to assess the air quality impacts of Marcellus Shale operations to determine if winter season ozone problems are present. Additionally, the results from monitoring stations across the Commonwealth, with the exception of one area, show attainment of both the annual and 24-hour fine particulate matter NAAQS. The exception is the Liberty-Clairton area, which is influenced by the local impacts of coke battery operations, and that area is also expected to show attainment when the upgrades to the coke battery are completed. The DEP is in the process of installing a new monitoring site in Bradford County that will monitor ozone and nitrogen oxides (NO<sub>x</sub>); the DEP is also adding NO<sub>x</sub> to a monitoring site in Tioga County. This year is the first year running ozone monitors year-round; monitoring staff are observing daily maximum values averaging in the 35 – 40 ppb range throughout the winter in both non-Marcellus and Marcellus Shale drilling areas of the state.

The DEP has addressed, and will continue to address, all public health and environmental impacts related to the natural gas industry in Pennsylvania.

**59. Comment:** The commentator said that the department's new guidelines for "single source" or "air aggregation" decisions reflect a narrowing of the federal government's common reading of the rule, which holds that sources of air pollution from oil and gas operations should be considered together when they are "interdependent," or linked by pipelines or other infrastructure. (14)

**Response:** The Department disagrees. As the guidance clearly states, interdependence may be considered, on a case-by-case basis, when conducting a single source determination.

**60. Comment:** The commentator supports PADEP's issuance of the guidance document and appreciates PA DEP's efforts to provide predictable permitting decisions for similar oil and gas operations across the state based on consistent application of the facts to the three-prong statutory test. However, we would like further information to determine when common control is not apparent. (15)

**Response:** The Department appreciates the commentator's support. The Department has added two additional questions in relation to the common control prong. However, the guidance does

not preclude applicants or the department from considering any and all information necessary to make a proper determination. Consequently, this prong of the test does not have a ready-made formula to determine common control. Each determination is fact-specific.

**61. Comment:** The commentator is concerned about the health impacts from aggregate emissions from many facilities associated with the oil and gas industry. He suggested that any revision to regulations or guidelines must be based on peer-reviewed science, and such science is readily available. (16)

**Response:** The guidance document provides a framework for air quality permitting staff to conduct a regulatory analysis based on regulations promulgated by EPA in 1980 to implement the court’s decision in Alabama Power case. It is a regulatory guideline document and, as such, it must be based on the statute and case law. As the comment relates to air quality generally, the DEP has completed a short-term ambient air quality sampling initiative in the southwest, northeast and northcentral regions of Pennsylvania, the areas primarily impacted by Marcellus Shale operations. The scope of the short-term sampling effort focused on natural gas extraction stages including drilling operations, hydraulic fracturing operations including impoundments, the flaring of gas, and gas compression facilities. The results of this short-term ambient air sampling initiative did not measure concentrations of any compound associated with Marcellus Shale drilling activities that would likely trigger air-related health issues. In July 2012, DEP launched a long-term study in southwestern Pennsylvania to further evaluate the ambient air emissions from unconventional natural gas production and processing operations. The emissions data and source reports submitted to the department for emissions during the 2011 calendar year will also allow the DEP to develop comprehensive emission inventories to assess air quality impacts from these operations. Additionally, the DEP is also revising the general plan approval and general operating permit requirements for natural gas production and processing facilities (GP-5) to update applicable requirements including best available technology requirements.

**62. Comment.** The word “and” highlighted in the following sentence implies that an aggregated collection of structures will only be considered for additional air quality permitting if the collection managed by one company reaches major source emissions. The close proximity of multiple structures owned by multiple companies producing a serious health risk in air pollution is not considered:

“If the emissions from two or more air contamination sources are aggregated as a single air contamination source, **and** reach major source emission thresholds, they would be subject to additional air quality permitting requirements under the Prevention of Significant Deterioration (“PSD”) .....”. (16)

**Response:** The Department has made this change. The regulatory language is a three-pronged test: (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 the source on the property is not controlled by the same person, then it would not meet the test, and the sources would not be aggregated and would not be subject to PSD permitting requirements unless the emissions from each source met the applicable major source thresholds.

**63. Comment:** In regards to the word “stationary” in the following sentence, the specification for stationary sources ignores the very important reality that the deep shale gas industry requires 200–400 truck visits to set up, drill and frack at a single location. These truck emissions must be added to the exposure the residents experience for weeks to months. In the case of re-fracking the trucks will return repeatedly, thus exposing residents to chronic air pollution problems. (16)

“The purpose of this document is to provide interim guidance to assist the Department of Environmental Protection’s Air Program permitting staff in making single stationary source determinations for the oil and gas industries in Pennsylvania.”

**Response:** The Department is precluded from addressing these emissions from trucks because of federal preemption under Title II of the federal Clean Air Act. Therefore, emissions from mobile sources which are regulated under Title II of the Clean Air Act are not considered when determining whether emissions from an air contamination source would be subject to the Title V, PSD and NSR permitting requirements. Additionally, non-road engines as defined in 40 CFR §§89.2 and §90.3 are not considered stationary sources unless the engines remain on site for 12 or more consecutive months.

**64. Comment:** The commentator believes that the following statements are in conflict with each other:

“This policy applies to case-by-case analyses conducted by DEP’s Air Program permitting staff when determining whether stationary sources should be considered a single source for permitting requirements applicable to programs including PSD, Nonattainment NSR and Title V Permits.”

And

“The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.”

This second statement logically conflicts with the first statement. In the real world, a DEP official will have to decide if a given structure or activity does or does not qualify as a single source. The outcome of this decision will ultimately impact the ability of the DEP to enact regulations on air quality for each single source. (16)

**Response:** The Department does not believe these statements are in conflict. The first one relates to the applicability of the policy; the second clarifies that the policy does not change the applicable legal requirements. However, the Department does agree that a permit reviewer will need to make a single source determination. The guidance document was designed to assist permit reviewers in that task.

**65. Comment:** In regards to the word “thresholds” in the sentence below, emission thresholds should consider the health impacts from combinations of pollutants. Substantial scientific evidence indicates that multiple pollutants can act synergistically to harm humans. This document does not clarify that such combinations are considered.

“If the emissions from two or more air contamination sources are aggregated as a single air contamination source, and reach major source emission thresholds, they would be treated as a “single source” subject to additional air quality permitting requirements under the NSR and Title V programs.” (16)

**Response:** The regulatory language is a three-pronged test that requires sources which meet the following criteria to be treated as a single source: (1) the sources belong to the same industrial grouping; (2) the sources are located on one or more contiguous or adjacent properties; and (3) are under the control of the same person. If a group of sources meets this requirement, they will be aggregated regardless of their status as major or minor sources. The aggregated sources would be subject to additional permitting requirements including PSD and NSR, if emissions meet or exceed major source thresholds. Moreover, the establishment of the thresholds is part of a regulatory process outside the scope of this action.

**66. Comment:** The commentator believes that the following statement is outdated and not supported scientifically: “... Historically, EPA has stated that it is a case-by-case, fact-specific determination and has made that claim since the promulgation of the PSD regulations on August 7, 1980 and in a number of EPA guidance documents.” The commentator stated that relying on a regulation document from 1980 is not scientifically supportable, given the enormous changes in our understanding of air pollutants, modeling of air pollution, and health impacts from air pollution in the last 30 years. (16)

**Response:** Even though this statement dates back to 1980, it relates to a regulatory requirement. Consequently, to the extent that the regulation remains unchanged, the interpretation is still instructive.

**67. Comment:** The commentator indicated that the state of the science of air pollution, pollution monitoring, and documented health impacts of regional air pollution indicate any guidelines should be based on science, not “common sense.” Common sense cannot dictate that a quarter mile is an appropriate rule of thumb for qualifying structures as adjacent and those more than a quarter mile apart as non-adjacent for the purpose of air quality regulations or permits. Many of the air toxins are invisible and non-odorous, but they have serious impacts on health, often over an area much larger than a quarter mile radius from combined air pollution emissions. (16)

**Response:** The “common sense approach” referred to is based on the contiguous or adjacency prong of the three-part test to determine whether sources should be aggregated for permitting purposes. The test is not based on technology. New sources will be subject to the best available technology requirements under GP-5 or as determined under a plan approval. Moreover, sources are also required to comply with the New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants. Consequently, these sources will be well controlled.

**68. Comment:** The “case-by-case basis” notion is inappropriate, unscientific, and impractical when one considers that in only a few years, 10,000 – 60,000 well permit applications are forthcoming, each requiring condenser stations, many compressor stations and miles of pipelines, at the very least. The number of case-by-case determinations is far too many to let each DEP permit reviewer simply use their judgment. Furthermore, the judgment of a permit for one

company's structures at one time may not adequately protect the public if another company subsequently builds another air pollution emitter near the first structure. (16)

**Response:** The guidance document is designed to assist permit reviewers with the task of reviewing all natural gas air quality permits. However, the very nature of the work means that no two permits are going to be identical. Consequently, the permit reviewer must use his best professional judgment on a case-by-case basis to determine if sources should be aggregated for permitting purposes.

**69. Comment:** The commentator stated that: "the "common sense notion" is far too simple a term to describe a combined operation under the control of one owner. Some minimum definitions of "plant" can be developed in addition to the "common sense notion" such that air pollution releases from temporary and permanent structures are tallied when a permit is considered. The temporary parts of a plant may be actively polluting for months. Furthermore, the above statements must account for the problem that similarly polluting structures operated by different companies will be in the same area and must be considered in aggregate." (16)

**Response:** The genesis of the three aggregation criteria, set forth in 40 C.F.R. §52.21(b)(6), is the 1979 case entitled *Alabama Power v. Costle*, 636 F.2d 323 (D.C. Circuit 1979). This case created the framework for analyzing aggregation of emissions from two or more facilities, and prompted EPA to promulgate new aggregation regulations at 40 C.F.R. §52.21(b)(6). Moreover, in the preamble to the new aggregation regulations, EPA stated that, to be a "source" for the purposes of the PSD program, an activity must: (1) carry out reasonably the purposes of PSD program; (2) approximate a common sense notion of "plant;" and (3) avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of "building," "structure," "facility," or "installation." See 45 Fed. Reg. 52676, 52693 (August 7, 1980). As a result, both the court and the preamble provide guidance on how to interpret the terms "contiguous and adjacent".

The use of the term "common sense notion of a plant" within this guidance document is merely a tool to assist air quality permitting staff in making case-by-case single source determinations. All single source determinations need to be based on applicable regulatory criteria for determining whether sources should be aggregated for Title V, PSD or NSR permitting purposes. The terms "contiguous" or "adjacent" are not defined in literal terms (that is, number of feet allowed between two or more sources that are physically separated from each other) or through an empirical formula. However, the guidance provides a "rule of thumb" that properties located a quarter mile or less apart are considered contiguous or adjacent properties for PSD, nonattainment NSR and Title V applicability determinations. Properties located beyond this quarter mile range may only be considered contiguous or adjacent on a case-by-case basis. Permit writers are allowed to look at interdependence and use EPA guidance, but the quarter mile radius rule of thumb provides both permit writers and industry some certainty and guide posts in deciding how single source determinations are made within a quarter mile radius.

**70. Comment:** The commentator requests that DEP do what needs to be done to best protect, not adequately, or according to DEP standards, but actually best protect our air quality and our health. (17)

**Response:** The Department in all instances requires the use of the best available technology for new air contamination sources in Pennsylvania. Consequently, the Department does require the best protection of public health and the environment.

**71. Comment:** The commentator offers her support for the proposed amendments to the Guidance for Performing Single Stationary Source Determinations for Oil and Gas Industries (270-0910-006). She further stated: “I commend the Department for taking a practical approach to determining whether two or more stationary air emissions sources should be aggregated together and treated as a single source for air permitting programs. The approach to the three-part test for determining whether or not to aggregate is grounded in federal and state policy and will provide much needed clarity and consistency.” (18)

**Response:** The Department appreciates the commentator’s support.

**72. Comment:** The commentators support the DEP guidance as it will create more consistency and predictability for permitting oil and gas operations across the region, benefitting the industry, regulators, and the general public alike. (19, 20, 25)

**Response:** The Department appreciates the commentators’ support.

**73. Comment:** The commentator is concerned that there were no discussions of the effect of aggregate compressor stations on farm crops. It has been proven from other parts of the country that these compressor stations cause adverse effects. (32)

**Response:** Single source determinations are based on the three-part regulatory analysis. While “farm crops” *per se* are not part of the analysis, all new compressor stations must comply with best available technology requirements. These requirements are designed to reduce emissions to the maximum extent possible, which will assist in protecting crops from the adverse effects of air pollution. Moreover, On August 16, 2012, EPA finalized New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the oil and gas sector. *See* 77 Fed. Reg. 49490. The NSPS and NESHAP standards are adopted and incorporated by reference in their entirety in the Pennsylvania Code at 25 Pa. Code Chapter 122 and at 25 Pa. Code section 127.35, respectively.

**74. Comment:** These commentators said that DEP should protect air quality. The DEP must look at total emissions of all companies within a given area. (33, 36, 41, 42, 43)

**Response:** Section 2(a) of the APCA provides that it is the policy of the Commonwealth of Pennsylvania to protect the air resources of the Commonwealth to the degree necessary for the (i) protection of public health, safety and well-being of its citizens; (ii) prevention of injury to plant and animal life and to property; (iii) protection of the comfort and convenience of the public and the protection of the recreational resources of the Commonwealth; (iv) development, attraction and expansion of industry, commerce and agriculture; and (v) implementation of the provisions of the Clean Air Act in the Commonwealth. *See* 35 P.S. § 4002 (relating to declaration of policy). To this end, the Department is committed to protecting public health and the environment as well as the

economic vitality of the Commonwealth. Single source determinations are based on the three-part regulatory analysis. All new compressor stations must comply with best available technology requirements. These requirements are designed to reduce emissions to the maximum extent possible, which will assist in protecting air quality.

The DEP has completed a short-term ambient air quality sampling initiative in the southwest, northeast and northcentral regions of Pennsylvania, the areas primarily impacted by Marcellus Shale operations. The scope of the short-term sampling effort focused on natural gas extraction stages including drilling operations, hydraulic fracturing operations including impoundments, the flaring of gas, and gas compression facilities. The results of this short-term ambient air sampling initiative did not measure concentrations of any compound associated with Marcellus Shale drilling activities that would likely trigger air-related health issues.

In July 2012, the DEP launched a long-term sampling project in southwestern Pennsylvania to assess air quality impacts in the region for up to 12 months. Additionally, revisions to the General Permit for natural gas production and processing facilities will establish more stringent emission limitations, monitoring and recordkeeping requirements. For the first time ever, EPA will regulate wellheads under the recently issued New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants. These requirements are designed to reduce emissions to the maximum extent possible, which will assist in protecting public health and the environment from the adverse effects of air pollution.

**75. Comment:** The commentators are concerned with the dramatic increase of gas-related industrial activities and the effect it has on the respiratory health of the people living here, especially the children. It is astonishing to them that the DEP would continue under previous, outdated guidelines that would treat gas emissions from compressor stations and other sources as independent emissions and not the combined effect that they would produce. (34, 35)

**Response:** All new compressor stations must comply with best available technology requirements. These requirements are designed to reduce emissions to the maximum extent possible, which will assist in protecting air quality. The DEP has completed a short-term ambient air quality sampling initiative in the southwest, northeast and northcentral regions of Pennsylvania, the areas primarily impacted by Marcellus Shale operations. The scope of the short-term sampling effort focused on natural gas extraction stages including drilling operations, hydraulic fracturing operations including impoundments, the flaring of gas, and gas compression facilities. The results of this short-term ambient air sampling initiative did not measure concentrations of any compound associated with Marcellus Shale drilling activities that would likely trigger air-related health issues. In July 2012, the DEP launched a long-term sampling project in southwestern Pennsylvania to assess air quality impacts in the region for up to 12 months.

**76. Comment:** These commentators claimed that the interim technical guidance document does not afford BAQ professionals a tool that will adequately protect our air resources. The test on aggregation is based on 1979 case law. It is time for the DEP to update the air aggregation regulations to reflect the introduction of shale gas development, the number of wells, and increasing encroachment of pipeline infrastructure anticipated within the Pennsylvania Marcellus



Shale areas. The commentators urge the DEP to please reconsider and rescind this interim technical guidance document. The previous document, which was issued in December 2010 and rescinded in February 2011, went much further in protecting public health and safety than this new interim technical guidance. We want to provide our DEP BAQ professionals with the proper tools to thoroughly protect our air resources. (37, 40, 45, 46, 47, 48, 49, 50)

**Response:** The previous guidance document was rescinded because it was merely a compilation of previous EPA determinations and guidance documents, which are not legally binding. This guidance document is designed to provide substantive guidance on making single source determinations. The regulatory three-part test was promulgated by the EPA and is incorporated by reference into the Department's regulations including the PSD provisions in 25 Pa. Code Chapter 127, Subchapter D. As a result, should the EPA revise the federal regulations, the provisions would be automatically incorporated in the Pennsylvania Code and would take effect in the Commonwealth on the same effective date as the federal regulations.

**77. Comment:** The commentator said that “the idea is to avert the health problems by PROPER REGULATION and ENFORCEMENT. ALL TOXIC EMISSIONS by a given industry should be AGGREGATED. The best monitoring equipment and constant vigilance are required.” (38)

**Response:** Air contamination sources will be aggregated as a single source, on a case-by-case basis, if they meet the three-prong regulatory test for Title V, PSD and NSR permitting purposes.

**78. Comment:** The commentator is concerned about the proposed rules for aggregation. The commentator believes that the rules should be based on the geography of the location, not arbitrary rules about distance and which company has the pollution source. The commentator urges the Department to modify its rules so that the Department will better protect the air than with those rules that are currently proposed. (44)

**Response:** The Department has not proposed any amendments to the regulatory language for single source determinations. The Department is merely taking comment on its technical guidance document that assists in interpreting those rules.

**79. Comment:** Please protect the people who breathe the air—inevitably—in the aggregate. The convenience and economic benefit to the gas and energy industry should not be a consideration in arriving at your decision. Safeguards that exist should be mandatory for all industries. Government must protect the citizenry from environmental degradation. We need responsible regulations that protect our health and environment. (351, 352, 353)

**Response:** The Department is obligated by law to protect the air resources of the Commonwealth. It also the policy of Pennsylvania to protect the air resources of the Commonwealth to the degree necessary for the “development, attraction and expansion of industry, commerce and agriculture.” *See* 35 P.S. § 4002(a)(iv). Moreover, the Department has adequate statutory and regulatory authority under the state APCA to regulate the air quality and will continue to address the public health and environmental impacts related to the natural gas industry in Pennsylvania.

**80. Comment:** The commentator expressed concerns about the natural gas drilling and production activities and recommended a moratorium. (354)

**Response:** This comment is outside the scope of this guidance document. However, on February 13, 2012, Governor Corbett signed comprehensive amendments (House Bill 1950) to Pennsylvania's Oil and Gas Act, which governs natural gas drilling and production activities in this Commonwealth. This law allows for the reasonable development of oil and gas resources in Pennsylvania.

**81. Comment:** The DEP proposed guidelines that once again favor the gas industry over citizens. The DEP does not have the scientific evidence to change federal recommendations on air pollution and it is not fair to those of us with health problems that have to breathe the extra pollution (as we are already in one of the worst air quality regions in the country!). (358)

**Response:** The interim guidance document does not change any federal or state regulatory requirements. Moreover, it does not favor one group over another. EPA's nonbinding guidance and memoranda concerning single source determinations do not have the force and effect of law. During the past decade, there have been significant improvements in air quality in the Commonwealth and the DEP will continue to protect public health and the environment by ensuring that there is no degradation of air quality associated with natural gas development activities in Pennsylvania.

**82. Comment:** The commentators oppose the proposed DEP guidance. The DEP's determination will allow many small and interconnected sources to skirt regulation because they do not reach sufficient emission thresholds on their own, despite their detrimental impact on air quality and human health when considered collectively. The two pieces of equipment that are part of a single industrial process should not be considered separate sources, simply because they are more than a quarter mile apart. The EPA should understand that the DEP's policy is not in accordance with federal law and take action to address the air quality issues that the DEP is ignoring. (355, 356, 360, 361, 362)

**Response:** The Department disagrees. All single source determinations must be conducted on a case-by-case basis, regardless of the separate status of each source. Emission thresholds will determine if aggregated sources trigger certain permitting requirements for major sources including Title V, PSD and NSR. For example, sources 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 will be treated as a single source for Title V or PSD permitting purposes if the emissions from the aggregated sources reach major source thresholds. Properties located beyond this quarter-mile range may only be considered contiguous or adjacent on a case-by-case basis. The Department believes that this guidance is consistent with federal and state law.

**83. Comment:** All gas drilling sites, and other gas operations regardless of the estimated volume of emissions, should be equipped with air monitors and the resulting data be made available on a public web site. The data would reveal the real extent of damage to human health caused by pollution resulting from gas drilling. (355, 360)

**Response:** This comment is outside the scope of this guidance document. However as it relates to air quality generally, DEP has completed a short-term ambient air quality sampling initiative in the southwest, northeast and northcentral regions of Pennsylvania, the areas primarily impacted by Marcellus Shale operations. The scope of the short-term sampling effort focused on various natural gas extraction stages including drilling operations, hydraulic fracturing operations including impoundments, the flaring of gas, and gas compression facilities. The results of this short-term ambient air sampling initiative did not measure concentrations of any compound associated with Marcellus Shale drilling activities that would likely trigger air-related health issues. In June 2012, the DEP launched a long-term sampling project in southwestern Pennsylvania to assess air quality impacts in the region for up to 12 months. The DEP has addressed, and will continue to address, all public health and environmental impacts related to the natural gas industry in Pennsylvania.

**84. Comment:** The commentator feels that the Department needs strict, enforceable guidelines. Instead the Department has nebulous language about something called "common sense" that no court would recognize and no agency could enforce. Please take time to write strong language to stop polluters whatever the cost. (357)

**Response:** The guidance document is based on the regulatory language under 40 CFR § 52.21(b)(6), which the Department incorporates by reference under Chapter 127, Subchapter D. This language was either developed by the EPA, as in the case 40 CFR § 52.21(b)(6), or approved by the EPA as part of Pennsylvania's SIP, as in the case 25 Pa. Code § 121.1. The DEP has adequate statutory and regulatory authority and is taking the actions necessary to ensure the protection of air quality in this Commonwealth, while at the same time balancing the needs for further economic development from the natural gas industry. Moreover, the term "common sense notion of a plant" is an EPA term of art, but will be used by PADEP as an instructive tool in assisting permit writers in making single source determinations.

Moreover, the genesis of the three aggregation criteria, set forth in 40 C.F.R. §52.21(b)(6), is the 1979 case entitled *Alabama Power v. Costle*, 636 F.2d 323 (D.C. Circuit 1979). This case created the framework for analyzing aggregation of emissions from two or more facilities, and prompted EPA to promulgate new aggregation regulations at 40 C.F.R. §52.21(b)(6). Moreover, in the preamble to the new aggregation regulations, EPA stated that, to be a "source" for the purposes of the PSD program, an activity must: (1) carry out reasonably the purposes of PSD program; (2) approximate a common sense notion of "plant;" and (3) avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of "building," "structure," "facility," or "installation." See 45 Fed. Reg. 52676, 52693 (August 7, 1980). Additionally in *Summit Petroleum v. U.S. EPA*, the U.S. Court of Appeals for the Sixth Circuit found that EPA's determination that the physical requirement of adjacency can be established through mere functional relatedness is unreasonable and contrary to the plain meaning of the term "adjacent." As a result, both the courts and the preamble provide guidance on how to interpret the terms "contiguous and adjacent".

**85. Comment:** The commentator expressed serious concerns about the hazards of radiation, explosion, and ground water contamination that are emanating from gas drilling. Also the

commentator expressed concerns of falling property values and poisoning of farms and food sources and suggested suspension of drilling activities. (359)

**Response:** The comment is outside the scope of the guidance document. However, the Department appreciates the concerns raised by the commentator and continues to implement measures to protect ground water in this Commonwealth. Act 13 establishes water quality safeguards including the following: (1) well setback distance is increased from 100 feet to 300 feet for streams, rivers, ponds and other water bodies, and from 200 feet to 500 feet from buildings and private water wells and to 1,000 feet for public drinking water systems; (2) the "presumed liability" for the operator of an unconventional well for impairing water quality has been expanded from 1,000 feet to 2,500 feet from a gas well, and extending the duration of the liability from six months to 12 months; (3) water quality replacement standards must also meet Safe Drinking Water Act standards. Blanket bonds have also increased from \$25,000 to \$600,000.

**86. Comment:** The DEP is more concerned about the natural gas industry's interests than protecting human health and the environment. Please remember what the P in DEP means. The idea of using distance to judge whether or not two pieces of natural gas equipment are part of the same operation is particularly absurd. The DEP should use guidance from the EPA and the Clean Air Act in determining adjacency and major sources of pollution. This should include a case-by-case analysis that determines if pieces of equipment are connected and interdependent on one another. Proper single source determinations are crucial for determining the cumulative effects of harmful air emissions from natural gas operations and ensuring the protection of human health and the environment. (363)

**Response:** The DEP is charged with the protecting the air resources of this Commonwealth. An adjacency determination is not the sole factor for determining whether multiple sources should be treated as a single source for permitting purposes. The DEP will continue to make single source determinations on a case-by-case basis consistent with federal and state regulatory criteria.

**87. Comment:** The commentator makes the following suggested edit as underlined. This policy applies to case-by-case analyses conducted by DEP's Air Program permitting staff when determining whether stationary sources at oil and gas facilities should be considered a single source for permitting requirements applicable to programs including PSD, Nonattainment NSR and Title V Permits... (21)

**Response:** The Department agrees and has revised the policy accordingly.

**88. Comment:** The commentator makes the following suggested edit as underlined. If two or more air contamination sources are collectively above the major source threshold and meet the three-part test under this latter definition, the sources should be treated as a single air contamination source for PSD and Title V purposes, provided certain additional criteria are satisfied. (21)

**Response:** The Department has clarified the policy relative to the word “collectively” and has also clarified that the single source determination is not limited to major sources.

**89. Comment:** The commentator makes the following suggested edits as underlined. In the preamble to these regulations, the EPA stated that to be a “source” for the purposes of the PSD program, an activity must: (1) carry out reasonably the purposes of the PSD program; (2) approximate a common sense notion of “plant;” and (3) avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of “building,” “structure,” “facility,” or “installation.” As a result, these additional factors should also be addressed in analyzing whether a group of pollutant-emitting activities (that is, two or more air contamination sources) should be grouped together as a single air contamination source. (21)

**Response:** The Department agrees that these factors should be considered when aggregating two or more stationary sources in accordance with applicable requirements in federal and state regulations and the State Implementation Plan. The document has been revised to address the concern.

**90. Comment:** The commenter makes the following suggested edits as underlined. Air quality permitting staff should rely on the three-part regulatory criteria and additional criteria identified above to determine whether emissions from two or more facilities should be aggregated and treated as a single source for PSD and Title V air quality permitting purposes. These three-part regulatory criteria are: whether the activities belong to the same industrial grouping; whether the activities are located on one or more contiguous or adjacent properties; and whether the activities are under the control of the same person (or persons under common control). If two or more facilities meet these criteria, they would be treated as a single facility for PSD and Title V permitting purposes, provided the additional criteria are also satisfied: aggregation reasonably advances the purposes of PSD, the combined facilities approximate the common sense notion of a plant, and the sources fit within the plain meaning of the terms “building, structure, facility or installation.”... (21)

**Response:** The Department disagrees. While the additional criteria may be considered during case-by-case determinations, the additional criteria are not dispositive for single source determinations. Only the regulatory criteria are dispositive for Title V and PSD permitting purposes.

**91. Comment:** Expansive operations would not comport with the “common sense notion of a plant.” Additionally, two aggregate stationary sources spread throughout a large geographical area are not consistent with the plain meaning of the terms contiguous or adjacent properties. (21)

**Response:** All single source determinations are conducted on a case-by-case basis. The Department will determine, on a case-by-case basis, if a specific expansive operation covering a large geographical area should be aggregated as a single source.

**92. Comment:** Historically, EPA has stated that it is a case-by-case, fact-specific determination and has made that claim since the promulgation of the PSD regulations on August 7, 1980 and in

a number of EPA interpretive letters and guidance documents. EPA guidance generally provides that the determination of whether sources are adjacent is based on the “common sense” notion of source and whether they functionally operate as a single source. (21)

**Response:** The Department’s policy supports the “common sense” notion of a source. However, this concept is instructive but not dispositive. Permit writers will consider on a case-by-case, fact-specific basis, which the sources should be aggregated in according with applicable criteria.

**93. Comment:** The commentator would like the following change: If common control is not established by the first two ways, then one should next look at whether there is a contract for service relationship between the two companies in order to determine if a common control relationship exists. (21)

**Response:** The Department declines to make the suggested change. The Department believes that the current language captures the intent of what the Department wants to communicate as it relates to “common control.”

**94. Comment:** The commentator would like the following change: This list is not exhaustive and serves only as a vetting device. If the owners or operators of a facility can provide information showing that one facility has few significant ties to another facility, then they are most likely separate sources under their own control. (21)

**Response:** The Department agrees with this suggestion and has made the change.

**95. Comment:** The commentator would like the following change: Pennsylvania air quality permitting staff should make single source determinations based on the following five-step analysis in determining whether two or more facilities should be treated as a single source for air quality permitting purposes: ... (2) each of the elements must be met in order to treat separate emission units as a single stationary source, and provided aggregation reasonably advances the purposes of PSD, the combined facilities approximate the common sense notion of a plant, and the sources fit within the plain meaning of the terms “building, structure, facility or installation.” (21)

**Response:** The Department declines to make the suggested change. While the suggested language should be considered in making a determination, only the elements under the regulatory test must be met in order to treat separate emission units as a single source.

**96. Comment:** The federal source aggregation policy has been modified substantially over the last few years and much remains in flux. In addition, several other states are reformulating their policies in the source aggregation area and it may be helpful to the DEP to follow the views of citizen organizations such as Damascus Citizens for Sustainability, and evolving federal and other states’ policies as part of its consideration here. (22)

**Response:** The guidance document is based on the regulatory language under 40 CFR § 52.21(b)(6), which the Department incorporates by reference in 25 Pa. Code Chapter 127,

Subchapter D and is part of the State Implementation Plan. The document is not based on EPA guidance. While PADEP looks to other sources as instructive in making determinations, only the regulatory language is dispositive.

**97. Comment:** The commentator recommended incorporating the concept of interdependent properties within the “adjacent” or “contiguous” properties like Texas. Interdependent properties should be considered part of the same source regardless of the physical distance between the interdependent properties. Texas defines “interdependent properties” as: “properties that are mutually dependent. In other words, a mutually dependent property either supports or is supported by another property (or properties) and cannot function independently.” The Texas guidance gives an example that is directly relevant to the proposed guidance under consideration. The Texas example is: “A compressor station that delivers field gas to a gas processing plant is an example of two interdependent properties since the compressor station cannot function normally without the gas plant.”

The same rationale would also apply to determine that the gas wells under common control would be interdependent properties with the field compressor station that moves gas from the wellhead to the gas processing plant. Just as the field compressor is mutually dependent on the gas processing plant, so too the gas wells and the field compression station are mutually dependent on each other, regardless of the physical distance between them. Natural gas cannot be moved from the wellhead without the compressor and the compressor cannot operate without the gas from the wells. (22)

**Response:** The Department is aware of the Texas guidance document. The PADEP document is consistent with that document and EPA determinations in that Pennsylvania permit writers are allowed to look at interdependence of sources. However, all single source determination need to be based on the regulatory language. The terms “contiguous” or “adjacent” are not defined in literal terms (that is, number of feet allowed between two or more sources that are physically separated from each other) or through an empirical formula. However, the guidance provides a “rule of thumb” that properties located a quarter mile or less apart are considered contiguous or adjacent properties for PSD, Nonattainment NSR and Title V applicability determinations. Properties located beyond this quarter mile range may be considered contiguous or adjacent on a case-by-case basis. Permit writers are allowed to look at interdependence and use the EPA guidance, but the quarter mile radius rule of thumb provides both permit writers and industry some certainty and guide posts in deciding how single source determinations are made.

**98. Comment:** The commentator has great concern about the direction the DEP seems to be headed in changing the guidelines for aggregation and for choosing to disregard the EPA guidelines for considering facilities connected by pipelines as combined influence. Multiple compressor stations along a pipeline do collectively alter the air quality of an area. Pad sites with multiple wells, heavy truck traffic (over 1,000 trucks per frack job) and impoundment ponds create not only obvious stench and tangible particulate matter, but insidious breathing issues and decreased health. In support of her comment the commentator has attached a report titled “Gassed! Citizens Investigation of Toxic Air Pollution from Natural Gas Development” that details results of air sampling from communities identified with unsafe level of toxins and analyzes the danger of living amid the natural gas boom. (23)

**Response:** The DEP respectfully disagrees that we disregarded the EPA guidelines for considering facilities connected by pipelines as combined influence. The guidance document is based on the regulatory language under 40 CFR § 52.21(b)(6), that EPA developed, and which the Department incorporates by reference under Chapter 127, Subchapter D.

**99. Comment:** The commentator supports the issuance of the PADEP's guidance as it will create more consistency and predictability for permitting oil and gas operations across the regions. This guidance furthers the EPA's goals in promulgating the three prong source definition to create consistency, efficiency, and predictability in the permitting process. While source determinations remain a case-by-case analysis, the guidance document will ensure permit requirements will remain the same throughout Pennsylvania for oil and gas activities. (24)

**Response:** The Department appreciates the commentator's support.

**100. Comment:** The commentator suggests incorporating a list of specific facts to consider for the case-by-case analysis by considering surface use agreements, pipeline agreements, and rights-of-way with surface rights owners. These agreements dictate the location of surface facilities, minimum offsets from adjoining boundaries, and the number of well pads allowed. Many of these factors are not specifically controlled or dictated by the operators. The spacing requirements for gas wells are established and regulated by federal, state, and local governments and there are also consideration of topography and the location of streams and ponds. For gathering facilities, such as compressor stations, compression of the gas must occur along the transportation path and be properly spaced to help overcome pressure loss and to facilitate the continued movement of the gas. These types of proximity inquiries are helpful when determining whether operations are contiguous or adjacent on a case-by-case basis. (24)

**Response:** The Department respectfully disagrees that it should list specific facts to consider for the case-by-case analysis. The guidance itself provides adequate assistance in making single source determinations. While nothing precludes the Department from considering the items identified by the commentator, all single source determinations need to be based on the regulatory language. However, the Department has revised certain areas of the common control section. Nevertheless, the guidance is a broad framework in which the Department makes its determinations. Applicants are encouraged to share any and all information to assist the Department in making a proper determination.

**101. Comment:** The commentator highlighted the complexities of ownership and control in the oil and gas industry. While it is true that the EPA has adopted the SEC definition for control, the questions and considerations highlighted by the PADEP's guidance may not be sufficient to understand control and ownership issues for this industry, which is complex and varied in its infrastructure and commercial framework.

Ownership and control may vary from well to well, from well to compressor station, between compressor stations, and between compressor stations and gas plants or transmission operations. Furthermore, while one party may operate a location, there are often several other parties involved in the control. For example, the ownership in a well can be split between royalty



owners, overriding royalty owners, working interest owners, and the operator. Each of these parties may acquire a contractual right that affects the operation of the well. Similarly, a compressor station or gas plant may be owned through a joint venture or other contractual relationship in which parties divide control through voting rights or other provisions. The commentator would recommend the guidance include questions asking whether there are multiple owners of an operation, and whether the owners have voting or control rights over an operation. (24)

**Response:** The Department does not believe it is appropriate to expand the EPA's ownership and control language. The guidance document is based on the regulatory language under 40 CFR § 52.21(b)(6), which the Department incorporates by reference under 25 Pa. Code Chapter 127, Subchapter D. However, the Department has revised certain areas of the common control section. Nevertheless, the guidance is a broad framework in which the Department makes its determinations. Owners and operators of sources are free to share the information the commentator references to the Department in assisting us in making a proper single source determination.

**102. Comment:** The commentator has concerns regarding certain aspects of how the DEP would classify two or more facilities as being "contiguous or adjacent" or under "common control." The commentator supports the use of a "quarter mile rule of thumb" in analyzing whether two or more facilities may be "contiguous or adjacent." However, the commentator believes that the Guidance should not automatically treat all properties within a quarter mile or less apart as being contiguous or adjacent. Individual circumstances, such as specific operational or geographic features, may not justify use of a quarter-mile guideline in all cases. On the other hand, facilities located more than one quarter mile apart should be presumed not to be contiguous or adjacent unless there are extraordinary and specific operational or geographic features compelling aggregation. When two or more facilities are within a quarter mile of each other, the DEP should allow facility owners the opportunity to rebut the presumption that they are "contiguous or adjacent" based on site-specific geographic or operational characteristics. (26)

**Response:** All single source determinations must be conducted on a case-by-case basis and apply the three-prong regulatory test. The guidance suggests that permit reviewers first and foremost use the regulatory language as their guide in making single source determinations. That regulatory language requires that three prongs must be met in order to make a single source determination: (1) belong to the same industrial grouping; (2) be located on one or more contiguous or adjacent properties; and (3) be under the control of the same person. The guidance suggests the use of the quarter-mile metric in determining what is contiguous or adjacent. Properties located beyond this quarter-mile range may be considered contiguous or adjacent on a case-by-case basis. The DEP guidance further suggests that EPA guidance may be used. Owners and operators are free to provide the Department with information they believe demonstrates that the sources at issue should not be aggregated for single source purposes. The Department will then take that information into account in making the final determination.

**103. Comment:** The term "interdependence" is vague and likely to vary from individual to individual. The Guidance should not allow the DEP permit reviewers the option to use an "interdependence" test for making a "contiguous or adjacent" determination. As a legal matter,

40 C.F.R. § 52.21(b)(6) does not permit the consideration of "interdependence" as a factor in defining a "'building,' 'structure,' 'facility' or 'installation.'" See 25 Pa. Code, Chapter 127, Subchapter D (adopting 40 C.F.R. Part 52 by reference). As a practical matter, the commentator believes that allowing the DEP permit reviewers to consider "interdependence" will cause confusion, impose significant and unnecessary burdens on facility owners and create an exception that will swallow the rule. Therefore, the commentator requests that the DEP remove the statement that "interdependence" may be used by the DEP permit reviewers. Allowing the DEP permit reviewers to rely upon the "interdependence" of two or more facilities to determine whether they are "contiguous or adjacent" could result in aggregating two facilities that are significant distances apart and inconsistent with both the plain meaning of the words "contiguous" and "adjacent" and the common sense notion of a plant. (26)

**Response:** The Department disagrees with this suggestion. The guidance document is clear. Only the three-prong regulatory test is dispositive in making determinations for PSD and Title V applicability purposes. However, interdependence may be considered in making these determinations on a case-by-case basis. While federal guidance may be instructive, it is not dispositive. Moreover, the plain meanings of the terms "contiguous" and "adjacent" are appropriate considerations in the application of the aggregation test. The Department also believes that such an approach is consistent with that of *Summit Petroleum* where the court found that adjacency cannot be established through mere functional relatedness. In any event, all single source determinations in the Commonwealth are made on a case-by-case basis.

**104. Comment:** The commentator supports elements of the Guidance's use of the SEC definition of "control," but has a number of concerns with certain statements in the Guidance regarding how the DEP permit reviewers should view "common control." The commentator identifies certain regulations and case law to support its arguments. Consequently, the commentator asks the DEP to make substantial revisions to the "common control" section of the Guidance by requiring permit reviewers to rely upon specific facts relevant to showing actual control over both facilities instead of presuming that such common control exists. (26)

**Response:** In reviewing the language under the interim guidance, the Department does not agree that this section needs to be modified or made more specific to discuss each and every legal nuance under state and federal law. However, certain modifications have been made that eliminate the presumed presumption that parent/subsidiary relationships automatically translates in common control or ownership.

The guidance is a broad framework to assist permit reviewers in making decisions relating to common control and ownership. The guidance is instructive and not dispositive. The guidance clearly states that common control is determined on a case-by-case basis. That means that permit reviewers must rely upon specific facts relevant to showing actual control over both facilities instead of presuming that such common control exists. The guidance further provides that if the owners or operators of a facility can provide information showing that one facility has few significant ties to another facility, then they are most likely separate sources under their own control. Any decision related to this prong of the single source determination will be made in accordance with the law. Consequently, it is the Department's expectation that owners and

operators will provide the permit reviewer with all of the information necessary to make a proper decision on whether the sources are under the common control of the same person.

**105. Comment:** The commentator supports the maximum protection of public health and the environment in all aspects of Marcellus Shale natural gas production, site restoration, and delivery to the customer, by requiring the use of best practices and promoting comprehensive regulation, communication, and adequate staffing across government agencies. Further, the commentator believes that the Department has an obligation to uphold Article 1, Section 27, of the Pennsylvania Constitution that says, “The people have a right to clean air, pure water, and the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As a trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” (27)

**Response:** The Department concurs with this suggestion and believes that it has a robust environmental regulatory program in place to fulfill its responsibilities as a trustee to protect the environment.

**106. Comment:** The commentator stresses the need for cumulative impact studies and for monitoring and protecting public health. The commentator recognizes that some Pennsylvania citizens are already at risk because of degraded air quality. Many areas subject to natural gas exploration and production are in remote areas that do not have facilities to monitor ongoing air quality. Ongoing monitoring must be expanded to adequately assess the impact of air degradation that does not abide by regional or state boundaries. Point sources are inadequate and do not provide essential measures necessary to protect public health and the environment.

The commentator urges the DEP to look beyond single source determinations and take a comprehensive view on permitting and monitoring air quality for the oil and gas industry’s impact on air quality. This is a case where the whole is greater than the sum of its parts. (27)

**Response:** The Department is also concerned about the potential cumulative impacts of unconventional natural gas operations. To this end, the DEP is pursuing certain initiatives to fully assess the potential impacts of natural gas production and processing activities. In July 2012, DEP began a long-term study in southwestern Pennsylvania to further evaluate the impacts on air quality. The emissions data and source reports submitted to the department for emissions during the 2011 calendar year will also allow the DEP to develop comprehensive emission inventories to assess air quality impacts from these operations. Additionally, the DEP is also revising the general plan approval and general operating permit requirements for natural gas production and processing facilities (GP-5) to update applicable requirements including best available technology requirements. Additionally, the Department is conducting siting activities for the installation of a new monitor in Bradford County where significant natural gas development is taking place. The Department is also considering a special purpose monitoring (SPM) project in Susquehanna and Wyoming Counties for volatile organic compounds. As was done in previous SPM studies, a monitor will be located in one of the selected counties for a minimum of one year and then relocated to the second county for a minimum of one year. Results from these special

purpose monitors will be used to determine if installation of a permanent monitoring site is warranted. *See also* Response to Comment 58.

The DEP has completed a short-term ambient air quality sampling initiative in the southwest, northeast and northcentral regions of Pennsylvania, the areas primarily impacted by Marcellus Shale operations. The scope of the short-term sampling effort focused on natural gas extraction stages including drilling operations, hydraulic fracturing operations including impoundments, the flaring of gas, and gas compression facilities. The results of this short-term ambient air sampling initiative did not measure concentrations of any compound associated with Marcellus Shale drilling activities that would likely trigger air-related health issues. In July 2012, the DEP launched a long-term sampling project in southwestern Pennsylvania to assess air quality impacts in the region for up to 12 months.

**107. Comment:** To evaluate the cumulative impact and come up with a stringent standard, the DEP needs to group all of these compressor stations and gas operations over a much larger area than quarter mile based on interconnected operations and entire pipeline systems so that together they don't make our air unfit. When evaluating the cumulative impacts of the compressor stations and gas operations, no matter how far apart, compressor stations and gas operations' proximity, the airflow patterns and their cumulative impact throughout an entire township need to be evaluated. (28, 32)

**Response:** The Department is also concerned about the potential cumulative impacts of unconventional natural gas operations. To this end, the DEP is pursuing certain initiatives to fully assess the potential impacts of natural gas production and processing activities. In July 2012, DEP launched a long-term study in Washington County to further evaluate the impacts on air quality. The emissions data and source reports submitted to the department for emissions during the 2011 calendar year will also allow the DEP to develop comprehensive emission inventories to assess air quality impacts from these operations. Additionally, the DEP is also revising the general plan approval and general operating permit requirements for natural gas production and processing facilities (GP-5) to update applicable requirements including best available technology requirements.

Additionally, the Department is currently conducting siting activities for the installation of a new monitor in Bradford County where significant Marcellus Shale development is taking place. *See also* Response to Comment 58.

The DEP has completed a short-term ambient air quality sampling initiative in the southwest, northeast and northcentral regions of Pennsylvania, the areas primarily impacted by Marcellus Shale operations. The scope of the short-term sampling effort focused on natural gas extraction stages including drilling operations, hydraulic fracturing operations including impoundments, the flaring of gas, and gas compression facilities. The results of this short-term ambient air sampling initiative did not measure concentrations of any compound associated with Marcellus Shale drilling activities that would likely trigger air-related health issues. This summer the DEP launched a long-term sampling project in southwestern Pennsylvania to assess air quality impacts in the region for up to 12 months.

Additionally, The International Business Times Green Economy Section ran a story on June 20, 2012 headlined, "US Carbon Emissions Down More Than Any Other Country" and the Vancouver Observer ran a story on June 4, 2012 with the headline, "Climate Change Stunner: USA Leads World In CO2 Cuts Since 2006." These recent press accounts from Canada and Great Britain regard the dramatic reduction in U.S. carbon emissions mostly resultant from the use of natural gas as fuel.

**108. Comment:** The draft guidance does not outline how the presence of wetlands and water bodies will be handled or consider the interrelationship between the air and water in given situations. It should have guidance that gives the evaluating person sufficient things to facilitate a real-time assessment. To see where the compressors shouldn't be located and multiple operations spread out far enough so as not to create a health issue, the DEP should conduct an air quality impact study of all areas potentially receiving compressor stations and gas operations. (28)

**Response:** This comment is beyond the scope of the subject matter related to this technical guidance document. The technical guidance only relates to making single source determinations within the context of air quality permitting. It does not extend to other issues. However, the Department believes that it has a robust regulatory and enforcement program to protect public health and the environment.

**109. Comment:** The randomness of the proposed guidelines will not facilitate an evenhanded handling of these permit applications. It is so murky that even the regulators won't have a clear idea of how to apply the guidelines. (28)

**Response:** The Department disagrees. Permit reviewers are always required to follow the law. The law in this case is the three-prong regulatory test. The guidance document is a framework on how to apply the law. The Department believes that both the law and guidance document are clear.

**110. Comment:** The DEP should consider rescinding this interim technical guidance document and replacing it with an updated air aggregation regulation that reflects the anticipated number of wells and pipeline infrastructure within the Pennsylvania Shale areas. The previous document, which was issued in December 2010 and rescinded in February 2011, while not perfect, went much further in protecting public health and safety than this new interim technical guidance. (28)

**Response:** The Department disagrees. The previous guidance was merely a compilation of EPA single source determinations. The current interim guidance goes much further and provides a framework for how the law should be applied. If properly implemented, this guidance and the law provide adequate protection for public health and the environment.

**111. Comment:** The commentators allege that the intent of the technical guidance document may marginalize the EPA's technical guidance document, the so-called McCarthy Memo, by stating "EPA's non-binding guidance memoranda are merely instructive—they are not dispositive." It should be redrafted with clear notice of the EPA technical guidance documents being disclaimed, and a new notice published in the *Pennsylvania Bulletin* so that citizens can

comment on the exact reference to EPA's guidance. What the EPA has to say on the subject of source determination for the oil and gas industry does matter. (29, 30)

**Response:** The Department disagrees. The regulatory language being implemented is the EPA's language under 40 CFR § 52.21(b)(6) as incorporated by reference under Pennsylvania law. The Department will implement this language as written. However, the EPA guidance may be considered in making any determinations, but is instructive only. The regulatory language is the law and remains dispositive in these situations.

**112. Comment:** By deemphasizing interdependence as a factor for "contiguous or adjacent" determinations, the PADEP will prevent the aggregation of commonly controlled, adjacent sources that work in tandem and pollute the same air, and thereby frustrate the purposes of PADEP's PSD and NSR programs. The technical guidance document ignores the functional and structural connectedness of pipelines connecting oil and gas wells and compressor stations in interpreting the word "contiguous." The Random House Unabridged Dictionary gives as one of the definitions of the word 'contiguous' as "touching, in contact." An oil and gas well is in contact with a compressor station by means of a pipeline. The combination of well, pipeline, and compressor station form a single connected structure. They are "in contact." (29, 30)

**Response:** The Department disagrees. Interdependence is a factor to be considered on a case-by-case basis. The concept is instructive, but not dispositive. The regulatory language being implemented is the EPA's language under 40 CFR § 52.21(b)(6), which is incorporated by reference in its entirety under Pennsylvania law. The Department will implement this language as written. However, the EPA guidance and how it interprets "contiguous" or "adjacent" may be considered in making any determinations, but is instructive only. The regulatory language is the law and remains dispositive in these situations.

**113. Comment:** The proposed Guidance on one hand suggests properties should be located within a quarter-mile of each other for "contiguous or adjacent" determinations. Again it suggests these properties "are contiguous or adjacent" as long as they also meet the EPA's "common control" and "same industrial grouping" criteria. Then there lie properties farther than a quarter-mile apart; these "may" be considered contiguous or adjacent on a "case-by-case basis." In theory, sources and facilities could be aggregated under both situations. In practice, by deemphasizing interdependence and reaffirming the superseded Wehrum memo's "simplified" focus on adjacency/contiguity as a factor for "contiguous or adjacent" determinations and discouraging permitting staff from consulting the EPA's current (McCarthy memo) guidance, the proposed Guidance will ensure that sources further than a quarter-mile apart will be aggregated rarely, if ever. The PADEP permitting staff should assess each case on its particular facts, considering the physical proximity and putting more weight to the interdependence of sources when determining whether sources are "contiguous or adjacent". (29, 30)

**Response:** All determinations will be made on a case-by-case basis and consistent with the law. Any sources located on properties within a quarter-mile are considered contiguous or adjacent for purposes of single source determinations. Sources located on properties outside of this quarter mile will be determined on case-by-case basis. While EPA guidance may be considered it is only instructive. The regulatory language is what is dispositive for these determinations.

**114. Comment:** The PADEP should continue to require operators to complete the questionnaire to require more detailed information including a map that shows all of the operator’s sources and facilities of air pollution within a defined, conservative radius, say, 100 miles, identifying by SIC code, latitude and longitude, air quality permit number of each well site, compressor station, gas processing plant or other source owned by the operator or an affiliate. (29, 30)

**Response:** The guidance document in no way limits or changes the type, amount or form of fact-specific information that may be considered in making single source determinations. Whatever information the Department currently requests will continue. Moreover, owners and operators may provide additional information to ensure that the Department has all the facts before it makes its final decision.

**115. Comment:** As the proposed Guidance observes, “the aggregation test must be applied on a case-by-case basis to the specific facts of the matter before the agency.” The Guidance should therefore be revised to include a comprehensive screening form for single source determinations like currently requiring oil and gas operators to complete a questionnaire entitled “Questions for Defining Contiguous or Adjacent Properties Under Common Control” when applying for air quality plan approvals and GP-5 general permits, and the PADEP should notice this form for public comment. (30)

**Response:** The Department agrees that single source determinations need to be made on a case-by-case basis. Properties located a quarter mile or less apart are considered contiguous or adjacent properties for PSD, nonattainment NSR and Title V applicability determinations. Properties located beyond this quarter mile range may only be considered contiguous or adjacent on a case-by-case basis. The Department disagrees that a comprehensive screening form for single source determinations is necessary since each situation needs to be evaluated on a case-by-case basis. Such an approach would constraint the department’s decision making.

**116. Comment:** PADEP’s quarter-mile rule was inspired by Texas, Oklahoma, and Louisiana, which each adopted a similar rule. But, Texas, Oklahoma, and Louisiana are not in the Ozone Transport Region established by the Clean Air Act, so that supports a more conservative aggregation rules for Pennsylvania than those of Texas, Oklahoma, and Louisiana. (29, 30)

**Response:** The guidance is just that—guidance. It does not and cannot adopt rules. The quarter-mile rule of thumb is guidance on how to approach the contiguous or adjacency prong of the three-prong test. Sources outside this radius may be aggregated on a case-by-case basis which is consistent with the EPA guidance. Moreover, Pennsylvania has a robust air quality permitting program that includes a best available technology requirement that requires the control of emissions to the maximum extent.

**117. Comment:** The technical guidance document fails to take into account litigation already under way in which the Department of Environmental Protection is a litigant on precisely this subject. The substance of the issues discussed in 270-0810-006 is in dispute in (at least) the following cases before the Environmental Hearing Board: Case Number 2011065, appellant Group Against Smog and Pollution, facility in question: Shamrock Compressor Station; and

Case Number 2011072, appellant Clean Air Council, facility in question: Houston Gas Processing Plant. In issuing 270-0810-006, the DEP is attempting to bypass the Environmental Hearing Board process and, in effect, litigate by executive order. Citizens of the Commonwealth of Pennsylvania must vigorously protest this attempt to short circuit the statutorily recognized Environmental Hearing Board process. (29)

**Response:** The Department disagrees that the guidance is an attempt to short-circuit the Environmental Hearing Board process. The guidance is not an executive order, which can only come from the Governor. The guidance document is intended to provide a framework to assist the air quality permitting staff in the implementation of the single source determination regulatory requirements. Moreover, it is the Department that implements the environmental regulatory program in Pennsylvania, and not the Board. The Environmental Hearing Board functions as the statutorily established trial court of statewide jurisdiction which hears appeals from actions of the Department. Consequently, the Department is exercising its statutory duty under the APCA to assist in implementing the law through a technical guidance document.

**118. Comment:** In accordance with its EPA-approved SIP, the PADEP must develop a revised guidance that gives proper deference to the EPA guidance documents, requires proper consideration of facility interdependence for “contiguous or adjacent” determinations, and is in fact a guidance that supports fact-specific, case-by-case determinations, not just the application of a rule-of-thumb. (29, 30)

**Response:** The guidance document specifically says that EPA determinations may be consulted in making determinations, but those EPA determinations are instructive. The SIP-approved regulations are the law and need to be applied as such.

**119. Comment:** Our BAQ professionals truly need a technical guidance document that guides them through the aggregation requirement. The air aggregation technical guidance as proposed in this document tightly follows the interpretation of the McCarthy Memo [EPA 9/22/2009] and the Marcellus Shale Coalition-published White Paper; “Source Determination for the Oil and Gas Industry,” September 2010. The technical guidance document does not adequately address the real and anticipated air impacts to the Marcellus Shale regions of Pennsylvania. All aggregation policy so far has been determined through case law, dating back to 1979 before any shale gas technology had been developed. (31)

**Response:** The Department disagrees that this guidance does not adequately address the real and anticipated air impacts to the Marcellus Shale regions of Pennsylvania. The guidance provides a framework for how existing regulatory language should be applied. If the guidance and regulations are properly implemented, the result will be a proper balance between economic development and environmental protection.

**120. Comment:** The technical guidance document is not based on sound science and reflective of the methods required to adequately protect our air resources. The industry-written white paper has provided the raw basis for this final interim guidance available for public comment. (31)



**Response:** The Department disagrees that the Marcellus Shale Coalition White Paper is the basis for this guidance document. The guidance was written independent of any particular view and with the sole goal of properly implementing the regulations. If the guidance and regulations are properly implemented, the result will be a proper implementation of the law. This will result in a balance between economic development and environmental protection. Moreover the guidance is a regulatory and not science document.

**121. Comment:** Within the context of Marcellus Shale, aggregation policy based on the three criteria is obsolete. The shale gas development in Pennsylvania has a much greater environmental footprint than conventional oil and gas exploration. In addition to the sheer size of the Marcellus Shale within Pennsylvania, consideration should have been given to rural population densities, climate, geography, and the specific nature of the resource exploitation. (31)

**Response:** The footprint of unconventional wells is much smaller than the footprint of conventional wells. The three criteria are the current law in both Pennsylvania and under the federal air quality program. The guidance document is designed to provide guidance in implementing the current law.

**122. Comment:** An exactly similar set of equipment, belonging in the same industrial grouping, situated in the same county, can produce different emission profiles. Generally, the same industrial grouping will work; however, the technical guidance needs to be flexible enough to recognize that this criterion is not an absolute. Our BAQ professionals must have an adequate technical guidance that addresses such unusual shortcomings. (31)

**Response:** The guidance document is flexible in that it provides a framework on how to implement the law. To deviate from the law would be arbitrary and subject to challenge in court.

**123. Comment:** Wetzel County, WV, has an area where there are many compressor stations within a three-mile radius. In that area, people have complained of related health problems. So, the quarter-mile rule in the proposed guidance is far from reasonable. The commentator does not agree that some would advocate for aggregating sources including pipeline route and the corresponding metering, compressor station, etc. as one source or as one plant. These well sites need not be aggregated unless a compressor engine or compressor station would be installed on site. By and large, air pollution sources are of a temporary nature in that they can be moved in/out of the site depending on what activity is occurring. This can be simply done through use of non-road engines and use of natural gas engines for all equipment during drilling and fracking phases. This way the industry uses the same natural gas engines at different sites, lowering overall emissions. (31)

**Response:** The DEP has completed a short-term ambient air quality sampling initiative in the southwest, northeast and northcentral regions of Pennsylvania, the areas primarily impacted by Marcellus Shale operations. The scope of the short-term sampling effort focused on natural gas extraction stages including drilling operations, hydraulic fracturing operations including impoundments, the flaring of gas, and gas compression facilities. The results of this short-term ambient air sampling initiative did not measure concentrations of any compound associated with

Marcellus Shale drilling activities that would likely trigger air-related health issues. In the spring of 2012, the DEP will launch a long-term sampling project in southwestern Pennsylvania to assess air quality impacts in the region for up to 12 months.

**124. Comment:** As referenced in the noted link, <http://www.encana.com/operations/activities/npl/docs/npl-fact-sheet.pdf>, to reduce nitrogen oxides (NOx) and volatile organic compounds (VOC) from natural gas production and gathering activities emissions Encana Oil & Gas, Wyoming, has taken steps like: funding air quality studies; reducing gathering system pressure; completing facility consolidation and upgrades; converting drill rig engines from diesel to cleaner natural gas fuel; installing Selective Catalytic Oxidation emission control devices on natural gas drill rig engines; implementing flareless flow-back green well completion techniques; implementing an enhanced inspection and maintenance program to reduce VOC emissions from equipment; adopting centralized hydraulic fracturing well techniques; installing remote telemetry process equipment; monitoring; and building a workforce facility to reduce traffic into and out of the field. Also, Encana will continue to pioneer new techniques and technology to reduce emissions by up to 75 percent. When Encana is willing to go to such lengths to address air quality issues, there is no reason why Pennsylvania cannot do the same. (31)

**Response:** This comment is beyond the scope of the subject matter related to this technical guidance document. However, the steps that Encana Oil & Gas took were done under the National Environmental Policy Act of 1969. An Environmental Impact Statement was required under the National Environmental Policy Act before the Bureau of Land Management issued a Record of Decision for the Wyoming natural gas project. As part of this process the company took additional steps before the 141,000 acre project would be approved. Most of the natural gas development that takes place in Pennsylvania is not on federal land and is not subject to the requirements under the National Environmental Policy Act. Moreover, the Department believes that it has an adequate environmental regulatory program in place to protect public health and the environment.

**125. Comment:** The DEP should define adequate compressor station site spacing. The initial GP-5 permit should be reviewed with the help of an improved technical guidance document that would provide guidance for a review of all adjacent sites within a suggested radius, say five–six miles, considering a three-mile radius is not working. A study of dispersion modeling of all sites within the designated five–six mile radius and allowing room for a future growth expectation of field compression, along with a cumulative impact study relative to PSD, NSR, and Title V permitting programs, will ensure adequate protection of our air resources. This evaluation must extend to all compressor stations within the designated five–six mile radius. If our regulator is not adequately prepared to address future growth of compressor stations requiring more compression and more emissions, it will be very difficult to reverse the aftermath of air quality impacts created by the proposed technical guidance based on outdated case law and the industry white paper. (31)

**Response:** This comment is beyond the scope of the subject matter related to this technical guidance document. The DEP recently proposed the revision of GP-5 and is seeking public comments.

**126. Comment:** The transportation of natural gas requires compression whether it is a gathering or transmission line. As the field increases there may be a need to add compression on the line to allow for greater gas flow. Also, as the field depletes more compression will be required on well sites and within the gathering system. Thus it is hard to determine the required compression for the transportation network in five years, let alone, say 20 years. A midstream company must be given the latitude to locate a station within the five–six mile radius should they firmly commit in writing during their initial GP-5 application to use emerging technologies that would significantly reduce emissions. However, in view of the amount of compression we are anticipating, the need is for newer technologies of the future that are able to reduce emissions even further. This will also encourage the industry to continue to place emphasis on research and development programs which will result in better control technology. (31)

**Response:** This comment is beyond the scope of the subject matter related to this technical guidance document. The DEP recently proposed the revision of GP-5 and is seeking public comments.

**127. Comment:** The interim final technical guidance document should be rescinded and a consideration should be given to formulate a new technical guidance document that will be reflective of shale gas exploitation and provide the BAQ professionals with the tools they need to adequately protect our air resources. (31)

**Response:** The Department disagrees. The Department believes that the interim guidance is a sound document that provides BAQ professionals with adequate guidance to make case-by-case determinations that are within the parameters of existing law.

**128. Comment:** These commentators stated that the DEP should protect air quality. The DEP must look at total emissions of all companies within a given area. The commentators are concerned with the dramatic increase of gas-related industrial activities and the effect they have on the respiratory health of the people living here, especially the children. It is astonishing to the commentators that the DEP would continue under previous, outdated guidelines that would treat gas emissions from compressor stations and other sources as independent emissions and not for the combined effect that they would produce. (33, 34, 35, 36, 41, 42, 43)

**Response:** Section 2(a) of the APCA provides that it is the policy of the Commonwealth of Pennsylvania to protect the air resources of the Commonwealth to the degree necessary for the (i) protection of public health, safety and well-being of its citizens; (ii) prevention of injury to plant and animal life and to property; (iii) protection of the comfort and convenience of the public and the protection of the recreational resources of the Commonwealth; (iv) development, attraction and expansion of industry, commerce and agriculture; and (v) implementation of the provisions of the Clean Air Act in the Commonwealth. See 35 P.S. § 4002 (relating to declaration of policy).

The interim guidance was developed to properly implement the law. All single source determinations must be conducted on a case-by-case basis and apply the three-prong regulatory test. The guidance suggests that permit reviewers first and foremost use the regulatory language

as their guide in making single source determinations. That regulatory language requires that three prongs must be met in order to make a single source determination: (1) belong to the same industrial grouping; (2) be located on one or more contiguous or adjacent properties; and (3) be under the control of the same person. The guidance suggests the use of the quarter-mile metric in determining what is contiguous or adjacent. Properties located beyond this quarter-mile range may only be considered contiguous or adjacent on a case-by-case basis. The guidance further suggests that the EPA guidance may be used. This guidance, which is designed to be implemented consistently by permit writers, should result in single source determinations, as appropriate and necessary for the protection of public health and safety.

**129. Comment:** The commentator is concerned about the proposed rules for aggregation. The commentator believes that the rules should be based on the geography of the location, not arbitrary rules about distance and which company has the pollution source. The commentator urges the Department to modify its rules so that the rules will better protect the air than those that are currently proposed. (44)

**Response:** The Department believes that the revised guidance document is protective of public health and allows for the development of the natural gas industry in a safe and effective manner. The interim guidance was developed to implement the law and provide for the development of the Marcellus Shale resource. The guidance suggests the use of the quarter-mile metric in determining what is contiguous or adjacent. Properties located beyond this quarter mile range may only be considered contiguous or adjacent on a case-by-case basis.

**130. Comment:** The commentators stated that the interim technical guidance document does not afford the BAQ professionals a tool that will adequately protect the Commonwealth's air resources. The test on aggregation is based on 1979 case law. It is time for the DEP to update the air aggregation regulations to reflect the introduction of shale gas development, the number of wells, and increasing encroachment of pipeline infrastructure anticipated within the Pennsylvania Marcellus Shale areas. The commentators urge the DEP to please reconsider and rescind this interim technical guidance document. The previous document, which was issued in December 2010 and rescinded in February 2011, went much further in protecting public health and safety than this new interim technical guidance. We want to provide our DEP BAQ professionals with the proper tools to thoroughly protect our air resources. (37, 40, 45, 46, 47, 48, 49, 50)

**Response:** The Department disagrees. The backbone of the guidance document rests on the regulatory language under 40 CFR § 52.21(b)(6), which the Department incorporates by reference under 25 Pa. Code Chapter 127, Subchapter D, and Section 121.1. This language was either developed by the EPA or approved by the EPA as part of Pennsylvania's SIP. The Department believes that the guidance provides adequate instructions on this point. The previous guidance was nothing more than a compilation of previous EPA determinations. It did not provide adequate guidance as this new document does.

**131. Comment:** The commentators strongly oppose the aggregation guidance issued by the DEP and believe this to be confirmation that the DEP is more concerned about the natural gas industry's interests than protecting human health and the environment. The idea of using

distance to judge whether or not two pieces of natural gas equipment are part of the same operation is particularly absurd. The DEP should use guidance from the EPA and the Clean Air Act in determining adjacency and major sources of pollution. This should include a case-by-case analysis that determines if pieces of equipment are connected and interdependent on one another. Proper single source determinations are crucial for determining the cumulative effects of harmful air emissions from natural gas operations and ensuring the protection of human health and the environment.

(39, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 361, 365, 366)

**Response:** The Department disagrees. The commentators have a fundamental misunderstanding of this guidance document. The interim guidance was developed to ensure that single source determinations are made in accordance with the law. All single source determinations must be conducted on a case-by-case basis and apply the three-prong regulatory test. The guidance suggests that permit reviewers first and foremost use the regulatory language as their guide in making single source determinations. That regulatory language requires that three prongs must be met in order to make a single source determination: (1) belong to the same industrial grouping; (2) be located on one or more contiguous or adjacent properties; and (3) be under the control of the same person. The guidance suggests the use of the quarter mile metric in determining what is contiguous or adjacent. Properties located beyond this quarter mile range may only be considered contiguous or adjacent on a case-by-case basis. The DEP guidance further suggests that EPA guidance may be used.

**132. Comment:** The guidance is consistent with the EPA rejected Wehrum memo rather than the McCarthy memo. (30).

**Response:** The Department disagrees. The guidance specifically states EPA single source determination memoranda are instructive, but not dispositive. This statement also applies to the McCarthy memo. Since the Wehrum memo is withdrawn, the Department would not consider it in any determination analysis. Consistent with the McCarthy memo, the Department will ensure

that all single source determinations are on a case-by-case basis taking into account all of the relevant facts for each individual determination. No determinations are predetermined.

**133. Comment:** The Department guidance marginalizes EPA guidance including the concept of independency. (30)

**Response:** The Department disagrees. Permit reviewers may take EPA guidance into consideration when making single source determinations. Moreover, the Department says that permit reviewers may consider independency when making determinations. However, EPA guidance is instructive, but not dispositive. Permit reviewers may consider any type of relevant information when making a determination whether that information comes from previous EPA determinations, information provided by the public, or information provided by a company. However any final determination must be based on the regulatory language itself.

**134. Comment:** Will the Department continue to ask applicants to complete the “Questions for Defining Contiguous or Adjacent Properties Under Common Control”? (30)

**Response:** Yes. The Department has no plans to stop this practice.

**135. Comment:** EPA’s concept of the “common sense notion of a plant” should still be considered in making determinations. (30)

**Response:** The Department believes that this concept is useful in making determinations. This concept will be used to assist in making determinations, but it is not a separate regulatory requirement. Consequently, only the three prong regulatory test is dispositive.

**136. Comment:** What facts and science support Pennsylvania’s decision to adopt the same policy as Texas, Oklahoma, and Louisiana? (30)

**Response:** The Department’s has adopted a plain reading of the three-part regulatory test. It is a test that was promulgated by EPA and adopted by reference by the Department. While the Pennsylvania guidance may be similar to other natural gas producing states, it is tailored for the Commonwealth.

**137. Comment:** If the Department has not done any analysis on how the quarter-mile rule works, it should reject a simplified aggregation analysis approach. (30)

**Response:** Single source determinations can be a complex undertaking. Any analysis undertaken will be thorough and complete. Moreover, each determination will be done on a case-by-case basis.

**138. Comment.** One commentator believes that a number of the common control questions are vague and should be modified.

**Response:** The Department disagrees that these questions are vague. Moreover, the questions are merely a vetting device to assist in the common control prong of the determination test. No

one is bound to use these exact questions. They are merely a vetting tool to assist both the Department and applicant in making the proper determination. Moreover, the Department added two other questions that may be more relevant to the natural gas industry.