UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Withdrawal of Source Determinations for Oil and Gas Industries

FROM: Gina McCarthy
Assistant Administrator (6101A)

TO: Regional Administrators
Regions I – X

The purpose of this memorandum is to communicate to you that I am withdrawing a recent memo concerning the application of Clean Air Act permitting programs to the oil and gas industries. On January 12, 2007, Acting Assistant Administrator William Wehrum issued a guidance memorandum entitled "Source Determinations for Oil and Gas Industries."[1] The stated purpose of the 2007 guidance was to assist permitting authorities in making major stationary source determinations for the oil and gas industries. The memorandum did not mandate application of a particular approach but instead was a non-binding policy statement that set forth a possible methodology for making source determinations in these industries. The memorandum aimed to simplify the process for determining when permitting authorities should consider two or more pollutant-emitting activities in these industries to be a single stationary source for purposes of the New Source Review (NSR) and Title V permitting programs. Today, by this memorandum, I am withdrawing this previously issued guidance and instead re-emphasizing 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.

I recognize that source determinations within the oil and gas industries will continue to be complex, involving in some cases in-depth analyses of ownership and operational issues. The previous memorandum attempted to simplify this analysis by focusing on one of the three regulatory criteria for source determinations – whether activities are "adjacent or contiguous." It emphasized proximity in addressing this criterion. In practice, however, I find individual facts warrant a closer examination of all three criteria identified in those regulations to arrive at a reasoned decision, and therefore, the simplified approach provided in the memorandum should not be relied on by permitting authorities as a sufficient endpoint in the decision-making process.

[1] *See* EPA docket EPA-HQ-OAR-2007-0629.

Permitting authorities should therefore rely foremost on the three regulatory criteria for identifying emissions activities that belong to the same "building," "structure," "facility," or "installation." These are (1) whether the activities are under the control of the same person (or person under common control); (2) whether the activities are located on one or more contiguous or adjacent properties; and (3) whether the activities belong to the same industrial grouping. 40 C.F.R. 52.21(b)(6). In applying these criteria, permitting authorities should also remain mindful of the explanation we provided in the 1980 preamble. *See* 45 FR 52676, 52694-95 (August 7,1980). In addition, over the past two decades, Regional Offices have applied these regulatory criteria in making source determinations in EPA permitting actions, and in providing guidance to other permitting authorities making such determinations (*available at http://www.epa.gov/region07/programs/artd/air/policy/search.htm*). Collectively, these numerous case-by-case determinations illustrate the kind of reasoned decision-making that is necessary to justify adequately a permitting authority's source determination decision. Nonetheless, these case-by-case source determinations represent highly fact-specific decisions, and while informative of the necessary analytical process, no single determination can serve as an adequate justification for how to treat any other source determination for pollutant-emitting activities with different fact-specific circumstances.

I agree with the previous memorandum's conclusion that whether or not a permitting authority should aggregate two or more pollutant-emitting activities into a single major stationary source for purposes of NSR and Title V remains a case-by-case decision in which permitting authorities retain the discretion to consider the factors relevant to the specific circumstances of the permitted activities. After conducting the necessary analysis, it may be that, in some cases, "proximity"may serve as the overwhelming factor in a permitting authority's source determination decision. However, such a conclusion can only be justified through reasoned decision making after examining whether other factors are relevant to the analysis.

Accordingly, I withdraw the guidance memorandum dated January 12, 2007, entitled "Source Determinations for Oil and Gas Industries," and direct permitting authorities to the three criteria for making source determinations specified in the existing NSR regulations. Regional Offices should 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.