

## Engineering Guide #58

### Question:

With the new Ohio Title V permit program, it has become more important to uniformly define the term "facility" for purposes of permitting. Since there is a nearly identical definition for "facility" in federal new source review regulations, this issue extends to the Ohio new source review permits. OAC Chapter 3745-35 did not define "facility," and this has led to inconsistencies in how entities have been permitted in the past. Therefore, it is important that we employ the same definition for permits to operate (PTO's). This should avoid confusion and mistakes in determining applicability for Title V and federal new source review permitting. The problem at hand is how to determine what constitutes the facility when there are several, separate, air pollutant emitting entities located in close proximity to each other?

### Answer:

To answer this question, we first have to explore a portion of the definition of "major source" in OAC rule 3745-77-01(W). Provided below is the pertinent portion of this definition.

(W) "major source" means any stationary source or any group of stationary sources that are located on one or more contiguous or adjacent properties and under common control of the same person (or persons under common control) belonging to a single major industry grouping and that are described in paragraphs (W)(1), (W)(2), or (W)(3) of this rule. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting entities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

As can be seen from the definition, three criteria need to be considered to establish whether there is one large facility or several separate facilities. All three criteria must be met in order to have one facility. (Since this definition is nearly identical to the definition in the federal Prevention of Significant Deterioration rules [40 CFR Part 52.21(b)(6)], there is substantial case precedent and policy concerning USEPA's interpretation of this definition.) The following clarifies how to evaluate each of these three criteria:

#### **1. Are the air pollutant emitting entities at the industrial complex located at one or more contiguous or adjacent properties?**

The air pollutant emitting entities must be located on the same or two or more contiguous or adjacent properties in order to be considered the same facility. Note, USEPA in the past has considered emission entities which are located close (not defined) to be considered adjacent properties. USEPA has indicated that a case-by-case determination needs to be made for this issue. The facts that must be considered when entities are close, but not next to each other, are:

- (a) Are the entities located in different counties and are the property boundaries located more than five miles apart? If the answer to this question is no and yes to (b) and (c), then these air emission entities will likely be considered adjacent to each other. If the answer to this question is yes, then based on geographic distance and logistics these air emitting entities are not considered adjacent.
- (b) Do these entities operationally support each other?
- (c) Are these entities physically joined in any manner [e.g., rail spur line, haul road, etc.]?

## **2. Are the air pollutant emitting entities under common control of the same person (or persons under common control)?**

Normally, the issue of ownership and common control is straight forward. However, some corporate structures can be very complex. It is possible to have a financial interest, but not have a controlling interest. The key issue for establishing common ownership for permitting purposes is whether control is exercised by a common entity. In the past, USEPA usually concludes that control is exercised by a parent corporation to its subsidiaries.

If it is established that there is a financial interest among the entities and the entities claim that there is no controlling interest between them, the Ohio EPA legal staff must be contacted to determine what information will be needed from the company. This information should be reviewed by the Ohio EPA legal staff to determine whether there is controlling interest between two or more parties.

## **3. Do the air pollutant emitting entities belong to a single major industrial grouping?**

Each entity's primary activity has a two-digit code provided in the Standard Industrial Classification (SIC) Manual. If any entities have the same 2-digit SIC code, then they belong to a single major industrial grouping.

This definition gets tricky when you have a situation involving two activities with different 2-digit SIC codes, but one activity clearly supports the other activity. USEPA has determined that in this case, the supporting facility shares the same 2-digit SIC code as the primary activity that it is supporting.

## **Examples**

Described below are five hypothetical situations which illustrate how the above-mentioned guidance should be applied:

### **Example 1:**

ABC Power Company (ABC) is located next to XYZ Manufacturing Company (XYZ). XYZ purchases power from ABC to support its manufacturing operations. ABC, however, produces power for thousands of customers within the State. In this example, we have two separate facilities. ABC, though supporting XYZ, also provides power to thousands of other customers. Therefore, ABC clearly is an independent power company, whose primary activity goes beyond supporting XYZ's operations. Also, there is no common ownership/control between the two operations.

### **Example 2:**

XYZ Manufacturing owns and operates a boiler (located in a separate building from the manufacturing operations) that generates process steam for the manufacturing operations. In this case, we have common ownership, the activities take place at the same location, and the steam generating boiler's primary activity is to support the manufacturing operations. Therefore, the boiler would be classified as part of the manufacturing operation. In this case, both operations would be considered as part of the same facility.

### **Example 3:**

XYZ Manufacturing owns and operates at the same location a boiler (located in a separate building from the wood furniture and metal cabinet manufacturing operations) that generates process steam for the manufacturing operations. In two other buildings, XYZ has a wood furniture manufacturing operation and a metal cabinet manufacturing operation. You have established that these two operations are primarily independent from each other because neither manufactured product is utilized by the other operation. These two manufacturing operations will be permitted separately because they are classified with different 2-digit SIC codes. However, the steam generating boiler provides process steam to both operations - 60% to the metal cabinet operation and 40 % to the wood furniture operation. In this case, the

primary activity that the steam generating boiler would be supporting would be the metal cabinet operation. Therefore, the supporting steam generating boiler would be classified as part of the metal cabinet manufacturing operation and would be considered to be part of that facility. The wood manufacturing operations would be considered to be a separate facility.

**Example 4:**

A wood furniture manufacturing plant owns and operates a wood-fired electric generating boiler. The electricity that is generated from this boiler is sold to a power company for use and distribution to its customers throughout the State. The boiler does not directly supply any power to the wood manufacturing plant. However, this boiler does primarily support the wood furniture manufacturing business because its main purpose is to provide an innovative means of disposing of the wood waste from the manufacturing plant. Therefore, in this case, the wood-fired electric generating boiler would be classified as part of the wood furniture manufacturing operations and would be considered to be part of the same facility.

**Example 5:**

We have the same facts as described in Example 4, except that the wood-fired electric generating boiler is not only charged with wood waste from its own wood furniture operations, but also receives wood waste from other manufacturing customers. The issue again is whether or not the primary activity of this boiler supports the wood manufacturing plant. If 50% or more of the waste charged into this boiler is from outside entities, the wood-fired electric generating boiler is primarily in the business of generating power (not disposing of the wood furniture manufacturing plant's wood waste) and would be considered to be a separate facility from the wood furniture manufacturing operations. If less than 50 % of the waste charged into this boiler is from outside entities, then the primary activity of this boiler is to support the wood furniture manufacturing operations in disposing of its waste. In this case, both the wood manufacturing operations and the electric generating boiler would be considered to be part of the same facility.

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