

Petitioner's Exhibit 16



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466

May 21, 1998

Ref: 8P2-A

Lynn Menlove, Manager
New Source Review Section
Utah Division of Air Quality
P.O. Box 144820
Salt Lake City, UT 84114-4820

Re: Response to Request for Guidance in
Defining Adjacent with Respect to Source
Aggregation

Dear Mr. Menlove:

This is in response to your letter of January 15, 1998, to Mike Owens of my staff, requesting guidance and/or specific recommendations in the matter of Utility Trailer Manufacturing Company. For the purpose of determining if two Utility Trailer facilities should or should not be aggregated into a single source under Clean Air Act Title V and New Source Review permitting programs, you asked what is the specific physical distance associated with the definition of "adjacent." The word "adjacent" is part of the definition of "source" in the Utah SIP regulations, at R307-1-1. The SIP definition follows the Federal definition found in 40 CFR 51.166.

In brief, our answer is that the distance associated with "adjacent" must be considered on a case-by-case basis. This is explained in the preamble to the August 7, 1980 PSD rules, which says "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." After searching the New Source Review Guidance Notebook, and after querying the other Regions and EPA's Office of Air Quality Planning and Standards, we have found no evidence that any EPA office has ever attempted to indicate a specific distance for "adjacent" on anything other than a case-by-case basis. We could not find any previous EPA determination for any case that is precisely like Utility Trailer, i.e., two facilities under common control, with the same primary 2-digit SIC code, located about a mile apart, both producing very similar products, but claimed by the company to be independent production lines.

Utah SIP regulations do not define "adjacent." The definition in the 1995 edition of Webster's New College Dictionary is: 1. Close to; nearby, or 2. Next to; adjoining. We realize this leaves considerable gray area for interpretation; however, since the term "adjacent" appears in the Utah SIP as part of the definition of "source," any evaluation of what is "adjacent" must relate to the guiding principle of a common sense notion of "source." (The phrase "common

sense notion” appears on page 52695 of the August 7, 1980 PSD preamble, with regard to how to define “source.”) Hence, a determination of “adjacent” should include an evaluation of whether the distance between two facilities is sufficiently small that it enables them to operate as a single “source.” Below are some types of questions that might be posed in this evaluation, as it pertains to Utility Trailer. Not all the answers to these questions need be positive for two facilities to be considered adjacent.

- Was the location of the new facility chosen primarily because of its proximity to the existing facility, to enable the operation of the two facilities to be integrated? In other words, if the two facilities were sited much further apart, would that significantly affect the degree to which they may be dependent on each other?
- Will materials be routinely transferred between the facilities? Supporting evidence for this could include a physical link or transportation link between the facilities, such as a pipeline, railway, special-purpose or public road, channel or conduit.
- Will managers or other workers frequently shuttle back and forth to be involved actively in both facilities? Besides production line staff, this might include maintenance and repair crews, or security or administrative personnel.
- Will the production process itself be split in any way between the facilities, i.e., will one facility produce an intermediate product that requires further processing at the other facility, with associated air pollutant emissions? For example, will components be assembled at one facility but painted at the other?

One illustration of this type of evaluation involved Great Salt Lake Minerals in Utah, which we wrote to you about on August 8, 1997, in response to your inquiry. (See enclosure #1.) We recommended, as EPA guidance, that you treat the two GSLM facilities as a single source (i.e., “adjacent”), despite the fact that they are a considerable distance apart (21.5 miles). We based that advice on the functional inter-relationship of the facilities, evidenced in part by a dedicated channel between them. We wrote that the lengthy distance between the facilities “is not an overriding factor that would prevent them from being considered a single source.”

Another illustration is ESCO Corporation in Portland, Oregon, which operates two metal casting foundries (a “Main Plant” and a “Plant 3”), a couple of blocks apart. All castings produced by foundries at both facilities are coated, packaged and shipped at the “Main Plant”. EPA Region 10 wrote to the State of Oregon on August 7, 1997 (see enclosure #2), that the guiding principle in evaluating whether the two facilities are “adjacent” is “the common sense notion of a plant. That is, pollutant emitting activities that comprise or support the primary product or activity of a company or operation must be considered part of the same stationary source.” EPA determined that the two ESCO facilities must be considered a single major stationary source, since they function together in that manner, even though the Plant 3 foundry operates independently from the Main Plant foundry.

Another illustration is Anheuser-Busch in Fort Collins, Colorado, which operates a brewery and landfarm about six miles apart. A memo from OAQPS to our Regional Office, dated August 27, 1996 (see enclosure #3), stated that with regard to “contiguous or adjacent,” the facilities should be treated as one source, due to their functional inter-relationship (landfarm as an integral part of the brewery operations), evidenced in part by a disposal pipeline between them. The fact that they are a considerable distance apart “does not support a PSD determination that the brewery proper and the landfarm constitute separate sources for PSD purposes.”

Another illustration is Acme Steel Company, which operates an integrated steel mill consisting of coke ovens and blast furnaces at a site in Chicago, Illinois, along with basic oxygen furnaces, casting and hot strip mill operations at a site in Riverdale, Illinois, about 3.7 miles away. The blast furnace in Chicago produces hot metal that is transported via commercial rail to the BOF shop in Riverdale for further processing into steel. EPA Region 5 wrote to the State of Illinois on March 13, 1998 (see enclosure #4), that “Although the two sites are separated by Lake Calumet, landfills, I-94, and the Little Calumet River, USEPA considers that the close proximity of the sites, along with the interdependency of the operations and their historical operation as one source, as sufficient reasons to group these two facilities as one.”

Therefore, in the matter of Utility Trailer, we recommend you evaluate, using questions such as those we posed above, whether the two facilities (one existing and one proposed for construction) will, in fact, operate independently of each other, as the company has claimed. Although Utility Trailer writes that “The present facility is not capable of conversion to the new trailer manufacturing process,” they also write that the existing facility is “an inefficient manufacturing process which has made this facility less cost-competitive.” This suggests to us the possibility that the existing facility could become a support facility for the new one. The company should be advised that if the two facilities are later discovered by the State and/or EPA to be actually operating as a single major source, and no Title V or PSD permit applications have been submitted where required by regulation, the company could become subject to State or EPA enforcement action or citizen suit.

Finally, please be aware that if the facilities are treated as two separate sources, no emission netting between them can be allowed, to avoid major source NSR permitting at either facility, in the event of future facility modifications.

We hope this letter will be helpful. It has been written only as guidance, as it remains the State’s responsibility to make source aggregation determinations under EPA-approved State programs and regulations. This letter has been reviewed by specialists at OAQPS, by our Office of Regional Counsel, and by Office of General Counsel at EPA Headquarters. We apologize for the delay in getting our response to you.

If you have questions, please contact Mike Owens. He is at at (206) 553-6511 until late June, after which he may be reached at (303) 312-6440.

Sincerely,

Richard R. Long
Director
Air Program

Enclosures (4)

cc: Rick Sprott, Utah DAQ
Scott Manzano, Utah DAQ
Jose Garcia, Utah DAQ