



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

FEB 23 2007

(AR-18J)

Laura L. Niemann
Environmental Information Logistics
130 East Main Street
Caledonia, Michigan 49316

Dear Ms. Niemann:

We have received your February 19, 2007, letter to George Czerniak, Branch Chief, Air Enforcement and Compliance Assurance Branch, of the United States Environmental Protection Agency (U.S. EPA), regarding a request for an applicability determination for the Gas Recovery Systems facility. The Illinois Environmental Protection Agency (IEPA) is the permitting authority for air pollution control permitting of sources in the State of Illinois.

We are forwarding your letter to Ed Bakowski of IEPA in Springfield, Illinois. IEPA will review your letter and provide you a response to your applicability determination request. If needed, IEPA will request guidance from U.S. EPA on making an applicability determination.

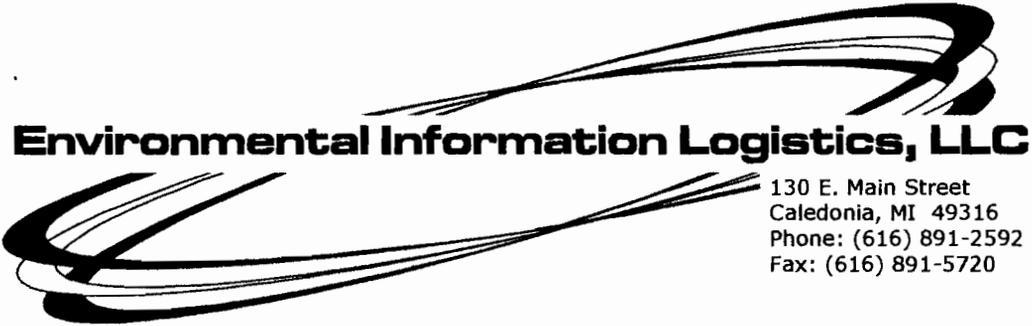
If you have any further questions, please feel free to contact Constantine Blathras, of my staff, at (312) 886-0671.

Sincerely yours,

Kaushal Gupta for P.B.

Pamela Blakley, Chief
Air Permits Section

cc: Ed Bakowski
IEPA



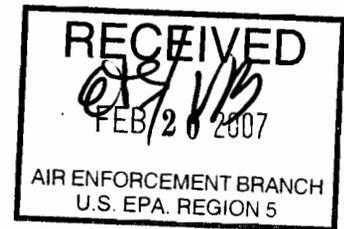
Environmental Information Logistics, LLC

130 E. Main Street
Caledonia, MI 49316
Phone: (616) 891-2592
Fax: (616) 891-5720

February 19, 2007

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Mr. George Czerniak
USEPA Region 5
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
USEPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590



RE: Gas Recovery Systems of Illinois, Inc.

Subject: Request for Determination of Source Status

Dear Mr. Czerniak:

On behalf of Gas Recovery Systems of Illinois, Inc. (GRS), Environmental Information Logistics LLC (EIL) is requesting a determination of source status for three facilities:

Gas Recovery Systems of Illinois, Inc.
Landfill A
Landfill B

The Landfill owners are not named because this request for determination is specifically that of GRS and not the landfill owners. Also, GRS hopes to use a favorable EPA determination for situations of multiple landfill owners at other projects in Illinois.

Specifically, GRS would like to accept landfill gas from both Landfill A (where GRS currently operates an energy recovery facility and accepts landfill gas from a closed landfill owned by one corporation) and Landfill B (an active landfill adjacent to the closed Landfill A).

Landfill B is owned by a separate corporation. GRS currently does not accept delivery of landfill gas from Landfill B, but would like to do so in the future. The additional gas from Landfill B will allow GRS to fully power its existing landfill gas to energy facility. However, GRS cannot move forward with this project because the three owners do not want to be considered a "single source" for the purposes of NSR/PSD.

The three separately owned facilities have held preliminary verbal discussions with the Illinois Environmental Protection Agency (IEPA) to solicit their opinion for source status were GRS to accept delivery of landfill gas from both landfill facilities. Based on these discussions, IEPA has indicated it believes the facilities could be considered a single source for Non-attainment New Source Review (NNSR) and Prevention of Significant Deterioration (PSD) purposes if such a change in gas management was made.

However, IEPA also strongly recommended that the facilities request a formal determination from USEPA, since USEPA looks at many additional criteria for source and common control designations. IEPA would then accept USEPA's determination on the matter and use that as its basis for any subsequent permitting action that may take place if the project moves forward.

Please note that if USEPA determines this change in gas management for Landfill B's gas would result in the facilities being determined as a "single source" for the purposes of NSR/PSD, then it is unlikely that this beneficial use of the landfill gas from Landfill B will take place. Neither Landfill B nor the closed Landfill A wish to be linked together as a single source since that linkage may inadvertently result in non-compliance issues beyond either sites control.

History

Gas Recovery Systems of Illinois, Inc. (GRS) operates a two engine landfill gas-to-energy plant at the closed Landfill A. GRS is also a separate independent corporation from both Landfill A and Landfill B.

The IEPA has previously determined that the closed Landfill A and the GRS plant could be considered a "single source" from an NSR/PSD standpoint since GRS receives 100% of its fuel from Landfill A, and Landfill A relies on GRS to control its gas. Since the active Landfill B does not currently contribute gas to the plant, Landfill B is not considered a "single source" with the other two entities with respect to NSR and PSD.

Gas Collection Systems/Gas Controls

Landfill A has an active gas extraction system installed in all areas of the closed landfill. The system has been operating for almost 10 years. Landfill A has its own Clean Air Act Permit Program (CAAPP) permit issued by IEPA covering its operation. Gas is directed to the two engine GRS plant (on Leased property from Landfill A) for combustion which is permitted under a separate CAAPP permit. A backup enclosed flare owned by Landfill A is available on Landfill A's property, but the flare relies on the GRS plant for the gas mover equipment. Note that Landfill A could install a blower for the flare that is independent of the GRS plant operations if the current arrangement detrimentally impacts USEPA's determination of separate sources.

Landfill B installed an active gas collection system with an open flare in 2006. The system is completely independent of the active gas system at the closed Landfill A and the facility is permitted as a separate facility with its own CAAPP permit. Gas cannot be physically sent to the GRS plant at this time, as a pipeline to the plant has not been constructed.

Currently, the GRS plant can only extract enough landfill gas from the closed Landfill A to keep one permitted engine running full time (approximately 300 – 400 cfm). GRS would like to utilize the landfill gas from the adjacent active Landfill B, since it is producing enough gas to fuel the second permitted engine (i.e. 300 – 400 cfm).

The addition of the landfill gas from Landfill B can occur in a multitude of ways, including comingling the gas for a short distance with the gas from the closed Landfill A in a common header line, or sending a separate line to the GRS plant until the gas reaches the compressors (gas mover equipment).

Regulatory Criteria for Single Source Determinations

A “stationary source” for the purposes of PSD and Title 5 is defined in 40 CFR 52.21(b)(5) and (6) as follows:

(5) Stationary source means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(6) Building, structure, facility, or installation means 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) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same “Major Group” (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U. S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

USEPA’s draft New Source Review Workshop Manual (October, 1990) further states (pages A.3 & A.4):

In most cases, the property boundary and ownership are easily determined. A frequent question, however, particularly at large industrial complexes, is how to deal with multiple emissions units at a single location that do not fall under the same two-digit SIC code. In this situation the source is classified according to the primary activity at the site, which is determined by its principal product) or group of products produced or distributed, or by the service it renders. Facilities that convey, store, or otherwise assist in the production of the principal product are called support facilities.

EIL’s research on historical “common control” decisions made by the USEPA indicates that the criteria in the stationary source definition utilized most frequently by USEPA case-by-case determinations can be summarized as follows:

- Same industrial grouping (i.e. same first two digit SIC code);
- Contiguous or Adjacent; and

- Common ownership or control

The question is whether all three of the companies meet all three criteria in conjunction with any of the others. The outcome most desired by all parties would be that each of the three sources could be considered “stand alone”; i.e. not combined with any of the other two.

The applicability of each of the USEPA’s determination criteria are discussed in the following paragraphs.

Industrial Grouping: The closed Landfill A and the active Landfill B each share the same four-digit SIC code: 4953 – Refuse Systems. The GRS landfill gas recovery plant has the SIC code of 4911 – Electric Services.

Since all three companies share the same first two digits of the general 4900 SIC classification “Electric, Gas and Sanitary Services”, they meet the first test of the single source determination.

Contiguous or Adjacent: The three sites are contiguous and adjacent. A pipeline connects the closed Landfill A to the GRS plant. A future pipeline would need to be constructed to connect the active Landfill B to the GRS plant. The facilities therefore meet the second test of single source determination.

Common Ownership or Control: The control discussion is a more complicated analysis, as it is EIL’s understanding that the USEPA looks at many factors including interdependencies, existing contractual relationships between the individual parties involved in the determination, etc. As such, common control may be established if:

1. There is ownership of multiple sources by the same parent corporation, or by a parent and a subsidiary of the parent corporation;
2. An entity or a corporation has the power to direct the management and control of a another entity, thus controlling its operations, through a contractual agreement or a voting interest;
3. There is a contract for service relationship between the companies;
4. There is a contractual joint venture, or other contractual agreement that would allow one entity to exercise control over another;
5. The parties have a common interest of purpose to carry out a single business enterprise for profit; or
6. A support/dependency relationship exists between the companies.

Each of these issues is examined in detail in the following:

1. Is there is ownership of multiple sources by the same parent corporation, or by a parent and a subsidiary of the parent corporation?

No. The ownership demonstration is straightforward since each entity is owned by a separate corporation, with no common parent corporation.

2. *Does an entity or a corporation have the power to direct the management and control of a second (or third) entity, thus controlling its operations, through a contractual agreement or a voting interest?*

No. None of the corporations have power to direct the management and control of any of the others. Landfill A and Landfill B and their respective parent companies do not have the authority to make any decisions affecting any aspect of the other facility, either through contractual agreement or voting interest. The parent companies of Landfill A or Landfill B do not have power over the management and/or control of Fortistar, GRS's parent company.

3. *Is there is a contract for service relationship between the companies?*

The following combinations of contractual relationships currently exist between the companies:

Landfill A/Landfill B: Landfill A and Landfill B share the use of the leachate load-out facility that is located on property owned by Landfill A. Landfill B manages the operation and maintenance of the leachate load-out facility through a contractual agreement with Landfill A. The contractual agreement requires Landfill A to pay a portion of the leachate disposal cost and share the cost of capital improvements to the load-out facility.

Leachate is a by-product of the waste disposal product (contaminated rainwater that comes into contact with the refuse) that must be managed and disposed of in accordance with applicable environmental regulations. It is not considered a "principal product" of the municipal solid waste industry, but is rather a byproduct of waste disposal. The "principal product" in the landfill industry is the environmentally sound management and disposal of municipal solid wastes.

Landfill A/GRS: There are no contract for service between Landfill A and GRS. Although a national contract is in place that governs the sale of landfill gas from the several of the parent company's landfills to GRS gas recovery plants, this contract is a purchase agreement and not a contract for service between the two parties.

Landfill gas is also a by-product of the waste disposal product: decomposition of the refuse under anaerobic conditions will produce landfill gas until organic material in the deposited waste is consumed by the landfill microbes. Landfill gas is not considered a "principal product" of the municipal solid waste industry – rather, it is a waste byproduct which has the potential for beneficial use in green power production due to its heating value. Unless sufficient economic incentives exist for its beneficial use, however, most landfills chose to flare their landfill gas in order to control it.

Landfill B/GRS: Currently, no contractual relationships exist between Landfill B and GRS. Should the USEPA make a favorable determination on the status of the sources (i.e. multiple vs. single), then it is likely that some form of contract would eventually be prepared for the use of Landfill B's gas at the GRS plant. However, the contract would not be a contract for service. Instead it would be a purchase agreement for the landfill gas.

4. *Is there is a contractual joint venture, or other contractual agreement that would allow one entity to exercise control over another?*

There are no contractual joint ventures between Landfill A and Landfill B. The managing entities of these two landfills do not have the legal authority to make decisions affecting any aspect of the other facility.

There are also no contractual joint ventures between Landfill B and GRS.

There are no contractual joint ventures between Landfill A and GRS. Existing contracts are custody transfer gas sales agreements, not joint ventures.

5. *Do the parties have a common interest of purpose to carry out a single business enterprise for profit?*

No, there is no common interest of purpose to carry out a single business enterprise for profit, although the corporations do engage in similar businesses.

6. *Does a support/dependency relationship exist between the companies?*

Again, it is useful to look at the combination of companies in order to determine if a support/dependency relationship exists.

Landfill B/GRS: There is no support/dependency relationship between GRS and Landfill B, since Landfill B operates a gas collection system and a flare completely independent of GRS's gas plant.

GRS would like to take the fuel from Landfill B since it would allow the plant to operate at capacity and produce additional green power. However, it has been operating without Landfill B's gas since the start of plant operations, and can conceivably do so for several more years, until there is not enough gas from the closed Landfill A site to keep one engine operating.

Landfill B/Landfill A: Landfill B and Landfill A do not believe that the contractual agreement for leachate disposal constitutes a support/dependency relationship. Landfill B has a permit from the IEPA Bureau of Land that allows the site to construct their own leachate tank and load out facility, should the site wish to do so in the future. Because Landfill B has a permit to construct their own facility, they are not dependent upon Landfill A for this activity.

Landfill A/GRS: The support/dependency relationship can be viewed two ways, and it is useful to point out how the relationship could be weakened with a few minor changes to the gas control system. As described previously, Landfill A utilizes GRS's engines to combust the gas collected from the closed landfill. However, Landfill A does own a backup enclosed flare that could be modified to operate independently of GRS's gas management system via addition of a separate blower (gas mover equipment). Should this modification occur, then Landfill A would no longer have any dependency on GRS to manage its landfill gas.

GRS, on the other hand, relies entirely on Landfill A at this point to supply its engines with fuel. If Landfill A did not do this, the GRS plant would have no reason for existence.

The situation changes, however, when the possibility of sending gas from the Landfill B site is introduced into the equation. This is the heart of the issue which USEPA is being asked to determine – specifically, when GRS has the ability to take gas from another landfill facility for use as a fuel, can it truly be said that there is a “dependent” relationship between all of these facilities?

Again, Landfill B is presently combusting landfill gas in its own gas collection system, and its own open flare, completely independent of the Landfill A gas system and the GRS gas plant. Landfill B is therefore not reliant upon the GRS plant to control its landfill gas, and the decision to send it to the GRS plant in order to produce green power is a choice, not a dependency. If Landfill A purchases a blower for its flare and no longer utilizes GRS’s gas mover equipment, then it also becomes independent of the GRS plant from a control standpoint.

It is useful to re-examine the use of the term “support facility”, as defined in the USEPA’s draft New Source Review Workshop Manual (October, 1990):

Facilities that convey, store, or otherwise assist in the production of the principal product are called support facilities.

As discussed earlier, the principal product for the two landfills is the environmentally sound management of municipal solid waste. While the utilization of the by-product of this industry for green power is a helpful component of solid waste management, the landfills each have the option of combusting landfill gas in an on-site flare (if minor modifications are made to Landfill A’s gas system), and therefore do not need the GRS plant to conduct their management activities. The GRS plant is therefore not a “support facility” for either landfill, since they have other options for gas management.

When the support relationship of the landfills to GRS is examined, it is clear that the GRS plant would be unable to produce its principal product (electricity) without the supply of gas from the landfills. However, in a PSD applicability determination letter written by Region 3 USEPA on May 1, 2002 (ADI Control No. 0300036), USEPA made the following determination for a dual-fuel landfill gas recovery facility operating at a landfill in Virginia:

“.....INGENCO’s facility does not need landfill gas to operate; the engines at use at the facility can run exclusively on liquid fuels such as diesel. In addition, Maplewood owns and controls its gas collection system and will continue to maintain its own flare. Maplewood accordingly does not need INGENCO to destroy the landfill gas as required by 40 CFR Part 60, Subpart WWW. Based on our understanding of the facts of this situation, it appears that the purpose of the USA Waste of Virginia, Inc./INGENCO purchase agreement is to allow INGENCO to purchase landfill gas to either run its engines or to sell to other purchasers, not to destroy nonmethane organic compounds (“NMOC”).....

The Commonwealth of Virginia has been granted full approval of the PSD and Title V operating permit programs. As the permitting authority, you must ultimately determine whether Maplewood and INGENCO are under common control for purposes of implementing your PSD and Title V programs. However, if EPA were making the determination, we would find, based on the facts outlined above, that Maplewood and INGENCO are not under common control...”

The key factor in this determination was the ability of the INGENCO facility to use fuels other than landfill gas to power its engines, which freed the INGENCO facility from a dependency on the landfill as a fuel supplier, and the ability of the landfill to manage its gas independently of the INGENCO engines. This determination could be applicable to the current situation for GRS, if one substituted “liquid fuels such as diesel” for “landfill gas from a different landfill”. The type of fuel is irrelevant; it is the supplier of the fuel that can create or break the dependency relationship.

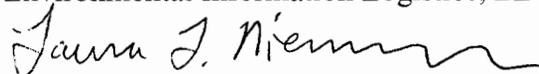
EIL believes that in the case of the GRS power plant in Illinois, if the plant has the ability to receive landfill gas from more than one landfill “supplier” there is no dependency between GRS and Landfill A and thus no basis for a “common control” designation. There would then be no basis for attempting to link GRS, Landfill A and Landfill B together as a single source under PSD either.

To summarize, I am requesting USEPA’s concurrence that if a second, independently owned landfill begins to send its gas to an existing landfill gas recovery facility, that the USEPA would not consider all three facilities (two independent landfills, and gas recovery facility) to be a single source for the purposes of PSD.

I greatly appreciate your help with this matter, as there are other green power projects in Illinois in similar situations (i.e. two independent landfills desiring to send gas to one plant) which could potentially be expanded given a favorable outcome of source status determination.

Please let me know if you need any additional information in order to issue a determination. I can be reached at (616) 891-2592.

Sincerely,
Environmental Information Logistics, LLC



Laura L. Niemann, P.E.
Senior Project Engineer

Cc: Matt Nourot, Gas Recovery Systems LLC
Mike Davidson, Kunj Patel and Yasmine Keppner, Illinois EPA