



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

APR 06 2012

REPLY TO THE ATTENTION OF:

Michael E. Hopkins, P.E.
Assistant Chief, Permitting
Ohio Environmental Protection Agency
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

Dear Mr. Hopkins:

This letter is in response to your March 17, 2011 letter to Richard Angelbeck and Kaushal Gupta of my staff in which you requested the U.S. Environmental Protection Agency's input on your office's determination that Spinnaker Coating, LLC (Spinnaker) is subject to the requirements of 40 C.F.R. Part 63, Subpart KK and that its two facilities constitute a single source for purposes of applicability of Title V of the Clean Air Act. We have since received further information via email from Spinnaker and the Ohio Regional Air Pollution Control Agency (RAPCA) to clarify these issues.

Printing and Publishing MACT

When promulgating the regulations at 40 C.F.R. Part 63, Subpart KK (Subpart KK) EPA made clear that we intended requirements to which sources were subject to remain permanent. *See* 61 Fed. Reg. 27132, 27134 (May 30, 1996) ("All sources that are major sources for hazardous air pollutants (HAPs) on the compliance date or become major sources after the compliance date are required to comply permanently with the National Emissions Standards for Hazardous Air Pollutant] to ensure that the maximum achievable reductions in toxic emissions are achieved and maintained.") Further, a May 16, 1995 memo from John Seitz, Director of EPA's Office of Air Quality Planning and Standards, states ;

EPA is today clarifying that facilities that are major sources for HAPs on the "first compliance date" are required to comply permanently with the Maximum Achievable Control Technology (MACT) standard to ensure that maximum achievable reductions in toxic emissions are achieved and maintained.

EPA believes that this once in, always in policy follows most naturally from the language and structure of the statute. In many cases, application of MACT will reduce a major emitter's emissions to levels substantially below the major thresholds. Without a once in, always in policy, these facilities could "backslide" from MACT control levels by obtaining potential-to emit

limits, escaping applicability of the MACT standard, and increasing emissions to the major-source threshold (10/25 tons per year).

Seitz memo at 9.

Your letter says that you believe that Spinnaker is subject to the MACT for the printing and publishing industry at 40 C.F.R. Part 63, Subpart KK based on EPA's "once in, always in" policy. Based on both the once in, always in policy and the discussion in the preamble to the Subpart KK MACT, we agree with your determination. Therefore, because Spinnaker became subject to the requirements of 40 C.F.R. Part 63, Subpart KK on the MACT compliance date of May 30, 1999, it should continue to comply with those requirements.

Single Source Determination

A permitting authority must consider three factors in determining whether two or more facilities constitute a single source for purposes of Title V applicability: (1) whether the facilities belong to a single major industrial grouping, (2) whether the facilities are under common control of the same person, and (3) whether the facilities are located on contiguous or adjacent properties. 40 C.F.R. § 70.2. In your March 17, 2011 letter, you ask whether EPA supports your determination that Spinnaker's Plants 1 and 2 constitute a single source for Title V permitting purposes. As discussed in more detail below, based upon the facts set out in that letter and other documentation that EPA has obtained, and upon an analysis under the federal Title V rules, we agree that Spinnaker Plants 1 and 2 appear to constitute a single source for Title V permitting.

1. The facilities belong to the same industrial grouping

Stationary sources are considered part of a single industrial grouping if all of the pollutant emitting activities belong to the same major group as described in the 1987 Standard Industrial Classification Manual. 40 C.F.R. § 70.2. You indicate in your letter that the Spinnaker plants primarily coat paper to make labels and print some labels, and that they share SIC code 2671. It appears from your letter that Spinnaker does not dispute this determination. Therefore, this part of the inquiry appears to be satisfied.

2. The activities are under common control

EPA's regulations do not specify how control is defined, but EPA's practice has been to rely on a fact-specific inquiry, and includes a presumption that common ownership constitutes common control. *See* October 18, 2010 letter from Cheryl Newton, Director, Air and Radiation Division, EPA, Region 5 to Scott Huber, Summit Petroleum Corporation (Summit letter) at 3. You state in your letter that Spinnaker Plants 1 and 2 are owned by the same entity. Again, it does not appear that Spinnaker disputes this finding. Therefore, this part of the inquiry appears to be satisfied.

3. The activities are located on one or more contiguous or adjacent properties

The final part of an inquiry into whether it is appropriate to aggregate multiple facilities into a single source for permitting purposes turns on whether the activities are located on one or more contiguous or adjacent properties. As noted in the Summit letter at 4, EPA has not established precisely how far apart activities must be located to be treated as separate sources. The inquiry must be made on a case-by-case and highly fact-specific basis. Part of the inquiry is an evaluation of the nature of the relationship between the facilities and the degree of interdependence between them. *Id.*

You note in your March 17, 2011 letter that the Spinnaker plants are located approximately three miles apart along State Route 41, which is a public roadway. You further state that Spinnaker ships products between the plants so that processes, including application of coatings and other finishing activities, can be performed. RAPCA states in a May 27, 2011 Contact Report regarding a May 20, 2011 call between RAPCA and Spinnaker that 38 percent of the products generated at Plant 1 are shipped to Plant 2 for final processing, and that shipping between the plants takes place 5 days a week. Some of the final product is sent back to Plant 1 for sheet cutting. However, Plants 1 and 2 have separate product lines and production staff, and Spinnaker states in a May 26, 2011 response to the Contact Report that some functions have transferred to Plant 2 over time to decrease its dependence on Plant 1. Nevertheless, it appears from the available documentation that there remains a significant amount of shipping between the two plants for processing.

Spinnaker has raised additional points. A November 16, 2009 letter from Timothy Hoffman, the source's legal representative, to RAPCA cites to a September 2, 2009 decision by the Franklin County Common Pleas Court regarding Shelly Materials, in which the Court says "'contiguous and adjacent' are not synonymous with 'close proximity.'" However, because the Court does not have federal jurisdiction and did not analyze the facts pertinent to a contiguous-and-adjacent test, its findings are not relevant to our decision.

Mr. Hoffman further states in his letter that the definition of "facility" used in the Mandatory Greenhouse Gas Reporting Rule requires "actual physical contact" or separation by only a public roadway or right-of-way for more than one property to be considered a single facility. The definition of "facility" for purposes of the Mandatory Greenhouse Gas Reporting Rule is:

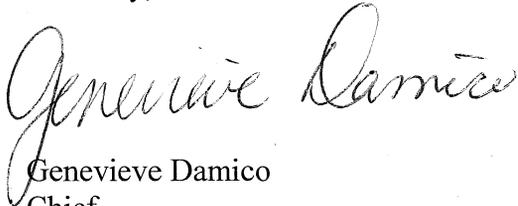
Facility means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits or may emit any greenhouse gas.

74 Fed. Reg. 56260, 56387 (October 30, 2009). However, EPA intended this definition of "facility" to apply to the Mandatory Greenhouse Gas Reporting Rule only, and thus it has no effect on how properties are aggregated for Title V permitting purposes *See id.* at 56266, footnote 4 ("For the purposes of this rule, facility means"). The October 18, 2011 Summit

letter contains EPA's most recent discussion of the relevant considerations in making a federal Prevention of Significant Deterioration aggregation determination. Based upon these points and the information available to us, it appears that the third factor of the inquiry is satisfied and that the Spinnaker plants would constitute a single source under federal regulation and policy.

Thank you for requesting our input on this matter. If you have any questions regarding this letter, please contact Kaushal Gupta, of my staff, at (312) 886-6803.

Sincerely,

A handwritten signature in cursive script that reads "Genevieve Damico".

Genevieve Damico
Chief
Air Permits Section