

July 15, 2005

(AR-18J)

Jeffrey C. Hanson, Chief
Permits and Stationary Source Modeling Section
Bureau of Air Management
Wisconsin Department of Natural Resources
101 South Webster Street
Box 7921
Madison, Wisconsin 53707-7921

Dear Mr. Hanson:

I am writing in response to your May 26, 2005, letter concerning Fox River Feeds and Utica Energy. In your letter you have requested the United States Environmental Protection Agency's (USEPA's) assistance in determining if there is a support facility relationship between these two facilities. From the information presented with your letter, we have determined that Fox River Feeds should be considered a support facility of Utica Energy under the Prevention of Significant Deterioration (PSD) program.

The PSD requirements apply to the construction of major stationary sources and major modifications at major stationary sources. See 40 CFR 52.21(i). The PSD regulations define stationary sources as any building, structure, facility, or installation that emits, or may emit any air pollutant subject to regulation under the Clean Air Act. See 40 CFR 52.21(b)(5). The regulations go on to define "building, structure, facility, or installation" as:

all of the pollutant emitting activities that belong to the same industrial grouping, are 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 will 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 number 4101-0066 and 003-005-00176-0, respectively)[40 CFR 52.21(b)(6)].

In the case of Utica Energy and Fox River Feeds, the issue of common control is clear as both entities are owned by Utica Industries. The question of support facility is not at issue unless there are collocated activities; therefore, in order to address your question, we must first consider the issue of contiguous and adjacent. A specific distance between pollutant emitting activities has never been established by USEPA for determining when

facilities should be considered separate or one source for PSD purposes. Whether facilities are contiguous or adjacent is determined on a case-by-case basis, and is based on the relationship between the facilities. The guiding principle behind USEPA guidance on this issue is the common sense notion of a plant.

It is not uncommon for ethanol production facilities to sell distillers grain, either wet or dry, as animal feed. In your letter you indicate that the wet spent grain from Utica Energy has typically been sold as animal feed. Drying the grain can be advantageous, as it will provide a longer shelf life and is easier to transport. While ethanol is the main product of this facility, animal feed is already a secondary product. From the information provided, it appears that Fox River Feeds simply serves to further process one of Utica Energy's current products. While Fox River Feeds has stated that it would be able to dry distillers grain from other ethanol plants in Wisconsin and neighboring states, the fact that all other ethanol facilities within the state are already equipped with spent grain dryers further supports the conclusion that Fox River Feeds is meant to support the current production of animal feed at Utica Energy. But for the existence of Utica Energy at a relatively close proximity, Fox River Feeds would not likely construct the grain dryer at the Pickett site. Therefore, USEPA does find that Utica Energy and Fox River Feeds should be considered to be contiguous or adjacent.

The third criterion for a single source determination is that activities must belong to the same industrial grouping. In the preamble to the PSD regulations, USEPA explained that each source is to be classified according to its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Thus, one source classification encompasses both primary and support facilities, even when the latter include units with a different two-digit SIC code. Support facilities are typically those that convey, store, or otherwise assist in the production of the principal product or group of products produced or distributed, or services rendered. See 45 FR 52676, 52695 (August 7, 1980). While not the principal product of Utica Energy, animal feed has been produced and distributed by the facility. The spent grain dryer at Fox River Feeds serves to support the production of the existing product. Therefore, USEPA finds that Fox River Feeds should be considered a support facility for Utica Energy.

It should be noted that our response is based on the definition found in the Federal PSD regulations. Because Wisconsin is implementing its own program under the approved State Implementation Plan, the Wisconsin Department of Natural Resources should make its determination based upon these approved rules. If you have any questions with respect to this letter, please contact Rachel Rineheart of my staff at (312) 886-7017.

Sincerely,

/s/

Pamela Blakley, Chief
Air Permits Section