

signed April 5, 1995

Thomas Micai, Chief
Bureau of Operating Permits
New Jersey Department of
Environmental Protection (NJDEP)
401 East State Street, CN 027
Trenton, New Jersey 08625-0027

Dear Mr. Micai:

In your letter dated January 23, 1995, you requested guidance from USEPA regarding the definition of "major source" in Part 70 regulations. You further described five situations regarding the "major source" definition on which NJDEP has received questions. You are seeking EPA's concurrence on NJDEP's draft response to these questions.

Pursuant to Part 70 rule, a major source is defined as, "...any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control..." (emphasis added). EPA interprets the term "common control" of an owner to include an operator (who is different from an owner) of a source that is operating under a contractual obligation with the owner and funded by the owner. An owner and operator having landlord-tenant or lessor-leasee type of relationship in most cases, however, is not considered as under common control of the owner. Please review Enclosure I in which we have provided our response to the five situations you listed for additional guidance.

We hope that our guidance clarifies the "major source" definition. If you have any questions, please call Umesh Dholakia at (212) 637-4023.

Sincerely,

Kenneth Eng, Chief
Air Compliance Branch

Enclosure I

Situation 1

Since there are many non-Army activities at Fort Dix, clarification is needed on which portions of Fort Dix are required to be included in the Army's operating permit application. In this specific example, the NJDEP plans to treat Fort Dix site as 15 separate facilities since each facility is under the control of a different governmental agency or private company.

EPA Response to Situation 1

EPA concurs with NJDEP's response that all non-Army, non-Department of Defense tenants, State/County and Private tenants will be treated as separate facilities from the Army facilities for determining the applicability of a Title V permit. Note that any operation at Fort Dix funded by and under a contractual agreement with the Army must be treated as part of a single Title V application from the Army.

Situation 2

An airport owned by a governmental agency leases space to various independent privately owned airlines. For the applicability determination, could the governmental agency exclude source operations owned and operated by the air lines? NJDEP believes the answer is yes.

EPA Response to Situation 2

EPA concurs with NJDEP's conclusion. Each airline would be subject to a separate applicability determination.

Situation 3

Can a cogen facility located at the same site as a chemical plant but owned and operated by a different owner be considered as a separate source? NJDEP believes that it can be considered as a separate source.

EPA Response to Situation 3

EPA concurs with NJDEP's opinion provided there is no corporate relationship between the two companies. Note that a corporate relationship is said to exist when a cogen is jointly owned by the chemical company or a subsidiary of the chemical company. In addition, the cogen should be supplying electricity/steam as part of a contract with the chemical company. The reviewing authority will make such a determination on a case by case basis and ensure that such contracts are not intended merely to circumvent environmental regulations.

Situation 4

A land development company leases parcels to industrial companies. NJDEP believes that the land development company is not responsible for obtaining an operating permit for an entire site.

EPA Response to Situation 4

EPA concurs with NJDEP's conclusion provided a landlord-tenant relationship exists between the land development company and the industrial companies.

Situation 5

Company A is responsible for the remediation on the property it sold to Company B. Which company is required to include remediation activity in a Title V permit if both are major? NJDEP believes the Company B should be responsible.

EPA Response to Situation 5

EPA concurs with NJDEP's conclusion. In addition, any emission control requirements (e.g., air stripper) for the remediation activity must also be listed in Company B's Title V permit.