

August 1, 2000

W. Clark Smith
Supervisor, Air Quality Permitting Section
Department of Environmental Quality
P.O. Box 98922
Lincoln, NE 68509-8922

Dear Mr. Smith:

This letter is in response to your letter dated June 22, 2000 in which you requested guidance about the interpretation of ambient air under the Prevention of Significant Deterioration program. The specific situation you described is that a source has purchased adjacent agricultural land. A three-strand barb-wire fence will enclose the land. The source will also post "no trespassing" signs around the perimeter and at all entrances. All the entrances to the land will be gated and locked. The source plans to enter into a "License Agreement" with a farmer that would:

- 1) rent the land to the farmer;
- 2) allow the farmer to use the land for the sole purpose of agricultural production (farming);
- 3) restrict access to the property for the sole purpose of farming and to the farmer and those persons under the farmer's supervision for the sole purpose of engaging in farming; and
- 4) the farmer is required to maintain a secure point of access to and from the property by keeping the gate locked at all times except when entering and exiting and by not acting or failing to act in any manner that may jeopardize the secured access to the property.

First, your letter did not state if there is a public road between the facility and the adjacent land that the source purchased. As you know, the location of any public road would be considered ambient air.

Second, ambient air is defined in 40 CFR 50.1(e) as that portion of the atmosphere, external to buildings, to which the general public has access. The farmer and others under his supervision are the general public since they are not employees or contractors of the adjacent source. Therefore, the farm land would be considered ambient air. This understanding has been used in similar determinations by the EPA. For example, a water district planned to build a sludge incinerator on a large tract of fenced land they owned. They planned to lease office space on the property to private parties but still control access to the property. The EPA determined this was ambient air.

Third, we are concerned that a three-strand barb-wire fence and “no trespassing” signs may not be adequate to keep the general public off the land. Three-strand barb-wire fences are easy to cross and signs could be ignored. This is an issue that would require more consideration if the land is not leased to a farmer.

Contact Ward Burns of my staff at (913) 551-7960 if you have any questions.

Sincerely,

Donald C. Toensing
Chief
Air Permitting and Compliance Branch

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