

November 16, 1994

Ms. Lisa J. Thorvig
Division Manager, Air Quality Division
Minnesota Pollution Control Agency
520 Lafayette Road, North
St. Paul, Minnesota 55155-4194

Dear Ms. Thorvig:

This is in response to your August 5, 1994 letter requesting that the Environmental Protection Agency (EPA) make a policy decision on whether to require stationary sources to include all of their operations in their applications for construction or operating permits, pursuant to title I or title V, respectively, of the Clean Air Act (Act). Specifically, you requested that the EPA issue policy guidance ensuring consistent treatment of temporary and contracted operations at stationary sources.

As you are aware, the definition of major source found in 40 CFR 70.2 requires all stationary sources located on contiguous or adjacent properties under common control and belonging to a single major industrial grouping to be considered as the same source. This approach of grouping sources according to their 2-digit Standard Industrial Classification (SIC) code has been established in the New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs under title I of the Act and is a result of the Alabama Power decision (see Alabama Power v. Costle, 636 F.2d 323, 360 (D.C. Cir., 1979)). In section 112 of the Act and 40 CFR part 63, however, a major source is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits (or has the potential to emit considering controls) above a threshold level of hazardous air pollutants (HAP). Consequently, the SIC codes of the sources are not considered in defining major sources of HAP. It is important to note that there are no provisions in title I or title V of the Act, or in regulations developed pursuant to them, for excluding contracted or temporary operations in defining major sources.

Accordingly, it is the EPA's policy that temporary and contractor-operated units be included as part of the source with which they operate or support. A recent informal survey of the EPA Regional Offices confirmed that States are including these operations in defining major sources. Thus, I wish to affirm that it is appropriate to continue this practice for the purposes of title V and section 112 permitting.

Due to the critical importance of determining which sources are major under the Act, we appreciate your scrutiny regarding treatment of contracted and temporary operations. Moreover, we invite discussion of additional applicability issues that may arise.

We appreciate this opportunity to be of service and trust this information will be helpful to you.

Sincerely,

/s/

John S. Seitz
Director
Office of Air Quality Planning
and Standards

cc: Air Division Director, Regions I-X