



Memorandum

TO: PA BAQ

FROM: Marcellus Shale Coalition

DATE: October 4, 2011

RE: MSC White Paper on Source Determinations for the Oil and Gas Industry for Transmittal to BAQ Version 2

The members of the Marcellus Shale Coalition's ("MSC") Air and Emissions Subcommittee listened with interest at the Committee's meeting with representatives of the Pennsylvania Department of Environmental Protection ("PA DEP"), Bureau of Air Quality ("BAQ") on June 22, 2010. As you know, the MSC learned that BAQ is currently engaged in the development of technical guidance to assist in the evaluation of oil and gas facilities at multiple locations for possible aggregation into single source for permitting purposes. This process is commonly referred to as "source aggregation." Given the MSC's keen interest in the predictable and timely permitting of its members' planned oil and gas facilities in Pennsylvania, the MSC would like to provide the BAQ with this White Paper raising a number of our concerns for your consideration in the development of such guidance.

Background

The ability of state permitting authorities and the federal EPA to aggregate multiple operations into a single major source permit is founded upon the definition of "stationary source" within the Clean Air Act ("CAA" or "the Act") and the regulations promulgated under the Act to implement the NSR/PSD program and the Title V Operating Permit Program. The counterpart to the federal CAA is the Pennsylvania Air Pollution Control Act ("APCA").¹

The Act defines a "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant."² *Alabama Power Co. v. Costle*³

¹ 35 PA. STAT. ANN. § 4001 et seq.

² 42 U.S.C. § 7411 (a)(3). The APCA defines an air contamination source as "any place, facility or equipment, stationary or mobile, at, from or by reason of which there is emitted into the outdoor atmosphere any air contaminant." 35 PA. STAT. ANN. § 4003.

³ *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1979).

established boundaries on the scope of a source such that “(1) it must carry out reasonably the purposes of PSD; (2) it must approximate a common sense notion of ‘plant’; and (3) it must avoid aggregating pollutant-emitting activities that as a group would not fit within the ordinary meaning of ‘building,’ ‘structure,’ ‘facility,’ or installation.”⁴ In response, in the 1980 amendments to the PSD regulations, EPA clarified that emissions from operations may be aggregated and considered a single major source for PSD permitting if they meet each of the following three criteria.

1. The sources are located on one or more “contiguous or adjacent” properties
2. The sources are under common control of the same person (or persons under common control)
3. The sources belong to a single major industrial grouping (same two digit major SIC code)

Only if all three criteria are met will the CAA permitting authority aggregate the operations into a single NSR/PSD permit. After the 1990 CAA Amendments created the Title V Operating Permit Program, this three-factor analysis was extended to Title V major source permitting.⁵

When analyzing this regulatory scheme it is important to acknowledge, as did the *Alabama Power* court, the purpose of the PSD regulations. In the 1980 background document the EPA pointed out that the scope of its source definition “would serve the purposes of PSD adequately by requiring review of those major projects that would cause air quality deterioration” but “would operate to avoid review of projects that would not increase deterioration significantly.”⁶ Thus the EPA had determined that limiting a source to those activities that fell within the three prong analysis adequately met the PSD requirement “to maintain air quality within the applicable increments.”⁷

As the BAQ is aware, EPA has recently addressed the issue of CAA source determinations in the oil and gas industry in a guidance document from the EPA Office of Air and Radiation (“McCarthy Memo”).⁸ The McCarthy Memo withdrew earlier

⁴ 45 Fed. Reg. 52676, 52694-95 (Aug. 7, 1980).

⁵ 42 U.S.C. § 7661 (2). It is important to keep in mind that the three factor test for aggregation must be considered in light of the requirements under *Alabama Power Co. v Costle*. A source must meet the component terms of stationary source (building, structure, facility or installation) and comport with the common sense notion of a plant.

⁶ 45 Fed. Reg. 52676, 52693 (Aug. 7, 1980).

⁷ *Id.*

⁸ See “Withdrawal of Source Determinations for Oil and Gas Industries,” memorandum from Gina McCarthy to Regional Administrators (September 22, 2009) (hereinafter *McCarthy Memo*) withdrawing

guidance from EPA which concluded that the three prong aggregation analysis for oil and gas activities should begin by looking at and focusing more heavily on the proximity of the surface locations.⁹ The McCarthy Memo recognized that source determinations in the oil and gas industry will continue to be complex, and re-emphasized that the regulations list three criteria to be used in the analysis. The McCarthy Memo then acknowledged that there will be cases in which proximity is the “overwhelming factor,” but the agency is not going to pre-judge that by using a simplified approach, and that “reasoned decision-making” of each of the relevant factors needs to occur on a case-by-case basis.¹⁰

Recently Colorado Department of Public Health and Environment (“DPHE”) issued its final decision on the Kerr-McGee/Anadarko Frederick Compressor Station¹¹ in response to Administrator Jackson’s order for Colorado to review the permit.¹² This decision reemphasizes the use of this three prong analysis for source aggregation determinations. In this response the state of Colorado undertook a thorough case by case analysis of the Kerr-McGee Frederick Compressor Station operations as well as an extensive review of past aggregation decisions. From this Colorado determined that the Frederick Compressor Station should *not* be aggregated with the surrounding oil and gas production locations.¹³ The MSC believes the thorough analysis in the Colorado decision may be helpful to BAQ in developing its technical guidance.

The Role of SIC Codes in Source Determinations

The 1980 preamble to the PSD regulations established the use of two-digit major SIC codes in lieu of analyzing functional interdependence of sources. The Agency specifically addressed this issue stating that “any assessment of functional interrelationships would be highly subjective” and “any attempt to assess those interrelationships would have embroiled the Agency in numerous, fine-grained analysis.”¹⁴ In response to these concerns the Agency chose to adopt the use of SIC

the 2007 EPA memo “Source Determinations for Oil and Gas Industries,” memorandum from William L. Wehrum to Regional Administrators (January, 12, 2007) (hereinafter *Wehrum Memo*).

⁹ See Wehrum Memo.

¹⁰ McCarthy Memo.

¹¹ “Response of Colorado Department of Public Health and Environment, Air Pollution Control Division, to Order Granting Petition for Objection to Permit,” Petition No. VIII-2008-02 (July 14, 2010) (hereinafter *Colorado Permit*). The EPA denied Wild Earth Guardian’s (WEG) petition to object (76 Fed. Reg. 10361 (February 24, 2011)). In response WEG petitioned for review to the 10th Circuit Court of Appeals. The court granted that petition and a briefing schedule has been set.

¹² “Order Granting Petition for Objection to Permit,” Petition No. VIII-2008-02 (October 8, 2009).

¹³ Colorado Permit at 42.

¹⁴ 45 Fed. Reg. 52676, 52695 (Aug. 7, 1980).



codes in the aggregation analysis. The Agency pointed out that SIC codes are “narrow enough to separate sets of activities into common sense groupings” yet “broad enough to minimize the likelihood of artificially dividing a set of activities that does constitute a plant.”¹⁵ The EPA also intended the use of the SIC code prong to ensure predictability when aggregating activities.¹⁶

However, beginning in the 1990s, long after EPA promulgated its 1980 PSD regulations, the Agency began to emphasize the role of “functional interdependence” between and among multiple sources being considered for aggregation in a number of informal regulatory interpretation letters involving source determinations under the CAA.¹⁷ Some of these letters posed a number of questions to be asked about sources being evaluated for possible aggregation such as whether the sources were connected by pipelines, conveyors, roads, and other means by which materials and products or intermediate products are transferred between them. In some cases, the answers to these questions led the Agency to recommend the aggregation of sources connected by such structures on the basis that they acted as a single source even though separated by significant distances and therefore not “contiguous or adjacent”. This methodology has led to inconsistent results.

As the EPA pointed out in its preamble, analyzing the functional interrelationship of activities would “embroil[] the Agency in numerous, fine-grained analyses.”¹⁸ Functional interdependence would be an abstract factor which would “reduce[] the predictability of aggregating activities.” In addition to increasing uncertainty and draining agency resources, aggregating activities based on function can “severely strain the boundaries of even the most elastic of the four terms, ‘building,’ ‘structure,’ ‘facility,’ and ‘installation.’”¹⁹ Furthermore, analyzing functional relationships would be highly subjective and make analyzing the scope of a source much more difficult.²⁰ As noted, using functional interdependency has led to inconsistent result which is in direct opposition to the purposes outlined by EPA to ensure predictability in aggregation by using SIC code in lieu of a functional interrelationship analysis.

The MSC believes, and the industry has long maintained, that reliance by the EPA on physical connections between non-contiguous and non-adjacent operations as a basis

¹⁵ *Id.*

¹⁶ 45 Fed. Reg. 52676, 52695 (Aug. 7, 1980).

¹⁷ Colorado Permit at 16-21.

¹⁸ 45 Fed. Reg. 52676, 52695 (Aug. 7, 1980).

¹⁹ *Id.*

²⁰ *Id.*

for aggregating them into a single CAA major source permit is improper and not supported by the statute, applicable case law, and EPA's own regulations. Additionally the use of functional interdependence can lead to conflicting and unpredictable permitting. Furthermore, the use of functional interdependency cannot be used in lieu of performing the case by case analysis using the three factors.

The Proximity of Oil and Gas Facilities

To be aggregated, operations must be contiguous or adjacent. Unfortunately the terms "contiguous or adjacent" have never been officially defined.²¹ Several decisions, including the Colorado Frederick Station decision, chose to use the dictionary definition of these terms.²² Those definitions are:

Contiguous: being in actual contact; touching along a boundary or at a point

Adjacent: not distant; nearby; having a common endpoint or border

The proximity of oil and gas operations is a unique factor in this industry. The *Costle* court instructed EPA that the definition of source should "provide explicit notice as to whether (and on what statutory authority) EPA construes the term source, as divided into its constituent units, to include . . . 'long-line' operations such as pipelines."²³ Oil and gas facilities are physically located based upon the ability to efficiently and economically extract the mineral resource. Oil and gas conservation laws and regulations also dictate proximity through spacing, pooling and unitization orders intended to prevent waste and promote the efficient production of the natural resource. The vast majority of the MSC's members' facilities are not, and will not be, "contiguous or adjacent" within the plain meaning of those terms, and are and will be located on separate leases separated by significant distances, consistent with the engineering, operational and spacing requirements applicable to such facilities. In response to this reality, Colorado noted that "such large, complex and dynamic processes generally do not fit consistently within the common sense notion of a plant."²⁴

Even though oil and gas facilities are connected by pipelines, most, if not all, operate independent of one another by design, to enhance production and reliability. The Agency responded to the *Costle* court's admonition to provide "explicit notice" regarding aggregation of "long-line" activities in the 1980 preamble stating that "it does not intend 'source' to encompass activities that would be many miles apart along a long-line

²¹ Colorado Permit at 12.

²² Colorado Permit at 15.

²³ 45 Fed. Reg. 52676, 694 (Aug. 7, 1980).

²⁴ Colorado Permit at 4.

operation”²⁵ and then specifically used a pipeline as an example. Any suggestion that operations connected to one another by pipelines across significant distances should somehow render them “contiguous or adjacent” is a serious misapplication of the required three-factor analysis. Furthermore, the fact sources are connected by a pipeline does not indicate the operations are part of the same emission source.²⁶

Several states have developed their own guidance documents for aggregation.²⁷ Since the terms contiguous and adjacent have not been defined, and determining what is adjacent is notoriously difficult, many states have used a ¼ mile rule of thumb.²⁸ Historically oil and gas operations located beyond ¼ mile of one another have not been considered adjacent. Furthermore, activities located within ¼ mile of each other only prompts the state to take a closer look and apply the three factor case by case analysis. It is important to note that operations within a ¼ mile radius are *not* automatically aggregated; it simply triggers the state to perform additional analysis. Additionally Texas noted in their guidance that “for oil and gas activities, the surface areas on which a stationary source has been located, including any immediate area graded or cleared for such stationary sources, is considered property.”²⁹ As states have addressed the question of adjacency they have been mindful that the 1980 preamble clearly indicated the EPA did not intend to aggregate long-line operations such as activities connected by a pipeline.³⁰

Over the years the EPA has misinterpreted the proximity analysis and substituted the use of functional interdependency.³¹ As outlined above, the EPA was very clear in

²⁵ 45 Fed. Reg. 52676, 52695 (Aug. 7, 1980).

²⁶ Colorado Permit at 5.

²⁷ See, e.g., Texas Commission on Environmental Quality “Definition of Site Guidance,” available at http://www.tceq.state.tx.us/permitting/air/guidance/titlev/tv_fop_guidance.html; Oklahoma Department of Environmental Quality guidance entitled “Permitting Collocated Facilities,” available at <http://www.deq.state.ok.us/factsheets/>; and Louisiana Department of Environmental Quality guidance entitled “Interpretation of Contiguous for Oil and Gas,” available at <http://www.deq.state.la.us/portal/tabid/2347/Default.aspx>.

²⁸ It is important to note that the use of the ¼ mile rule of thumb has never been formalized in any state or federal statute or regulation.

²⁹ Texas Commission on Environmental Quality “Definition of Site Guidance,” available at http://www.tceq.state.tx.us/permitting/air/guidance/titlev/tv_fop_guidance.html, at 1.

³⁰ 45 Fed. Reg. 52676, 695 (Aug. 7, 1980). As Louisiana noted in their guidance document, facilities should not be daisy-chained together for permitting purposes. For example, if Pad A is ¼ mile from Pad B which is ¼ mile from Pad C but Pads A and C are more than a ¼ mile apart, a daisy-chain of all three pads should not be used to establish contiguous and adjacent.

³¹ Colorado Permit at 16-21. CDPHE thoroughly researched and analyzed prior EPA aggregation determinations. The state’s review clearly shows how functional interdependency has been misused in

the preamble to eliminate this “fine grained” analysis.³² Colorado pointed out that “‘interdependency,’ which many individual EPA determinations consider, is *not* discussed in the 1980 Preamble or mentioned in the final PSD or Title V regulation defining ‘source.’”³³

The MSC’s members therefore urge the BAQ to remain mindful of the unique operational requirements of oil and gas exploration and production, and to avoid aggregating activities, even if connected by pipelines, that are not contiguous or adjacent and do not fall within the common sense notion of a plant.

Common Control in Aggregation Decisions

The EPA relies on the Securities and Exchange Commission (“SEC”) definition of control.³⁴ The SEC defines control as “the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person (or organization or association) whether through ownership of voting shares, contract, or otherwise.” In their guidance documents both Texas and Oklahoma provided a list of factors to consider when determining common control.³⁵ These factors include ownership, decision making authority, and contractual relationships.³⁶

Oil and gas operations often depend on the operator of the facility to make the day to day decisions for that site. However, many operations have multiple owners that may be able to assert operational control through the contractual agreements. While control may be determined by looking at who is listed as the operator for the location, often control is a far more complicated picture.

For instance, oil and gas production locations often have an operator, working interest owners, royalty owners, and over riding royalty owners. Depending on the nature of the contracts, each of these parties may have the ability to assert operational control.

prior determinations and has led to inconsistent determinations. The EPA clearly understood the potential problem associated with a functional interdependency analysis and intended to avoid this by implementing the use of SIC codes in the three prong test based on their statements in the 1980 preamble.

³² 45 Fed. Reg. 52676, 52695 (Aug. 7, 1980).

³³ Colorado Permit *at 14* (emphasis added).

³⁴ See “Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Emission Offset Interpretive Ruling,” 45 Fed. Reg. 59874, 878 (Sept. 11, 1980).

³⁵ See, e.g., Texas Commission on Environmental Quality “Definition of Site Guidance,” available at http://www.tceq.state.tx.us/permitting/air/guidance/titlev/tv_fop_guidance.html; and Oklahoma Department of Environmental Quality guidance entitled “Permitting Collocated Facilities,” available at <http://www.deq.state.ok.us/factsheets/>.

³⁶ *Id.*

In addition to the complex ownership structure of the production locations, the compressor stations and gathering lines may also have multiple owners and these are often separate from the owners and operators of the wells.

Additionally, ownership and control of oil and gas operations are constantly evolving. Unlike many industries where one party will own and operate a location for several years and may never sell or change management, the control of oil and gas operations changes regularly. This constant ownership fluctuation would create regulatory havoc if the operations were aggregated into a single operating permit.

These complex ownership structures are unique to oil and gas operations. While operations at one location may affect another site this does not lead to the type of control that is required for an aggregation determination. Instead the control must be the type allows one entity to make the day to day decisions that affect the operations of the location.

Misapplication of Functional Interdependence

In addition to Colorado's Frederick Compressor station decision the EPA has recently released three additional aggregation decisions applying for oil and gas operations.³⁷ First, in the EPA Response to Colorado Permit the Agency responded to Wild Earth Guardian's request for EPA to review the Colorado Permit. In its response the EPA noted that the Colorado Permit is "substantively consistent with federal regulations and appropriately considered guidance" from the McCarthy Memo.³⁸ EPA denied Wild Earth Guardian's request for objection³⁹ and the decision has been appealed to the United States Court of Appeals for the Tenth Circuit.⁴⁰

Similarly EPA responded to comments for a Title V permit for British Petroleum's ("BP") Florida River compressor station. In responding to comments on aggregation the EPA thoroughly analyzed BP's operations and again reiterated that this analysis is a case by case determination.⁴¹ The petitioner erroneously argued that

³⁷ See "Response to Comments on the Florida River Compression Facility's March 28, 2008 Draft Title V Permit to Operate" (hereinafter *Florida River*); Letter from Cheryl L. Newton, Director, Air and Radiation Division to Scott Huber, Summit Petroleum Corporation (Oct. 18, 2010) (hereinafter *Summit Petroleum*); Letter from Callie A. Videtich, Director, Air Program, to Jeremy Nichols, Wild Earth Guardians (Oct. 18, 2010) (hereinafter *EPA Response to Colorado Appeal*).

³⁸ EPA Response to Colorado Permit at 1.

³⁹ See "Order Denying Petition for Objection to Permit," Petition No. VII-2010-4 (Feb. 2, 2011).

⁴⁰ See "Petition for Review," Appellate Case NO. 11-9527 (April 25, 2011)

⁴¹ *Florida River* at 10.

functional interdependency should establish facilities as being “contiguous or adjacent.”⁴² The EPA noted that functional interdependency does not make locations contiguous or adjacent however, the Agency went on to say that “emission points separated by significant distances can be ‘adjacent’ (and thus a single source) based on their interrelatedness, such determinations were *only made in circumstances in which those emission points had a unique or dedicated interdependent relationship with one another.*”⁴³ This approach clearly contradicts the requirements under the 1980 preamble which expressly removed any need to analyze functional interdependence by establishing the SIC code prong of the test. However, EPA’s final determination not to aggregate the facilities was appropriate since the facilities which were spread over a great distance and only connected by a pipeline is not “contiguous or adjacent” within the plain meaning of the terms nor does it satisfy the common sense notion of a plant.⁴⁴

While the EPA made the appropriate decision in the Florida River case, a misuse of a functional interdependence analysis led to a contradictory decision in Summit Petroleum.⁴⁵ Here Summit explained that their operations were not contiguous or adjacent because the wells and compressor station were separated by 500 feet to more than 8 miles and only connected by pipeline.⁴⁶ Again, the EPA looked at the functional interrelationship of the facilities in lieu of analyzing whether the facilities were contiguous or adjacent to determine if the facilities should be aggregated. As Summit pointed out these facilities are not contiguous or adjacent and do not meet the common sense notion of a plant.⁴⁷ However, the EPA disagreed and directed Summit to aggregate the sources under one permit.⁴⁸

Both Florida River and Summit Petroleum should not be aggregated under the three prong analysis. While the facilities are the same SIC code and for the most part under common control they are *not* contiguous and adjacent.

⁴² *Id.* at 9.

⁴³ *Id.* at 9.

⁴⁴ In response to EPA’s decision to issue the Title V permit, Wild Earth Guardians filed a “Petition for Review” before the Environmental Appeals Board. *See* “Petition for Review” Permit No. V-SU-0022-05.00 (Nov. 18, 2010). The Environmental Appeals Board ordered the parties to enter into and are currently participating in arbitration. *See* “Order Extending Stay of Proceedings to Continue ADR Process” Permit No. V-SU-0022-5.00 (July 5, 2011).

⁴⁵ *See* Summit Petroleum.

⁴⁶ *Id.* at 5.

⁴⁷ *Id.* at 6.

⁴⁸ Summit Petroleum appealed to the United States Court of Appeals for the Sixth Circuit EPA’s determination to aggregate Summit’s operations. *See* Petition for Review of Final Action of the United States Environmental Protection Agency,” Case No. 09-4348 (April 1, 2011).

EPA has repeatedly gone against its own regulations when analyzing aggregation by failing to properly apply the three prong analysis and introduce functional interdependence in lieu of proximity. This approach was expressly rejected by the EPA in the 1980 preamble.⁴⁹ This misapplication of the factors has led to embroiling both state agencies and the EPA in highly subjective fine-grained analysis which the EPA expressly sought to avoid. Furthermore, this methodology has created inconsistent results across many industries, not just oil and gas, making permitting unpredictable which again the EPA intended to avoid.

Additional Considerations in the Development of Technical Guidance

The MSC's members suggest that the BAQ consider some additional factors that courts have also found appropriate in the review of source determinations under the CAA. Courts have acknowledged the heavy administrative burden potentially associated with source determinations in the oil and gas sector. Given the pace at which exploration and production activities proceed (and must proceed); the timeliness of permitting becomes a major concern. However, if emissions from many oil and gas operations are aggregated into single major source permits, the ability to modify permits to add additional activities will become a very significant constraint and source of delay for operators while also creating a large burden for permitting authorities such as PA DEP. Rather than impose undue burdens on the agency's limited staff resources, we urge BAQ to be cautious in its approach to source determinations for the oil and gas sector, and suggest that any technical guidance to be developed consider the approach taken in other oil and gas producing states

Furthermore, oil and gas locations are typically minor sources which are subject to federal and state performance standards.⁵⁰ Additionally, EPA recently proposed new and revised NSPS and NESHAPs standards for the oil and gas sector.⁵¹ The equipment being installed at these locations is the latest technology and effective at controlling air emissions. In its analysis Colorado reviewed any potential emissions reductions through aggregation and determined that aggregation would not lead to a significant environmental benefit.⁵² It is evidenced that these requirements serve the purpose of

⁴⁹ 45 Fed. Reg. 52676, 52695 (Aug. 7, 1980).

⁵⁰ Pennsylvania guidance currently considers oil and gas exploration and production facilities to be of minor significance. Oil and gas compressor stations are typically minor sources. See Department of Environmental Protection: Air Quality document "Air Quality Permit Exemptions" dated (July 26, 2003).

⁵¹ Oil and Natural Gas Sector: New Source Performance Standards and Emission Standards for Hazardous Air Pollutants Reviews; Proposed Rule, 76 Fed. Reg. 52738 (Aug. 23, 2011).

⁵² Colorado Permit at 41. The Colorado Frederick Station decision addressed the benefit of aggregating the compressor station and associated wells. The decision established that aggregation in that situation, which is typical of oil and gas operations, would not create a reduction in air emissions.

protecting the air shed without additional aggregation. The source definition established by EPA was intended to only aggregate “major projects that would cause air quality deterioration” but “avoid review of projects that would not increase deterioration significantly.”⁵³ The MSC suggests that any potential air quality benefits of aggregation in the oil and gas sector would be very greatly outweighed by the administrative burdens of such an approach. Furthermore, the modifications being made to the GP-5 will be adequate to address any concerns the state may have regarding emissions from oil and gas operations.

Unlike the nonattainment provisions which were designed to prevent excess increases in emissions and reduce emissions the goal of PSD is to maintain air quality.⁵⁴ EPA thoroughly analyzed its definition of source to ensure that it only required “review of those major projects that would cause air quality deterioration” but “avoid review of projects that would not increase deterioration significantly.”⁵⁵ The EPA did not intend PSD to reduce increment consumption in nonattainment areas but instead to protect the air shed. The current definition ensures that those activities that “would not significantly worsen air quality” escape review and are not aggregated together.⁵⁶

Most states, including Pennsylvania, have SIP-approved minor source permitting programs and delegation of authority to implement federal NSPS and NESHAP programs. There are several NSPS and NESHAP standards that apply to the oil and gas industry and are intended to reduce criteria air pollutant emissions and hazardous air pollutant (HAP) emissions, respectively. Many of the NESHAP requirements also have the collateral benefit of reducing some criteria pollutants. Examples of common NSPS Subparts that apply to oil and gas industry include: 40 CFR Part 60 Subparts Dc, Kb, KKK, LLL, IIII, and JJJJ. NESHAP subparts that frequently apply to the oil and gas industry include: 40 CFR Part 63 Subparts HH, HHH, and ZZZZ. These control requirements serve to further reduce emissions from minor sources in the oil and gas sector (and especially for newer equipment), thereby making NSR regulation of those sources much less beneficial, even while such regulation is unquestionably burdensome to all concerned (including involved agencies). Furthermore, as the BAQ is well aware, the EPA is in the process of reviewing these standards and expanding their application to include additional emission sources.

Finally, it is relevant to note that Congress did consider aggregation of oil and gas operations when it directed EPA to develop the NESHAPs rules. In the CAA Section

⁵³ 45 Fed. Reg. 52676, 52693 (Aug. 7, 1980).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ 45 Fed. Reg. 52676, 52694 (Aug. 7, 1980).

112(n)(4) Congress specifically exempted oil and gas from aggregation for HAPs purposes.⁵⁷ Congress found that emissions from oil and gas operations “are typically located in widely dispersed geographic areas, rather than concentrated in a single area.”⁵⁸ In response the EPA wrote in the 1999 preamble that the definition of facility should “lead to an aggregation of emissions in major source determinations that is reasonable, consistent with the intent of the Act, and easily implementable [.]” Consequently the EPA determined it was not appropriate to aggregate oil and gas facilities.⁵⁹

Clearly the EPA and Congress have contemplated aggregation of oil and gas operations and determined that aggregation is not a suitable method to reduce NESHAPs pollution.⁶⁰ In the same way, Colorado analyzed the affect of aggregation for other criteria pollutants and determined aggregation would not result in significant emissions reduction.⁶¹ While other regulatory schemes are in affect to control and limit emissions from oil and gas operations, aggregation is not the appropriate vehicle to accomplish this goal.

Conclusion

The MSC’s members appreciate the opportunity to provide BAQ with this White Paper regarding source determinations under the NSR/PSD and Title V operating permit programs in Pennsylvania. While not comprehensive, we hope it is useful to BAQ. Furthermore, we would be happy to provide BAQ with any additional information or follow up discussions on this topic as the agency moves toward developing its own guidance document.

⁵⁷ 42 U.S.C. § 7412 (n)(4).

⁵⁸ 136 Cong. Rec. H12848-01.

⁵⁹ 40 Fed. Reg. 32610, 32618 (June 17, 1999).

⁶⁰ *Id.*

⁶¹ Colorado Permit *at* 41.