

The EPA Administrator, Gina McCarthy, signed the following notice on 8/18/2015, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website (<http://gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2013-0685. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 51, 52, 70, and 71**

**[EPA-HQ-OAR-2013-0685; FRL-9931-97-OAR]**

**RIN 2060-AS06**

### **Source Determination for Certain Emission Units in the Oil and Natural Gas Sector**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is proposing to clarify the term “adjacent” in the definitions of: (1) “building, structure, facility or installation” used to determine the “stationary source” for purposes of the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs and (2) “major source” in the title V program as applied to the oil and natural gas sector. The EPA has previously issued guidance on how to assess “adjacency” for this industry, but the use of the guidance has been challenged, resulting in uncertainty for the regulated community and for permitting authorities. The EPA is proposing to clarify how properties in the oil and natural gas sector are determined to be adjacent in order to assist permitting authorities and permit applicants in making consistent source determinations for this sector. In this action, the EPA is proposing two options for determining whether two or more properties in the oil and natural gas sector are “adjacent” for purposes of defining the “stationary source” in the PSD and NNSR programs, and “major source” for the title V program (referred to collectively as “source”). The preferred option would define “adjacent” for the oil and natural gas sector in terms of proximity. The EPA is co-proposing and taking

comment on an alternative option to define “adjacent” in terms of proximity or functional interrelatedness.

**DATES: Comments.** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Public Hearing.* The EPA will hold public hearings on the proposal. Details will be announced in a separate notice.

**ADDRESSES: Comments.** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2013-0685, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. If you need to include CBI as part of your comment, please visit <http://www.epa.gov/dockets/comments.html> for instructions.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. For additional submission methods, the full EPA public comment policy, and general guidance on making effective comments, please visit

<http://www.epa.gov/dockets/comments.html>. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For further general information on this rulemaking, contact Ms. Cheryl Vetter, Office of Air Quality Planning and Standards (C504-03), U.S. Environmental Protection Agency, by phone at (919) 541-4391, or by email at [vetter.cheryl@epa.gov](mailto:vetter.cheryl@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. Does this proposal apply to me?*

Entities potentially affected directly by this proposal include owners and operators of sources of new and modified oil and gas sector operations. Such entities are expected to be in the groups indicated below. In addition, state, local and tribal governments may be affected by the rule if they update state rules to adopt these changes.

<b>Industry Group</b>	<b>NAICS Code<sup>1</sup></b>
Oil and Gas Extraction	21111
Crude Petroleum and Natural Gas Extraction	211111
Natural Gas Liquid Extraction	211112
Drilling Oil and Gas Wells	213111
Support Activities for Oil and Gas	213112
Natural Gas Distribution	221210
Pipeline Distribution of Crude Oil	486110
Pipeline Distribution of Natural Gas	486210
Federal Government	May Be Affected
State/Local/Tribal Government	May Be Affected

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#### *B. What should I consider as I prepare my comments for the EPA?*

When submitting comments, remember to:

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<sup>1</sup> North American Industry Classification System (NAICS)  
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- Identify the rulemaking by docket number and other identifying information (subject heading, *Federal Register* date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

*C. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this action will be posted at <http://www.epa.gov/airquality/oilandgas/actions.html>.

*D. How is this document organized?*

The information presented in this notice is organized as follows:

- I. General Information
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- II. Statutory, Regulatory and Policy Background for Proposal
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  - D. What are the air emissions resulting from the oil and natural gas sector?

- E. How does the EPA regulate air emissions from the oil and natural gas sector?
  - F. How has the EPA defined the source for the oil and natural gas sector previously?
  - G. What approaches has the EPA taken recently regarding implementation of NSR and title V permitting for oil and natural gas sector sources?
  - H. What is the purpose of this proposed action?
  - I. Policy Discussion
  - J. Why is the EPA proposing this action at this time?
  - K. What is the effect of this proposed rulemaking on other industries?
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- III. What are the options that the EPA is considering?
- A. Define Source Based on Proximity (Similar to the NESHAP)
  - B. Define Source to Include Exclusively Functionally Interrelated Equipment
  - C. Impacts of the Options on Air Permitting
  - D. Proposal is Limited to Onshore Oil and Gas Operations
- IV. Environmental Justice Considerations
- V. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Determination Under Section 307(d)

Statutory Authority

## **II. Statutory, Regulatory and Policy Background for Proposal**

### *A. Statutory and Regulatory Background*

The major New Source Review (NSR) programs found in parts C and D of Title I of the Clean Air Act (CAA or Act) are preconstruction review and permitting programs that apply to new and modified major stationary sources of air pollutants subject to regulation under the Act.

In areas where air quality does not meet the primary or secondary National Ambient Air Quality

Standards (NAAQS) for a given pollutant and in the ozone transport region (OTR), which includes states in the Northeast and Mid-Atlantic regions, the program is implemented under part D of title I of the Act. This is called the “nonattainment” NSR (NNSR) program. In areas that meet the NAAQS, or “attainment” areas, or where we<sup>2</sup> cannot determine whether those standards are met, or “unclassifiable” areas, the requirements under part C of title I of the Act apply. This program is called the PSD program. The regulations for these two NSR programs are found in 40 CFR 51.165, 51.166, 52.21, 52.24 and part 51, appendix S.

The NSR permitting programs are primarily implemented by state and local permitting authorities either through programs in their approved State Implementation Plans (SIPs) or through delegation of the federal program by the EPA. The EPA implements the federal PSD program and the NNSR program directly in reservation areas of Indian country and non-reservation areas of Indian country over which a tribe or the EPA has demonstrated that a tribe has jurisdiction, unless a tribe has developed a Tribal Implementation Plan (TIP). The EPA may also implement the federal PSD program directly in areas where the state or local area has not developed a SIP-approved program or has not requested delegation of the program by the EPA. States are also required to have legally enforceable procedures that will allow them to prevent the construction or modification of a source that will interfere with attainment or maintenance of a NAAQS. In addition to the major source permitting programs, this is typically accomplished through a state or local “minor” new source permitting program. The EPA implements a minor source permitting program in all reservation areas of Indian country, unless a tribe has developed

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<sup>2</sup> In this preamble, the term “we” and “our” refers to the EPA.

a TIP and in any non-reservation areas of Indian country for which a tribe, or the EPA acting in the tribe's place, has demonstrated that the tribe has jurisdiction.

The NSR program applies to new and modified stationary sources of emissions. The CAA generally defines the term "stationary source" as "any source of an air pollutant" except those emissions from certain mobile sources or engines under CAA section 216 [CAA section 302(z)]. The Act also defines some other terms that form the basis of specific NSR programs. So, for example, the PSD program requires a preconstruction permit for any "major emitting facility" constructed after a particular date [CAA section 164 (a)], and defines a "major emitting facility" as a "stationary source" emitting or with the potential to emit more than a certain amount of air pollutants [CAA section 169(1)].

Adhering to the statutory language in CAA section 111(a)(3), we have defined the term "stationary source" to mean "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant" [40 CFR 52.21(b)(5); 40 CFR 51.165(a)(1)(i); 40 CFR 51.166(b)(5)]. We have then further defined the four statutory terms "building, structure, facility, or installation" collectively in our NSR regulations to mean "all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control)," where the "same industrial grouping" refers to the two-digit Standard Industrial Classification code [40 CFR 52.21(b)(6); 40 CFR 51.165(a)(1)(ii); 40 CFR 51.166(b)(6)].<sup>3</sup> These three regulatory factors: (1) same industrial grouping; (2) location on contiguous or adjacent

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<sup>3</sup> The four-digit SIC code was the only code system in use at the time our rules were developed. This classification system has since been replaced by the six-digit NAICS, which was developed with Canada and Mexico, and is used for classifying North American businesses. While the SIC

properties; and (3) under the control of the same person or persons must be evaluated on a case-by-case basis for each permitting decision.

In addition to the pre-construction permitting requirements of the NSR program, title V of the CAA also requires a “major source” to obtain an operating permit, known as a title V permit [CAA section 501(2); CAA 502]. The title V definition of major source refers to the definitions in other sections of the Act, including the definition of major source for hazardous air pollutants (CAA section 112), the general CAA definition of major stationary source (CAA section 302) and the definition of major stationary source under the NNSR program. Each of these programs set different numerical emissions thresholds at which permitting requirements apply, which then become the basis for the major source determination in the title V program.

Our operating permit regulations define major source as “any stationary source (or group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping...” (40 CFR 70.2, 71.2). As in the NSR programs, we have defined industrial grouping to refer to the two-digit SIC code (40 CFR 70.2, 71.2). Many state and local permitting authorities have approved title V permitting programs that have adopted similar definitions.

*B. How has the EPA applied the statutory and regulatory definitions?*

Source owner/operators and permitting authorities assess the three regulatory factors – same industrial grouping, location on contiguous or adjacent property, and under common control – on a case-by-case basis to determine which pollutant-emitting activities should be

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codes are no longer updated, the United States Department of Labor’s Occupational Safety and Health Administration still maintains the list of SIC codes for reference.

included as part of a single source when determining applicability of the NSR and title V permitting requirements. In the original promulgation and later application of these three factors, we have been mindful of the direction the D.C. Circuit Court of Appeals provided that the “source” for permitting purposes should comport with the “common sense notion of a plant” (45 FR 52694, August 7, 1980 citing *Alabama Power v. Costle*). In the *Alabama Power* decision, the Court said that EPA cannot treat contiguous and commonly owned units as a single source unless they “fit within the four statutory terms...” (*i.e.*, the terms building, structure, facility and installation). The Court said that we should “...provide for the aggregation, where appropriate, of industrial activities according to considerations such as proximity and ownership.” *Alabama Power Co. v. Costle*, 636 F. 2d 323, 397 (D.C. Cir. 1979). Examples of the case-by-case determinations made by the EPA, or by permitting authorities with the EPA’s input, applying these principles over several decades of NSR permitting are available at <http://www.epa.gov/region07/air/nsr/nsrindex.htm>.

The EPA later promulgated the title V major source definition found at 40 CFR 70.2 (57 FR 32250, July 21, 1992) and 71.2 (61 FR 34202, 34210, July 1, 1996). Not only were these definitions consistent with each other, but EPA was also clear that the language and application of the title V definition was to be consistent with the language and application of the PSD definition contained in section 52.21 (61 FR 34210, July 1, 1996). Examples of case-by-case source determinations made by the EPA, or by permitting authorities with the EPA’s input, that apply the title V definitions are available at <http://www.epa.gov/region7/air/title5/t5index.htm>.

Reviewing both the NSR and title V guidance regarding source determinations, it is clear that we have used the term “contiguous or adjacent” to mean that the land associated with the source (*i.e.*, building, structure, facility or installation) is connected to (*i.e.*, contiguous) or

nearby (i.e., adjacent) another source. In response to the *Alabama Power* decision, the EPA promulgated the 1980 PSD rule, including the definitions used to determine the scope of the source for permitting purposes (45 FR 52676, August 7, 1980). We explained that the 3-part test (same industrial grouping, location on contiguous or adjacent property, and under common control) would comply with the court decision by reasonably comports with the purposes of the PSD program, approximating the common sense notion of a plant, and avoiding aggregating pollutant-emitting activities that would not fit within the ordinary meaning of building, structure, facility or installation (45 FR at 52694, August 7, 1980). In so doing, we considered but chose not to add a fourth factor or “functional interrelationship” test to the criteria for defining a source, as at that time, we believed that such a test would “embroil[] the Agency in numerous fine-grained analyses” (45 FR 52695, August 7, 1980). In the same rulemaking, we said that we did not intend “source” to include activities that are many miles apart along something like a pipeline or transmission line as a single source, but also noted that we were “unable to say precisely at this point how far apart activities must be in order to be treated separately” (45 FR 52695, August 7, 1980).

Even though our regulations use the term “adjacent,” they do not define “adjacent.” Similarly, even though the EPA’s historic interpretation is that “adjacent” means “nearby,” neither our regulations nor our historic interpretations set a specific distance that we would consider “nearby.” Over the years, the EPA has considered both the distance between two or more sources and whether they share an operational dependence or functional interrelatedness to determine whether they are “adjacent.” Even though our regulations do not explicitly define “adjacent,” we have provided policy interpretations of “adjacency” over time in the context of individual permitting actions many times because we were asked by permitting authorities to

advise them on how to define a source within a specific permitting action. As is the case for most permitting-related decisions, these determinations were made on a case-by-case basis, considering the specific facts in each instance. In many of these cases and as explained in the examples below, we cited the principle of the “common sense notion of a plant” in making a determination regarding the scope of the source.

In one example, we determined that two aluminum smelting operations within the same SIC code (3334), located approximately 3.4 miles apart and commonly owned by Alcoa, should be considered a single source for purposes of NSR applicability. Alcoa requested confirmation of this single source determination after it purchased one of the plants from another company, allowing both operations to share common control and management as well as a single SIC code. The EPA determined that the two operations should be considered adjacent because of the shared materials and personnel and the company’s assertion that the two plants would be operated as one facility.<sup>4</sup>

In one case specific to the oil and natural gas sector, the EPA determined, in a letter issued by EPA Region 5 to Summit Petroleum Corporation, that an oil and gas sweetening plant and approximately 100 oil and gas wells located within the boundaries of the Saginaw Chippewa Band’s Isabella Reservation in Michigan were a single major source for purposes of the title V operating permit program.<sup>5</sup> The EPA based its decision on its evaluation that the sweetening

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<sup>4</sup> Riva, Steven C. “Alcoa Messena Modernization Project and Request for a Single Source Determination.” March 9, 2009. EPA Region 7 Air Program New Source Review Program Policy & Guidance Index available at <http://www.epa.gov/region07/air/nsr/nsrmemos/alcoany.pdf> and in the docket for this rulemaking.

<sup>5</sup> Newton, Cheryl. “Summit Petroleum Corporation Single Source Determination.” October 18, 2010. EPA Region 7 Air Program New Source Review Program Policy & Guidance Index

plant and wells share the same two-digit SIC code and are under common control (Summit Corporation). In addition, the EPA concluded that the plant and the wells were adjacent and, thus, a single source given their proximity and exclusive interdependence as demonstrated by the following facts: all of the wells are located within an 8-mile radius of the sweetening plant; all are connected by a dedicated system of pipes; and all oil and gas from the wells must be processed through the sweetening plant before it can be marketed. That determination was later challenged and overturned, as will be discussed later in this notice.

Finally, in another example involving the oil and natural gas sector, the EPA determined that two natural gas compressor stations (Florida River and Wolf Point) and the numerous well sites owned or operated by BP and located within the Northern San Juan Basin should not be considered a single stationary source. In that situation, unlike the Summit Petroleum case discussed previously, there was no dedicated interrelationship between the wells and the compressor stations that would indicate that they should be treated as a single “plant.” Gas from the individual wells could flow to the two BP compressor stations, or other compressor stations. Gas production from BP’s wells would not have to stop if one or both of the BP compressor stations were shut down. Additionally, the gathering pipeline between the wells and the stations co-mingled gas from operators other than BP and the compressor stations likewise accepted gas from other operators. The EPA’s determination that this complex, dynamic system did not resemble a “common sense notion of a plant” was also challenged, and was settled.<sup>6</sup>

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available at <http://www.epa.gov/region07/air/nsr/nsrmemos/singler5.pdf> and in the docket for this rulemaking.

<sup>6</sup> Videtich, Callie. “BP American Production Company’s Florida River Compression Facility Single Source Determination.” October 18, 2010. EPA Region 7 Air Program New Source Review Program Policy & Guidance Index available at

In each of these examples, the EPA based its opinion on an analysis of the specific facts in the individual case. We have not established a “bright-line” distance beyond which we would always consider operations to be separate sources. Neither have we established a distance within which we would always consider operations to be one source. We have also not established that certain operations must always (or never) be considered together for permitting purposes.

### *C. Oil and Natural Gas Sector*

The United States Census Bureau’s North American Industry Classification System (NAICS) describes the Oil and Gas Extraction industry (NAICS Code 2111) as including activities such as “exploration for crude petroleum and natural gas; drilling, completing, and equipping wells; operation of separators, emulsion breakers, de-silting equipment, and field gathering lines for crude petroleum and natural gas; and all other activities in the preparation of oil and gas up to the point of shipment from the producing property.”<sup>7</sup> This definition includes activities such as natural gas processing and liquids extraction, and sulfur recovery from natural gas. Pipeline transmission and distribution of oil and natural gas, and storage of natural gas are included in NAICS subsector 486 Pipeline Transportation.

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<http://www.epa.gov/region07/air/nsr/nsrmemos/singler8.pdf> and in the docket for this rulemaking. The Environmental Appeals Board (EAB) docket for CAA Appeal No. 10-04 is available at [http://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/77355bee1a56a5aa8525711400542d23/2c6cf712eac2d7b38525788b00545227!OpenDocument&Highlight=2,CAA,10-04](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/77355bee1a56a5aa8525711400542d23/2c6cf712eac2d7b38525788b00545227!OpenDocument&Highlight=2,CAA,10-04). The petition for review by the EAB, EPA Region 8’s response, and the reply by petitioner are available in the docket for this rulemaking.

<sup>7</sup> U.S. Department of Commerce, United States Census Bureau, North American Industry Classification System, 2012 NAICS Definition, Sector 21 – Mining, Quarrying, and Oil and Gas Extraction, 21111 Oil and Gas Extraction <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=21111&search=2012> accessed 12/03/2013.

The EPA has previously described in the preamble to its proposed New Source Performance Standard (NSPS) for the oil and natural gas sector that this sector includes operations in the extraction and production of oil and natural gas, and the processing, transmission and distribution of natural gas. For oil, we described the sector as including “all operations from the well to the point of custody transfer at a petroleum refinery.” For natural gas, we described it as including all operations from the well to the customer (76 FR 52738, 52744, August 20, 2011).

For purposes of this proposed action, we are primarily interested in the first two of these: oil and natural gas production, and natural gas processing, or what may be referred to in the industry as “upstream” and “midstream” operations. For reasons that will be explained later in this notice, we do not intend to apply the proposed clarification to operations that take place offshore. Onshore production operations include “the wells and all related processes used in the extraction, production, recovery, lifting, stabilization, separation, or treating of oil and/or natural gas (including condensate). Production components may include, but are not limited to, wells and related casing head, tubing head and “Christmas tree” piping, as well as pumps, compressors, heater treaters, separators, storage vessels, pneumatic devices and dehydrators. Production operations also include the well drilling, completion and workover processes, and include all the portable non-self-propelled apparatus associated with those operations. Production sites include not only the “pads” where the wells are located, but also include standalone sites where oil, condensate, produced water and gas from several wells may be separated, stored and treated. The production sector also includes the low pressure, small diameter, gathering pipelines and related components that collect and transport the oil, gas and other materials and wastes from the wells to the refineries or natural gas processing plants (76 FR 52744, August 20, 2011).

Natural gas processing operations are aimed at removing impurities and other by-products from the extracted gas. Natural gas consists primarily of methane. It may also contain water vapor, hydrogen sulfide (H<sub>2</sub>S), carbon dioxide (CO<sub>2</sub>), helium, nitrogen and other compounds. It commonly exists in mixtures with other hydrocarbons, referred to as natural gas liquids (NGL). Natural gas must be processed to remove these other compounds and gases before the gas is considered pipeline quality suitable for transmission and distribution. Natural gas processing removes and recovers the liquids, and non-methane gases, all or some of which may be sold.

*D. What are the air emissions resulting from the oil and natural gas sector?*

Emissions from the oil and natural gas sector include volatile organic compounds (VOC), greenhouse gases (including methane), H<sub>2</sub>S, sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO) and nitrogen oxides (NO<sub>x</sub>). VOCs, including some hazardous air pollutants (HAP), are generally emitted during well completions, from equipment leaks and from storage tanks. Emissions of the greenhouse gas methane may also come from these sources while emissions of the greenhouse gas CO<sub>2</sub> come primarily from combustion sources, such as flares, engines and compressors. Emissions of NO<sub>x</sub> and CO are also a result of these combustion operations. Emissions of sulfur compounds come from production and processing operations that treat “sour gas,” that is, natural gas with an H<sub>2</sub>S content of greater than 0.25 gr/100 scf.

*E. How does the EPA regulate air emissions from the oil and natural gas sector?*

In addition to the source-specific permitting required by the NSR and title V programs, air emissions from the oil and natural gas sector are also regulated through other CAA-based rules. The EPA first listed crude oil and natural gas production for NSPS development in 1979 (44 FR 49222, August 21, 1979). An NSPS, 40 CFR part 60, subpart KKK, was promulgated in

1985 that addressed VOC emissions from leaking components at onshore natural gas processing facilities (50 FR 26122, June 24, 1985). A second NSPS, regulating SO<sub>2</sub> emissions from natural gas processing plants, 40 CFR part 60, subpart LLL, was promulgated in 1985 (50 FR 40158, October 1, 1985). In 2012, the EPA finalized revisions to these NSPS and established standards in 40 CFR part 60, subpart OOOO, limiting VOC emissions from gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers and storage vessels (77 FR 49490, August 16, 2012). In 2013 and 2014, the EPA made certain amendments to the 2012 NSPS standards in order to improve implementation of the standards (78 FR 58416, September 23, 2013 and 79 FR 79018, December 31, 2014). Separately, the EPA is proposing to expand the NSPS (subpart OOOO) to regulate several additional categories of emitting equipment in this sector.

The EPA has also regulated emissions of HAP from certain oil and natural gas sector processes through use of National Emissions Standards for Hazardous Air Pollutants (NESHAP), specifically the Oil and Natural Gas Production NESHAP (40 CFR part 63, subpart HH) and Natural Gas Transmission and Storage NESHAP (40 CFR part 63, subpart HHH). These regulations were first promulgated in 1999 (64 FR 32610, June 17, 1999) and were amended in 2012 (77 FR 49490, August 16, 2012).

*F. How has the EPA defined the source for the oil and natural gas sector previously?*

As discussed in the previous section, selected equipment and emitting activities involved in oil and gas production are regulated under both the NSPS and NESHAP programs. The NSPS and NESHAP focus on technology-based standards for industrial source categories, and do not approach the regulation of stationary sources in the same way as required for NSR permitting.

The definition of a major source in the NESHAP program is similar to, but distinguishable from, the definition of stationary source used in the NSR permitting programs. The NESHAP program defines a major source as a stationary source or a group of stationary sources “within a contiguous area” (40 CFR 63.2). This “major source” definition differs from the definition of stationary source used in the NSR permitting programs because it does not include “adjacent properties” [e.g., 40 CFR 52.21(b)(5)]. A major source under CAA section 112 is further defined as any stationary source or group of stationary sources “that emits or has the potential to emit considering controls, in the aggregate 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.” [CAA section 112(a)(1)]. An area source of HAP is one that is not a major source of HAP.

When Congress revised CAA section 112 in 1990, however, it included a specific provision discussing how oil and gas wells and pipeline facilities were to be treated with respect to regulating emissions of HAP [CAA section 112(n)(4)(A)]. This section provides that “notwithstanding” the definitions of major source in section 112, the emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station “shall not be aggregated with emissions from other similar units” to determine whether the units or stations are major sources. Congress specified this whether the units are in a contiguous area or under common control. In the case of any oil or gas exploration or production well (with its associated equipment), such emissions “shall not be aggregated for any purpose under this section.”

In the NESHAP for Oil and Natural Gas Production Facilities, the EPA defines the affected source consistent with this requirement of the Act, including which associated equipment should be part of the facility, which associated equipment could potentially be

aggregated, and which cannot be aggregated as per CAA section 112(n)(4)(A) [40 CFR 63.760(b)]. The EPA defines this associated equipment to include “equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the wellbore to the point of custody transfer” (40 CFR 63.761). The EPA defines the facility for purposes of the NESHAP to mean “the grouping of equipment where hydrocarbon liquids are processed, upgraded (i.e., remove impurities or other constituents to meet contract specifications), or stored prior to the point of custody transfer” or where natural gas is “processed, upgraded, or stored” prior to natural gas transmission and storage. For the purpose of the NESHAP major source determination, facility (including a building, structure, or installation) means oil and natural gas production and processing equipment that is located within the boundaries of an individual surface site as defined in the NESHAP (40 CFR 63.761).

Furthermore, the EPA defines surface site as “any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed” (40 CFR 63.761). The effect of these definitions is to define the affected facility based on the emissions from equipment and activities that are in close proximity to each other. The EPA stated that its intent in defining affected facility in this way was both to comply with the specific language in CAA section 112(n)(4), and to reduce the burden on owners and operators in making source determinations. The EPA stated at that time its belief that it was not reasonable to aggregate emissions from surface sites that are located on the same lease, but are at great distances from each other, even though they would be under common control (64 FR 32618, June 17, 1999).

*G. What approaches has the EPA taken recently regarding implementation of NSR and title V permitting for oil and natural gas sector sources?*

As was the case with other industry categories, the EPA initially approached permitting decisions in the oil and natural gas sector on a case-by-case basis without any specific guidance until 2007. At that time, because of an increase in oil and gas development, and an increase in permit activity, the EPA issued the first guidance document specific to this industry. The EPA built on the idea of using the surface site, as defined in 40 CFR 63.761, and the proximity of surface sites to each other in permitting guidance, when it issued a guidance document titled “Source Determinations for Oil and Gas Industries” in 2007.<sup>8</sup> This 2007 memo is relevant to our proposed action because it acknowledged that source determinations within the oil and gas industry may not be as straightforward as those within other regulated industries. We note that even in cases that clearly meet the tests of same SIC code and common control, the nature of oil and gas exploration and production operations may require a detailed evaluation to determine whether sources are on contiguous or adjacent properties. Production fields, even if under the control of a single operator, may cover large areas. Unlike many other industries, however, the expanse of land on which these commonly-controlled operations are located is frequently not owned or controlled by the owner/operator of the oil and gas activity. Instead, the producers may control only the surface area that holds the well and associated production equipment.

As discussed earlier in this notice, EPA has previously said that it would not consider all facilities along a pipeline to be one source. The 2007 memo built upon that idea to conclude that, for the oil and gas production industry, “we do not believe determining whether two activities are operationally dependent drives the determination as to whether two properties are contiguous or

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<sup>8</sup> Wehrum, William. “Source Determinations for Oil and Gas Industries.” January 12, 2007. EPA Region 7 Air Program New Source Review Program Policy & Guidance Index available at <http://www.epa.gov/region07/air/nsr/nsrmemos/oilgas.pdf> and in the docket for this rulemaking.

adjacent, because it would embroil the Agency in precisely the fine-grained analysis we intended to avoid and would potentially lead to results which do not adhere to the common sense notion of a plant.” Thus, the 2007 memo acknowledged that permitting authorities may consider proximity, and not operational dependence, as the most informative factor in determining the scope of a source, and recommended the approach used in CAA section 112 and the NESHAP for Oil and Natural Gas Production Facilities (the “surface site”) as the starting point for determining the boundaries of the source for NSR and title V. Beyond the surface site, the memo recommends that permitting authorities consider aggregating multiple surface sites if they are in close proximity, i.e., physically adjacent or separated by no more than a short distance. However, consistent with the EPA’s overall permitting practice, the 2007 memo concluded that the decision of whether a permitting authority should aggregate two or more pollutant-emitting activities into a single source for permitting remains a case-by-case decision taking into consideration the factors relevant to the specific case.

In 2009, the EPA withdrew the 2007 memo.<sup>9</sup> In doing so, we reinstated the use of the fundamental criteria for making source determinations for the oil and natural gas sector based on the use of the three factors contained in our regulations; same SIC code, common control, and location on contiguous or adjacent property. This fact-specific examination is consistent with the EPA’s historical practice in other industries, and is in contrast to the simplified approach of relying principally on proximity that was the focus of the 2007 memorandum. From 2009

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<sup>9</sup> McCarthy, Gina. “Withdrawal of William Wehrum’s January 12 2007 Issued Guidance Memo ‘Source Determinations for Oil and Gas Industries’.” September 22, 2009. EPA Region 7 Air Program New Source Review Program Policy & Guidance Index available at <http://www.epa.gov/region07/air/nsr/nsrmemos/oilgaswithdrawal.pdf> and in the docket for this rulemaking.

forward, the EPA recommended that permitting authorities conduct each source determination based on a case-by-case evaluation of the emissions activities at each building, structure, facility or installation. The 2009 memo acknowledged that proximity might well serve as the overwhelming factor in a permitting authority's source determination decision, but the conclusion could only be justified after examining all relevant factors, consistent with regulatory requirements and historical practice.

The EPA has had direct experience as the permitting authority in making source determinations for onshore oil and gas operations in Indian country. The 2010 permit for compressor stations located on the Southern Ute Indian Reservation (Florida River and Wolf Point) and the Summit Petroleum permits are two examples discussed in detail previously. In these cases, the EPA conducted a fact-specific examination of the three factors in determining which emitting activities should be included in title V permits. In both of these cases, the source determinations were challenged.

The EPA was challenged on its source determinations for the Florida River permit by WildEarth Guardians. They challenged the EPA's decision not to aggregate certain wells into a single source in the title V permit renewal. EPA entered into a settlement agreement with the petitioner and agreed to undertake a "pilot" program to gather additional information "for the purpose of studying, improving and streamlining oil and gas source determinations in new or renewal Title V permits."<sup>10</sup> The EPA has collected data from several permit applicants, but has

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<sup>10</sup> U. S. Environmental Protection Agency. February 20, 2012. Motion for Dismissal. In re: BP America Production Company, Florida River Compression Facility, Permit No. V-SU-0022-05.00. Available at [http://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/\(Filings\)/E340610E897366E1852579AB005443C4/\\$File/Motion%20for%20Dismissal...41.pdf](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/(Filings)/E340610E897366E1852579AB005443C4/$File/Motion%20for%20Dismissal...41.pdf) and in the docket for this rulemaking.

not yet issued permits based on that data, due to uncertainties created by court decisions discussed later in this proposal.

In the case of Summit Petroleum's operations in Rosemont, Michigan, also discussed previously, the EPA determined in 2010 that the company's gas sweetening facility and associated wells were under common control and in the same major industrial grouping. In addition, the EPA determined that they were adjacent because of the functional interrelatedness of the operations. The EPA determined that the source must get a title V operating permit.

Summit appealed that determination to the United States Court of Appeals for the Sixth Circuit, which issued a decision that overturned the EPA's title V applicability determination. *Summit Petroleum Corp. v. U. S. Environmental Protection Agency*, 690 F.3d 733 (6<sup>th</sup> Cir. 2012). In the decision, the Court said that the EPA's use of interrelatedness in determining whether sources were "adjacent" is unreasonable and contrary to the plain meaning of the term as currently used in EPA's regulations. The two judges in the majority found that the term "adjacent" was unambiguous and its plain meaning related only to physical proximity, and thus could not include consideration of functional interrelatedness. The EPA sought rehearing of the Court's decision, but that request was denied.

In a memorandum, EPA Headquarters then instructed its Regional Air Directors that the agency intended to apply the outcome of the Sixth Circuit decision only in the states under the jurisdiction of the Sixth Circuit and that we would continue to make stationary source

determinations for title V and PSD permitting consistent with the agency’s long-standing interpretations of its regulations in the rest of the country.<sup>11</sup>

The EPA’s guidance memo to its regional offices was challenged by the National Environmental Development Association’s Clean Air Project (NEDA/CAP) in the D.C. Circuit Court of Appeals. *National Environmental Development Association’s Clean Air Project v. Environmental Protection Agency*, 752 F.3d 999 (D.C. Cir. 2014). NEDA/CAP alleged that the memorandum violated the EPA’s Regional Consistency regulations by establishing inconsistent permit criteria in different parts of the country. The D.C. Circuit agreed and held that the memo conflicted with EPA regulations that promote uniform national regulatory policies. 752 F.3d at 1009 (discussing 40 CFR part 56). In essence, the Court found that EPA bound itself to consistency with the *Summit* decision through its own regulations. In issuing the decision, the D.C. Circuit indicated that the EPA could have avoided a conflict between its December 2012 memo and the Regional Consistency regulations by revising the source determination regulations to explicitly require consideration of functional interrelatedness.

*H. What is the purpose of this proposed action?*

The purpose of this action is to request comment on the best approach to define “adjacent” for the onshore oil and natural gas sector.<sup>12</sup> We believe it is important to address this

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<sup>11</sup> Page, Stephen. “Applicability of the Summit Decision to EPA Title V and NSR Source Determinations.” December 21, 2012. EPA Region 7 Air Program New Source Review Program Policy & Guidance Index available at <http://www.epa.gov/region07/air/nsr/nsrmemos/inter2012.pdf> and in the docket for this rulemaking.

<sup>12</sup> We note that the EPA Administrator signed a separate proposal on August 5, 2015 to amend the Regional Consistency Regulations to address consistency issues resulting from judicial decisions. See Environmental Protection Agency, RIN 2060-AS53 available at <http://www.epa.gov/nsr/actions.html>.

industry separately because permitting decisions are difficult and time-consuming. Providing this guidance will promote a consistent regulatory treatment for this industry. In addition, this industry continues to grow at a rapid pace, and the sheer number of determinations that need to be made heightens the need for guidance in the near term.

We also believe it is important to address this issue through a rulemaking. The oil and gas source determination guidance provided by the EPA on two separate occasions, in 2007 and 2009, was issued in the form of a memo, with no opportunity for public notice and comment. Then, as discussed above, the subsequent onshore oil and gas permitting decisions made by EPA were challenged, and both guidance memos were referenced or relied upon by the parties in those challenges. The EPA is interested in addressing any uncertainty by providing additional clarity through rulemaking and seeking comment on the best approach for defining the term “adjacent” specific to the onshore oil and natural gas sector.

### *I. Policy Discussion*

An important consideration in deciding how to define the stationary source for oil and gas operations is the environmental protection that is achieved by aggregating multiple pollutant-emitting activities into a single source. Under the PSD and NNSR programs, new major sources or major modifications at major sources for a given pollutant are subject to either Best Available Control Technology (BACT) or Lowest Achievable Emissions Reduction (LAER) controls, depending on the air quality designation status for that pollutant of the area in which the source is located. These controls may be more stringent than controls required at minor sources. Because major source BACT or LAER controls may be continually improving, permitting authorities must assess and sources must install the best technology at the time a permit is issued, instead of what was the best the last time an NSPS or NESHAP was updated. Therefore, these

case-by-case controls required for major sources or major modifications at major sources are often more stringent than controls required under NSPS or NESHAP, if those standards have not been recently updated, because control technology tends to improve over time.

In addition, if the source is or will be located in an area that is designated nonattainment, emissions reductions, known as offsets, may be required in higher ratios to compensate for the proposed emissions increase. Therefore, aggregating activities into major sources may result in more oil and gas sources being subject to greater control under LAER, in addition to having to obtain offsets, resulting in greater environmental protection.

Aggregating facilities is also more likely to result in sources being subject to operating permitting requirements under title V of the Act. While this does not result in any additional control requirements, it may result in additional monitoring and reporting requirements that provide more information on the operation of the source to the regulators and interested citizens. The title V permitting process includes opportunities for public participation, EPA oversight, and citizens' rights to petition the EPA to object to permits. These opportunities exist at both the initial permit issuance, and at permit renewal, which occurs every 5 years. The title V process provides more opportunities for public participation than minor source permitting, which generally includes public participation only at the time of initial construction or modification, and under processes that vary according to the permitting authority.

Aggregating activities may also provide facility owners/operators with greater flexibility to modify operations without triggering additional permitting requirements. A source consisting of multiple emitting activities may be able to "net out" of further PSD or NNSR permit review by reducing emissions in one part of a source in order that emissions at another part of the source may increase. This allows sources to avoid additional permitting requirements for modifications

to an existing facility under PSD and NNSR by taking credit for reductions that have already occurred within the facility. A smaller source offers less opportunity to “net out” because there are fewer emitting activities that can be reduced if a modification results in an increase. Finally, netting is usually not available under minor NSR programs, so smaller minor sources would likely not be able to take advantage of netting to avoid minor NSR permitting requirements.

Another approach to achieving environmental protection is to require controls by direct federal regulation through the NSPS or NESHAP programs. The NSPS program results in significant control and is applicable to new, modified and reconstructed sources. The NSPS also includes monitoring and recordkeeping requirements. The NESHAP program also results in significant control of HAP, many of which are also VOCs, and is applied to both new and existing sources. Each of the emissions standards established pursuant to these programs must be reviewed and revised, if necessary, at least every eight years to take into account developments in practices, processes and control technologies. These standards apply to affected facilities independent of the need for an NSR permit. Separately, the EPA is proposing revisions to 40 CFR part 60, subpart OOOO, the NSPS for the oil and natural gas sector.

Additional controls may be required for sources located in nonattainment areas, including minor sources, through a SIP, or through a Federal Implementation Plan (FIP) in areas where EPA is the regulatory authority, such as in certain areas of Indian country. The CAA requires implementation of reasonable available control technology (RACT) for major sources in moderate and above ozone nonattainment areas and in the Ozone Transport Region (OTR). The EPA develops Control Techniques Guidelines (CTGs) to inform a state’s RACT determinations. Separately, the EPA is proposing a CTG for the oil and natural gas sector.

All of these programs (NSPS, NESHAP, RACT and state SIP/EPA FIP requirements) typically apply to emitting equipment, irrespective of the total emissions of the source at which the equipment is located, although there may be thresholds for individual types of equipment. An advantage of applying environmental control through these programs is that the administrative burden of applying for, obtaining, and maintaining major source permits can be reduced for sources because these limitations establish enforceable limits on the sources' potential to emit, and can keep a source from being considered major. The burden of reviewing and issuing major source permits is likewise reduced for permitting authorities.

The biggest advantage to sources, particularly in this industry, is that controlling emissions through NSPS, NESHAP or emission control standards imposed by states through their SIPs does not require case-by-case pre-approval as do the controls determined through major source permitting. This provides greater certainty to the source owners and operators without the delays associated with such permitting. Communities can also be certain of the controls sources are required to install and operate because the sources do not have the opportunity to "net out" of controls through a permitting process. Compliance and enforcement are also enhanced because the control, monitoring and recordkeeping requirements are consistent for each type of equipment and do not differ from site to site, or in the case of federal controls, state to state.

For the oil and gas industry, where source owners/operators must obtain the right to drill in a particular location and only hold those rights for a limited period of time, the ability to proceed quickly is important. For communities and air regulators, the ability to protect air quality and public health is important. A major source permit typically takes a year or more to process.

If there is uncertainty about what should be included as part of that permitted source, the time to

issue a permit can take longer. We believe that the most important result of a major or minor permit for all stakeholders, including the regulated industry, the community in which the source is located, and the permitting authority, is the requirement to install control technology to minimize air emissions and protect public health and the environment. We think that providing clarity about the scope of the source through this rule, and the emissions control requirements associated with other rules being proposed by the EPA serves the interests of all stakeholders.

*J. Why is the EPA proposing this action at this time?*

One reason for taking this action is to resolve the uncertainty that the litigation over the Summit Petroleum source determination and resulting guidance has created for both permitting authorities and for owners/operators of regulated sources. Another reason is to develop a coordinated approach to regulating emissions from oil and gas sources under the variety of regulatory mechanisms available to state and federal regulatory agencies. There has been an increase in oil and gas production resulting from the rise in use of unconventional methods of extraction (e.g., the use of hydraulic fracturing), and this production is taking place in more areas and at a faster pace than in the recent past. We believe this justifies a new look at the best way to regulate and permit these operations. In separate notices, the EPA is proposing to require additional controls for the emissions from the oil and natural gas sector. Those requirements include additional requirements for new sources under the NSPS, requirements for minor sources at oil and gas operations in Indian country, and a CTG that will inform RACT determinations for existing major VOC sources located in moderate or above ozone nonattainment areas and in the OTR.

We believe that the additional emissions controls required for new sources under the revised NSPS makes it less likely that major source permitting would result in substantial

additional pollution control. In commenting on this proposal, commenters are encouraged to consider how emission controls being proposed in separate EPA notices may impact the preferred option in this proposal.

*K. What is the effect of this proposed rulemaking on other industries?*

At this time, the EPA is proposing to clarify the definition of “adjacent” used to determine the source to be permitted within the PSD, NNSR and title V programs as it applies to the oil and natural gas sector for the reasons discussed earlier in this proposal. The EPA believes that the unique characteristics of this industry – such as the underground mineral rights versus surface land ownership, widespread operations and interconnectedness via pipeline, etc. – warrant an industry-specific definition that will streamline the assessment of which operations should be considered to be on contiguous or adjacent properties. For other industries, we continue to believe that a case-by-case assessment of the three factors remains the appropriate method of making source determinations. For these industries, as discussed previously, we believe it is generally less difficult to determine the scope of the source, because the operations already take place at facilities that more clearly match the common sense notion of a plant.

*L. What is the effect of this proposed rulemaking on permitting authorities?*

We are proposing to make changes to both the PSD and NNSR programs in this rulemaking. We believe that it may be possible for some states to interpret their existing state rules consistent with this rulemaking (when final) and may not need to revise SIPs to incorporate these changes. However, we intend to encourage states to revise their SIPs to adopt these changes, when final. Similarly, states would be expected to make conforming changes to their operating permit programs. While we are proposing changes to both the federal programs and the

requirements for state programs, we invite comment on whether states should be required to adopt these changes.

### **III. What are the options that the EPA is considering?**

In this proposal, the EPA is proposing and requesting comment on two options for clarifying the definition used to determine the source to be permitted within the NSR and title V programs as it applies to the oil and natural gas sector. As we stated before, any determination of the scope of a source requires a fact-specific inquiry into each of the three regulatory factors, i.e., whether emitting activities share the same SIC code, are under common control, and are contiguous or adjacent. We are not proposing to change or take comment on this inquiry or the three factors. However, in this notice, the EPA is taking comment on how the term “adjacent” in the third factor should be applied specifically to emission units in the oil and natural gas sector.

#### *A. Define Source Based on Proximity (Similar to the NESHAP)*

Under the first, and currently preferred, option for which the EPA is taking comment, the EPA proposes to define “adjacent” such that the source is similar to that in the NESHAP for this industry, Subpart HH, National Emissions Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities (40 CFR 63.760). Under this option, the “source” for oil and natural gas sector activities is presumed to be limited to the emitting activities at the surface site, and other emitting activities will be considered “adjacent” if they are proximate. Thus, under this first option, two or more surface sites must be considered as a single source if they share the same SIC code, are under common control, and are contiguous or are located within a short distance of one another.

We prefer this option because we believe that a definition that centers on a surface site is familiar to the industry and the regulators because of the current NESHAP requirements, so it

will streamline permitting. We also believe that a definition focused on a surface site most closely represents the common sense notion of a plant for this industry category. Surface sites that are not in close proximity to one another may be on a separate lease which may not align with the common sense notion of a single plant. In addition, we believe that this definition is consistent with Congress' intent, at least as they expressed it with regard to HAPs, as discussed previously.

Under this option, as we are proposing it, the source owner/operator would not be required, and would not be allowed, to include additional emitting activities in a permit beyond those in the source as defined. This could mean that an owner/operator must obtain more individual construction permits and possibly more operating permits. However, these would be more likely to be minor source permits. If finalized, owner/operators could lose the benefits of being able to net emissions over a larger source, which could be a disadvantage, particularly for sources in nonattainment areas. We request comment on this more limited concept of source for this industry, specifically whether limiting the scope of the source in this way provides sufficient guidance for sources and permitting authorities to permit these sources in a consistent and efficient manner.

In addition, we request comment on whether it is appropriate to establish a specific distance within which to consider multiple surface sites as a single source, and if so, what that distance should be. Some states, such as Texas, Oklahoma, Louisiana and Pennsylvania, have issued guidance that presumes that operations within  $\frac{1}{4}$  mile should be considered a single source. We believe that it will be helpful to prescribe a distance in this rule, given that this question has generated significant confusion and uncertainty in the past. The EPA is proposing to adopt a distance of  $\frac{1}{4}$  mile but is asking for comment on whether another distance, such as  $\frac{1}{2}$

mile, is an appropriate distance to consider for defining a single source even if on separate surface sites (i.e., operations beyond that distance would not be considered for aggregation).

Louisiana's guidance further specifies that facilities should not be "daisy-chained" together to establish a single contiguous source.<sup>13</sup> A series of emission units are "daisy-chained" when each individual unit is located within the specified "contiguous or adjacent" distance from the next unit, but where the last unit is separated from the first unit by a much larger distance. We request comment on whether the EPA should make a similar distinction if we adopt this proximity-focused source definition. Louisiana's guidance goes on to specify that the geographic center of the site's emissions defines the center for purposes of establishing the ¼ mile distance used to determine the boundary of the single source. We request comment on whether the center or some other feature, such as the boundary of the surface site, is more appropriate to use as the starting point of the measurement radius when determining the source.

We also request comment on whether there are instances where setting such a bright-line distance could increase or limit permitting authority oversight of these sources because they would be more likely to be subject to minor source permitting. We also request comment on whether the potentially smaller scope of each source could result in an unacceptable permitting burden (by creating a larger number of smaller sources) on the regulated community or on permitting authorities.

While the EPA does not expect there would be adverse air quality impacts as a result of this approach, we are interested in whether there might be any environmental effect, including

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<sup>13</sup> Louisiana Department of Environmental Quality. *Interpretation of Contiguous for Oil & Gas Production Facilities*. <http://www.deq.louisiana.gov/portal/DIVISIONS/AirPermitsEngineeringandPlanning/AirPermitsProceduresandGuidance/ContiguityandOilandGasProduction.aspx>. March 2015.

effects on NAAQS compliance from this approach, with either benefit or harm resulting. Finally, we request comment on whether there are circumstances in which an owner/operator would prefer to combine surface sites or other operations that are beyond the presumptive distance, e.g., ¼ mile, and seek a PSD or NNSR permit, and whether the EPA should preserve this option. If so, should the option to seek a major source permit be limited to the owner or operator's discretion, or should a permitting authority be able to make this determination, and under what circumstances?

*B. Define Source to Include Exclusively Functionally Interrelated Equipment*

Under the second option, the EPA proposes to define the “source” for the oil and natural gas sector to include all of the interrelated equipment that is under common control, is in the two-digit SIC (Code 13 Oil and Gas Extraction), and is on contiguous or adjacent property, where the EPA would presume that equipment in an oil and gas field is “adjacent” if it is proximate, or if it is exclusively functionally interrelated. Exclusive functional interrelatedness might be shown by connection via a pipeline or other means, because of the physical connection between the equipment. Other examples of factors that could be assessed to determine interrelatedness include exclusive delivery of product from one group of equipment to the other via truck or train and facts such as whether one group of equipment would be able to operate if the other group of equipment was not operating. The EPA and states would make a determination of adjacency based on a consideration of the interrelatedness of emitting activities in addition to the distance between them. So, for the oil and natural gas sector, pollutant-emitting activities will be considered adjacent if one of the following circumstances apply: 1) the pollutant-emitting activities are separated by a distance of ¼ mile or more and there is an

exclusive functional interrelatedness; or 2) the pollutant-emitting activities are separated by a distance of less than ¼ mile.

The consideration of interrelatedness is consistent with the EPA's current and historical practice for other industries and its longstanding practice for oil and natural gas sector activities. The EPA is requesting comment on this approach to better understand the perspective of various stakeholders. What are the advantages and disadvantages to this approach? Are there characteristics related to the oil and natural gas sector that would make this approach more or less difficult to implement than the preferred alternative, such as need to examine various interrelatedness criteria or the interconnectedness of the operations through pipelines? Should the EPA further define exclusive functional interrelatedness for this sector to provide additional clarity to regulators and the regulated community? For example, should the EPA limit exclusive functional interrelatedness for this sector to emitting equipment that is configured in a "hub and spoke" model, where oil or gas produced from one or more wells has a dedicated flow (via a pipeline or other delivery method) to only one possible downstream point for further compression, processing or storage? Are there other configurations specific to this industry that the EPA should consider to be exclusively functionally interrelated?

In addition, is there any environmental benefit or harm that might result from this approach? For example, could this approach create a disincentive to building pipelines, and what would be the environmental effect of those decisions? Finally, the EPA requests comment on whether there is a specific distance beyond which sources in the oil and gas industry should not be considered interrelated, even if interconnected by pipeline.

### *C. Impacts of the Options on Air Permitting*

The EPA expects that the combined effect of all the rules being proposed, including the proposed changes to the NSPS, the proposed rule for oil and gas sources in Indian country, and the CTG, will be to reduce the number of major oil and gas sources, even if we finalize Option 2. The proposed rules add requirements for enforceable controls, thereby decreasing potential emissions and making it less likely that major source permitting will be required. This is because a source's potential emissions are determined after taking into account controls that are enforceable as a practical matter, such as those required in the NSPS and a SIP adopting the CTG.

The two options presented in this rule differ primarily in the permitting burden placed on sources and permitting authorities. In the EPA's experience, it takes significantly longer to apply for and review a PSD application than it does to apply for and review a minor NSR permit. Option 1 can be expected to result in fewer major sources than Option 2, but more minor sources. Option 2 can be expected to result in more major sources, as some otherwise minor sources could be combined into a smaller number of major sources.

Because the EPA would benefit from public comment on all of these issues, the EPA is co-proposing these two approaches and, following review of public comments on the issues raised by each approach, anticipates adopting one of the approaches in the final rule. We welcome comments on these two discrete options, or some combination of these, and other options for determining the source for permitting oil and natural gas sector operations.

#### *D. Proposal is Limited to Onshore Oil and Gas Operations*

The EPA is proposing to limit this rulemaking to onshore oil and gas operations for a number of reasons. First, the CAA already contains a specific definition of "outer continental shelf source" which includes any "equipment activity, or facility which emits or has the potential

to emit any air pollutant” specifically including “platform and drill ship exploration, construction, development, production, processing, and transportation.” In addition, “emissions from any vessel servicing or associated with an outer continental shelf (OCS) source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source” must be included when determining the OCS source [CAA section 328(a)(4)(C)]. In our permitting experience, these OCS sources are more likely than onshore operations to be stand-alone major PSD sources. The EPA has issued permits for exploration rigs to operate as portable PSD sources, allowing them to operate in a number of locations under one permit. We believe that this current approach provides sufficient streamlining for both sources and permitting authorities and propose to continue the existing case-by-case approach for offshore sources.

#### **IV. Environmental Justice Considerations**

This proposal is intended to clarify the definition of adjacent used to determine the source to be permitted within the existing PSD, NNSR and title V programs as it applies to the oil and natural gas sector. This clarification will assist permitting authorities and permit applicants in making source determinations for the oil and gas industry and is not intended to result in less environmental protection for human health and the environment. It is being proposed as a part of a comprehensive strategy to reduce emissions from the oil and natural gas production sector which includes new (or lower) emission standards or requirements for a number of types of emitting equipment. It, therefore, is not expected to have a disproportionately high and adverse human health or environmental effects on minority populations or low-income populations. However, the permitting process, particularly under the major source programs, NSR and title V,

may provide opportunities for public participation at individual sources that may be of interest to minority or low-income populations.

## **V. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This proposed action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it raises novel legal and policy issues arising out of the President's priorities. Any changes made in response to OMB recommendations have been documented in the docket.

### *B. Paperwork Reduction Act*

This proposed action would not impose any new information collection burden. However, the OMB has previously approved the information collection requirements contained in the existing regulations for PSD (40 CFR 52.21) and title V (40 CFR parts 70 and 71) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq* and has assigned OMB control numbers 2060-0003, 2060-0336 and 2060-0243. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. Instead of new information collection burdens, this proposed action proposes proffers options that clarify the existing permitting requirements applicable to new and modified oil and natural gas sector sources. This proposed action is not likely to increase the burden associated with permitting, and may reduce it.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency

certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) a small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. Entities potentially affected directly by this proposal include sources in the oil and natural gas sector. We intend with this proposal to clarify the existing requirements for permitting new and existing sources in the oil and natural gas sector. We believe that any option finalized after notice and comment rulemaking will not increase, and may decrease, the administrative burden for permitting these sources, including those that may be small entities. We have, therefore, concluded that this proposed action will have no net regulatory burden for all directly regulated small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This proposed action does not contain an unfunded mandate of \$100 million or more as described in the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. The CAA imposes the obligation for private sector sources to obtain permits prior to construction. Many states and some local governments choose to implement those requirements. In other areas, the EPA implements those requirements. In this proposal, the EPA is taking comment on the most appropriate way to implement those requirements for an industry category. Therefore, this proposed action is not subject to the requirements of sections 202, 203 and 205 of the UMRA.

*E. Executive Order 13132: Federalism*

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirement to obtain permits for new major sources is imposed by the CAA. This proposed rule, if made final, would interpret those requirements as they apply to the oil and natural gas sector. Thus, Executive Order 13132 does not apply to these proposed regulation revisions.

In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comments on this proposed action from state and local officials.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. It would not have a substantial direct effect on one or more Indian tribes, since no tribe has developed a TIP that allows it to issue NSR permits. Furthermore, these proposed regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and tribes in developing plans to implement NSR permitting, and this proposal does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

The EPA has concluded that this action will not have tribal implications because it doesn't impose a significant cost to tribal governments. However, there are significant tribal interests because of the growth of the oil and gas production industry in Indian country. Although Executive Order 13175 does not apply to this action, the EPA has offered consultation to tribal officials in developing this action. Meeting summaries will be included in the docket for this rulemaking.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

*G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*

The EPA interprets EO 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children. This action is not subject to EO 13045 because it is not intended to establish an environmental standard intended to mitigate health or safety risks. The proposal requests

comments on the appropriate definition of a source as it applies to one source category for purposes of permitting under the requirements of the CAA.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This proposed action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. We believe this action is not likely to have any adverse energy effects because it will not increase, and may decrease, the permitting burden on owners and operators of sources in the oil and natural gas sector.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this proposed action will **not** have disproportionately high and adverse human health or environmental effects

on minority, low-income populations or indigenous populations. The proposal requests comment on the appropriate definition of the source as it applies to one industry category for purposes of permitting under the CAA. As such, it does not adversely affect the health or safety of minority or low-income populations. The results of this evaluation are contained in Section IV of this preamble.

*K. Determination Under Section 307(d)*

Pursuant to sections 307(d)(1)(J) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Under section 307(d)(1)(J), the provisions of section 307(d) apply to revisions to regulations relating to PSD. Under section 307(d)(1)(V), the provisions of section 307(d) apply to “such other actions as the Administrator may determine.”

**Statutory Authority**

The statutory authority for this action is provided by sections 101; 111; 114; 116, 160-165, 169, 173, 301, 302, 501 and 502 of the CAA, as amended (42 U.S.C. 7401; 42 U.S.C. 7411; 42 U.S.C. 7414; 42 U.S.C. 7416; 7470-7475, 7479, 7503, 7601, 7602, 7661, and 7662.

**Page 42 of 53 - Source Determination for Certain Emission Units in the Oil and Natural Gas Sector**

**List of Subjects**

*40 CFR Part 51*

Environmental protection, Air pollution control, Construction permit, Intergovernmental relations, Major source, Oil and gas.

*40 CFR Part 52*

Environmental protection, Air pollution control, Construction permit, Intergovernmental relations, Major source, Oil and gas.

*40 CFR Part 70*

Environmental protection, Air pollution control, Intergovernmental relations, Major source, Oil and gas, Operating permit.

*40 CFR Part 71*

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Major source, Operating permit.

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Dated:

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Gina McCarthy,  
Administrator.

For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is proposed to be amended as follows.

**PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS**

1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401-7671q.

2. In §51.165:

revise paragraph (a)(1)(ii) to read as follows:

**§51.165 Permit requirements.**

(a) \* \* \*

(1) \* \* \*

\* \* \* \* \*

**[PROPOSED REGULATORY TEXT FOR OPTION 1]**

(ii) (A) *Building, structure, facility, or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control).

Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same *Major Group* (*i.e.*, which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(B) Notwithstanding the provisions of paragraph (A) of this section, *building, structure, facility, or installation* means, for onshore activities under SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or

more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site, or on surface sites that are located within ¼ mile of one another, where a surface site has the same meaning as in 40 CFR 63.761.

**[PROPOSED REGULATORY TEXT FOR OPTION 2]**

(ii) (A) *Building, structure, facility, or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control).

Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same *Major Group* (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(B) Notwithstanding the provisions of paragraph (A) of this section, *building, structure, facility, or installation* means, for onshore activities in SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered adjacent if one of the following circumstances apply: 1) the pollutant-emitting activities are separated by a distance of ¼ mile or more and there is an exclusive functional interrelatedness; or 2) the pollutant-emitting activities are separated by a distance of less than ¼ mile.

\* \* \* \* \*

3. In §51.166,

revise paragraph (b)(6) to read as follows:

**§51.166 Prevention of significant deterioration of air quality.**

\* \* \* \*

(b) \* \* \*

\* \* \* \* \*

**[PROPOSED REGULATORY TEXT FOR OPTION 1]**

(6) (i) *Building, structure, facility, or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located 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 shall be considered as part of the same industrial grouping if they belong to the same *Major Group* (*i.e.*, which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(ii) Notwithstanding the provisions of paragraph (i) of this section, *building, structure, facility, or installation* means, for onshore activities under SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are

located on the same surface site, or on surface sites that are located within ¼ mile of one another, where a surface site has the same meaning as in 40 CFR 63.761.

**[PROPOSED REGULATORY TEXT FOR OPTION 2]**

(6) (i) *Building, structure, facility, or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located 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 shall be considered as part of the same industrial grouping if they belong to the same *Major Group* (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(ii) Notwithstanding the provisions of paragraph (i) of this section, *building, structure, facility, or installation* means, for onshore activities in SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered adjacent if one of the following circumstances apply: 1) the pollutant-emitting activities are separated by a distance of ¼ mile or more and there is an exclusive functional interrelatedness; or 2) the pollutant-emitting activities are separated by a distance of less than ¼ mile.

\* \* \* \* \*

4. In appendix S to part 51,

revise section A.2 to read as follows:

## APPENDIX S TO PART 51 – EMISSION OFFSET INTERPRETATIVE RULING

\* \* \* \* \*

### II. \* \* \* INITIAL SCREENING ANALYSES AND DETERMINATION OF APPLICABLE REQUIREMENTS

#### A. \* \* \*

\* \* \* \* \*

#### [PROPOSED REGULATORY TEXT FOR OPTION 1]

2. (i) *Building, structure, facility or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located 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 shall be considered as part of the same industrial grouping if they belong to the same “Major Group” (*i.e.*, which have the same two digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(ii) Notwithstanding the provisions of paragraph (i) of this section, *building, structure, facility or installation* means, for onshore activities under SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site, or on surface sites that are located within ¼ mile of one another, where a surface site has the same meaning as in 40 CFR §63.761.

#### [PROPOSED REGULATORY TEXT FOR OPTION 2]

2. (i) *Building, structure, facility or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located 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 shall be considered as part of the same industrial grouping if they belong to the same “Major Group” (*i.e.*, which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(ii) Notwithstanding the provisions of paragraph (i) of this section, *building, structure, facility or installation* means, for onshore activities in SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered adjacent if one of the following circumstances apply: 1) the pollutant-emitting activities are separated by a distance of ¼ mile or more and there is an exclusive functional interrelatedness; or 2) the pollutant-emitting activities are separated by a distance of less than ¼ mile.

\* \* \* \* \*

## **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

5. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

6. In §52.21,

revise paragraph (b)(6) to read as follows:

### **§52.21 Prevention of significant deterioration of air quality.**

Page 49 of 54

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

**[PROPOSED REGULATORY TEXT FOR OPTION 1]**

(6) (i) *Building, structure, facility, or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located 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 shall 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 numbers 4101-0066 and 003-005-00716-0, respectively).

(ii) Notwithstanding the provisions of paragraph (i) of this section, *building, structure, facility, or installation* means, for onshore activities under SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site, or on surface sites that are located within ¼ mile of one another, where a surface site has the same meaning as in 40 CFR 63.761.

**[PROPOSED REGULATORY TEXT FOR OPTION 2]**

(6) (i) *Building, structure, facility, or installation* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located 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 shall 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 numbers 4101-0066 and 003-005-00716-0, respectively).

(ii) Notwithstanding the provisions of paragraph (i) of this section, *building, structure, facility, or installation* means, for onshore activities in SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered adjacent if one of the following circumstances apply: 1) the pollutant-emitting activities are separated by a distance of ¼ mile or more and there is an exclusive functional interrelatedness; or 2) the pollutant-emitting activities are separated by a distance of less than ¼ mile.

\* \* \* \* \*

## **PART 70 – STATE OPERATING PERMIT PROGRAMS**

7. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

8. In §70.2, revise the definition for “Major source,” to read as follows:

### **§ 70.2 Definitions.**

\* \* \* \* \*

#### **[PROPOSED REGULATORY TEXT FOR OPTION 1]**

*Major source* means any stationary source (or any group of stationary sources that are located on one or more continuous or adjacent properties, and are under common control of the same person

(or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. For onshore activities belonging to SIC Major Group 13: Oil and Gas Extraction, pollutant emitting activities shall be considered adjacent if they are located on the same surface site, or are on surface sites that are located within ¼ mile of one another, where a surface site has the same meaning as in 40 CFR 63.761.

**[PROPOSED REGULATORY TEXT FOR OPTION 2]**

*Major source* means any stationary source (or any group of stationary sources that are located on one or more continuous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. For onshore activities belonging to SIC Major Group 13: Oil and Gas Extraction, pollutant emitting activities shall be considered adjacent if one of the following circumstances apply: 1) the pollutant-emitting activities are separated by a distance of ¼ mile or more and there is an exclusive

functional interrelatedness; or 2) the pollutant-emitting activities are separated by a distance of less than ¼ mile.

\* \* \* \* \*

## **PART 71 – FEDERAL OPERATING PERMIT PROGRAMS**

9. The authority citation for part 71 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

9. In § 71.2, subpart A, under the definition of “Major sources,” revise the definition to read as follows:

### **Subpart A – Operating Permits**

10. In §71.2, revise the definition for “Major sources” to read as follows.

#### **§71.2 Definitions**

\* \* \* \* \*

#### **[PROPOSED REGULATORY TEXT FOR OPTION 1]**

*Major source* means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)), belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. For onshore activities belonging to SIC Major Group 13: Oil and Gas Extraction, pollutant emitting activities

shall be considered adjacent if they are located on the same surface site, or are on surface sites that are located within ¼ mile of one another, where a surface site has the same meaning as in 40 CFR 63.761.

**[PROPOSED REGULATORY TEXT FOR OPTION 2]**

*Major source* means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)), belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. For onshore activities belonging to SIC Major Group 13: Oil and Gas Extraction, pollutant emitting activities shall be considered adjacent if one of the following circumstances apply: 1) the pollutant-emitting activities are separated by a distance of ¼ mile or more and there is an exclusive functional interrelatedness; or 2) the pollutant-emitting activities are separated by a distance of less than ¼ mile.

\* \* \* \* \*