West Virginia Department of Environmental Protection
Division of Air Quality

Fact Sheet

For Final Renewal Permitting Action Under 45CSR30 and Title V of the Clean Air Act

Permit Number: **R30-10700182-2024**
Application Received: **June 8, 2023**
Plant Identification Number: **03-54-107-00182**
Permittee: **The Chemours Company FC, LLC**
Facility Name: **Washington Works**
Business Unit: **Facilities, Construction, and Support (FC&S) (Part 12 of 14)**
Mailing Address: **P. O. Box 1217, Washington, WV 26181-1217**

Physical Location:	Washington, Wood County, West Virginia
UTM Coordinates:	442.368 km Easting • 4,346.679 km Northing • Zone 17
Directions:	Route 68 west from Parkersburg to intersection of Route 862. Continue west on Route 862 with the plant being on the north side about one mile from the intersection of Routes 68 and 862.

Facility Description

Facilities, Construction and Support provides specialized maintenance services and construction capabilities to the manufacturing units at Chemours Washington Works. Facilities, Construction, and Support (FC&S) performs operations such as welding, painting, insulation fabrication and installation, and vehicle refueling in support of specific projects and specific maintenance requirements for other business units at the site. Included in this group are contracted services that are brought on-site for specialized activities of short duration, such as large component cleaning, sandblasting and painting.

Emissions Summary

Plantwide Emissions Summary for FC&S [Tons per Year]		
Regulated Pollutants	**Potential Emissions**	**2023 Actual Emissions**
Carbon Monoxide (CO)	0.00	0.00
Nitrogen Oxides (NO_X)	0.00	0.00
Particulate Matter ($PM_{2.5}$) [1]	0.00	0.00
Particulate Matter (PM_{10}) [1]	96.37	0.01
Total Particulate Matter (TSP)[1]	96.37	0.01
Sulfur Dioxide (SO_2)	0.00	0.00
Volatile Organic Compounds (VOC)	11.32	0.60

[1] $PM_{2.5}$ and PM_{10} are components of TSP

Hazardous Air Pollutants	Potential Emissions	2023 Actual Emissions
Cumene	0.02	0.00
Ethylene Glycol	0.06	0.00
Glycol Ethers	0.22	0.00
Toluene	0.21	0.01
Ethyl Benzene	0.10	0.00
Xylenes (mixed)	0.40	0.01
Methyl Isobutyl Ketone	0.00	0.00
Methyl Ethyl Ketone	0.60	0.00
Methylene Chloride	0.02	0.00
n-Hexane	0.01	0.00
Total HAPs	1.64	0.02

Title V Program Applicability Basis

This facility has the facility-wide potential to emit over 100 tons per year of criteria pollutants (CO, NO_x, PM_{10}, SO_2, and VOC), over 10 tons per year of a single Hazardous Air Pollutant (HAP), and over 25 tons per year of aggregated Hazardous Air Pollutants (HAPs). Due to this facility's potential to emit over 100 tons per year of criteria pollutants (CO, NO_x, PM_{10}, SO_2, and VOC), over 10 tons per year of a single Hazardous Air Pollutant (HAP), and over 25 tons per year of aggregated Hazardous Air Pollutants (HAPs), Chemours Washington Works is required to have an operating permit pursuant to Title V of the Federal Clean Air Act as amended and 45CSR30.

Legal and Factual Basis for Permit Conditions

The State and Federally-enforceable conditions of the Title V Operating Permits are based upon the requirements of the State of West Virginia Operating Permit Rule 45CSR30 for the purposes of Title V of the Federal Clean Air Act and the underlying applicable requirements in other state and federal rules.

This facility has been found to be subject to the following applicable rules:

Federal and State:	45CSR6	Open burning prohibited.
	45CSR7	Particulate matter and opacity limits for manufacturing sources.
	45CSR11	Standby plans for emergency episodes.
	WV Code § 22-5-4 (a) (14)	The Secretary can request any pertinent information such as annual emission inventory reporting.
	45CSR30	Operating permit requirement.
	40 C.F.R. Part 61	Asbestos inspection and removal
	40 C.F.R. Part 82, Subpart F	Ozone depleting substances.
State Only:	45CSR4	No objectionable odors.
	45CSR21, Section 30	Control of VOC emissions from cold and solvent metal cleaning.

Each State and Federally-enforceable condition of the Title V Operating Permit references the specific relevant requirements of 45CSR30 or the applicable requirement upon which it is based. Any condition of the Title V permit that is enforceable by the State but is not Federally-enforceable is identified in the Title V permit as such.

The Secretary's authority to require standards under 40 C.F.R. Part 60 (NSPS), 40 C.F.R. Part 61 (NESHAPs), and 40 C.F.R. Part 63 (NESHAPs MACT) is provided in West Virginia Code §§ 22-5-1 *et seq.*, 45CSR16, 45CSR34 and 45CSR30.

Active Permits/Consent Orders

Permit or Consent Order Number	Date of Issuance	Permit Determinations or Amendments That Affect the Permit *(if any)*
N/A	N/A	N/A

Conditions from this facility's Rule 13 permit(s) governing construction-related specifications and timing requirements will not be included in the Title V Operating Permit but will remain independently enforceable under the applicable Rule 13 permit(s). All other conditions from this facility's Rule 13 permit(s) governing the source's operation and compliance have been incorporated into this Title V permit in accordance with the "General Requirement Comparison Table," which may be downloaded from DAQ's website.

Determinations and Justifications

This is the fourth renewal of the Title V permit. The following changes to the Title V permit were made as part of this renewal:

- Emission Unit ID-V238G03, “Hotsy” Propane Hot Water Cleaner, was removed from the permit.

- The description of Emission Point ID-VCS01E was updated in the Emission Units Table for Emission Unit IDs-VCS04 and VCS05. The emission point is no longer described as an “inside vent.”

- ❖ 40 CFR Part 64 – The facility did not have any pollutant specific emissions units (PSEUs) that satisfied all of the applicability criteria requirements of 40 CFR §64.2(a). There have been no emission units added to this permit since the previous renewal was issued, so CAM remains not applicable to any emission unit listed in the renewal application.

- ❖ Title V Boilerplate Changes:

  - **Condition 2.1.3** - The section of Rule 30 that defines Secretary changed in a previous version of Rule 30 and we failed to update this condition. Also, in the recently revised Rule 30, the word "such" was removed.

  - **Condition 2.11.4.** – The reference notation was changed from 45CSR§30-2.39 to 45CSR§30-2.40 because this definition was renumbered in 45CSR30.

  - **Condition 2.22.1.** - The reference notation was changed to delete 45CSR38 because it has been repealed.

  - **Condition 3.5.3.** - The EPA contact information and address were updated.

  - **Conditions 2.17, 3.5.7, and 3.5.8.a.1** - The section for Emergency was removed and replaced with Reserved in condition 2.17. Section 5.7 of Rule 30 which pertained to emergencies and affirmative defense was removed in the revised Rule 30.

  - **Condition 3.5.4** - Under the revised Rule 30, certified emissions statements are no longer required to be submitted. Facilities have been submitting their emissions data in SLEIS and paying fees based on their SLEIS submittal, so this requirement was no longer needed.

  - **Condition 3.5.8.a.2** - Under the revised Rule 30, "telefax" was replaced with "email".

Non-Applicability Determinations

The following requirements have been determined not to be applicable to the subject facility due to the following:

a. 40 C.F.R. 60, Subpart K - "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978." There are no petroleum liquid storage tanks in Facilities, Construction, and Support constructed, reconstructed or modified between these dates.

b. 40 C.F.R. 60, Subpart Ka - "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984." There are no petroleum liquid storage tanks in Facilities, Construction, and Support constructed, reconstructed or modified between these dates with a capacity greater than 40,000 gallons.

c. 40 C.F.R. 60, Subpart Kb - "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984." There are no volatile organic liquid storage tanks constructed in Facilities, Construction, and Support after the effective date with a design capacity greater than 75 m^3 (19,812.9 gallons).

d. 40 C.F.R. 60, Subpart VV - "Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry." Facilities, Construction, and Support does not produce as intermediates or final products any of the materials listed in 40 C.F.R. §60.489.

e. 40 C.F.R. 60, Subpart DDD - "Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry." Facilities, Construction, and Support does not manufacture polypropylene, polyethylene, polystyrene, or poly(ethylene terephthalate) for which this rule applies.

f. 40 C.F.R. 60, Subpart RRR - "Standards of Performance for Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes." Facilities, Construction, and Support does not produce any of the chemicals listed in §60.707 as a product, co-product, by-product, or intermediate.

g. 40 C.F.R. 61, Subpart V - "National Emission Standards for Equipment Leaks (Fugitive Emissions Sources)." Applies to sources in VHAP service as defined in 40 C.F.R. §61.241. VHAP service involves chemicals that are not used in a manner that qualifies them under the rule in Facilities, Construction, and Support

h. 40 C.F.R. 63, Subpart F – "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry." 40 C.F.R. 63 Subparts F, G, and H do not apply to manufacturing process units that do not meet the criteria in 40 C.F.R. §§63.100(b)(1), (b)(2), and (b)(3).

i. 40 C.F.R. 63, Subpart G – "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater." 40 C.F.R. 63 Subparts F, G, and H do not apply to manufacturing process units that do not meet the criteria in 40 C.F.R. §§63.100(b)(1), (b)(2), and (b)(3).

j. 40 C.F.R. 63, Subpart H - "National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks." 40 C.F.R. 63 Subparts F, G, and H do not apply to manufacturing process units that do not meet the criteria in 40 C.F.R. §§63.100(b)(1), (b)(2), and (b)(3).

k. 40 C.F.R. 63, Subpart DD – "National Emission Standards for Hazardous Air Pollutants From Off-Site Waste and Recovery Operations." Facilities, Construction, and Support (FC&S) does not receive off-site materials as specified in paragraph 40 C.F.R. §63.680(b) and the operations are not one of the waste management operations or recovery operations as specified in 40 C.F.R. §§63.680(a)(2)(i) through (a)(2)(vi).

l. 40 C.F.R. 63, Subpart YY – "National Emission Standards for Hazardous Air Pollutant for Source Categories: Generic Maximum Achievable Control Technology Standards." Facilities, Construction, and Support is not one of the source categories and affected sources specified in 40 C.F.R. §§63.1103(a) through (h).

m. 40 C.F.R. 63, Subpart JJJ - "National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins." Facilities, Construction, and Support does not produce the materials listed in 40 C.F.R. §63.1310.

n. 40 C.F.R. 63, Subpart EEEE – "National Emission Standards for Hazardous Air Pollutants: Organic Liquid Distribution (Non-Gasoline)." Facilities, Construction, and Support does not operate an organic liquids distribution (OLD) operation or does not handle material organic liquids as defined in §63.2406.

o. 40 C.F.R. 63, Subpart PPPP – "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products." Facilities, Construction, and Support does not produce an intermediate or final product that meets the definition of a "surface coated" plastic part.

p. 40 C.F.R. 63, Subpart WWWW - "National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production." Facilities, Construction, and Support does not engage in reinforced plastics composites production as defined in 40 C.F.R. §63.5785 and does not manufacture composite material as defined in 40 C.F.R. §63.5935.

q. 40 C.F.R. 63, Subpart ZZZZ – "National Emission Standards for Hazardous Air Pollutants: Reciprocating Internal Combustion Engines." Facilities, Construction, and Support does not have a stationary Reciprocating Internal Combustion Engine (RICE) as defined by 40 C.F.R. §63.6675.

r. 40 C.F.R. 63, Subpart GGGGG – "National Emission Standards for Hazardous Air Pollutants: Site Remediation." Facilities, Construction, and Support does not conduct site remediation as defined by 40 C.F.R. §63.7957 that meets all three of the conditions specified in 40 C.F.R. §§63.7881(a)(1) through (a)(3).

s. 40 C.F.R. 63, Subpart HHHHH – "National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing." Facilities, Construction, and Support does not produce, blend, or manufacture coatings as part of the manufacturing process.

t. 40 C.F.R. 63, Subpart NNNNN – "National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production." Facilities, Construction, and Support is not an HCl production facility as defined by 40 C.F.R. §63.9075.

u. 40 C.F.R. 82, Subpart B - "Protection of Stratospheric Ozone." Requires recycling of Chlorofluorocarbons (CFCs) from motor vehicles and that technicians servicing equipment need to be licensed. Facilities, Construction, and Support does not conduct motor vehicle maintenance involving CFCs on site.

v. 40 C.F.R. 82, Subpart C – "Protection of Stratospheric Ozone." Bans non-essential products containing Class I substances and bans non-essential products containing or manufactured with Class II substances. Facilities, Construction, and Support does not use, manufacture, nor distribute these materials.

w. 45CSR16 – "Standards of Performance for New Stationary Sources Pursuant to 40 C.F.R. 60." The FC&S Area is not subject to any requirements under 40 C.F.R. 60.

x. 45CSR17 – "To Prevent and Control Particulate Matter Air Pollution from Materials Handling, Preparation, Storage and Other Sources of Fugitive Particulate Matter." Per 45CSR§17-6.1, the FC&S Area is not subject to 45CSR17 because it is subject to the fugitive particulate matter emission requirements of 45CSR7.

y. 45CSR§21-40 – "Other Facilities that Emit Volatile Organic Compound (VOC)." None of the emission sources in FC&S have maximum theoretical emissions of 6 pounds per hour or more and are not subject to the requirements of this section.

z. 45CSR§27-4.1 – "To Prevent and Control the Emissions of Toxic Air Pollutants: Fugitive Emissions of Toxic Air Pollutants." The equipment in the FC&S Area is not in "toxic air pollutant service" as defined by 45CSR§27-2.11 and is not subject to the requirements of 45CSR§27-4.1.

aa. 40 C.F.R.63, Subpart FFFF – "National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing." Facilities, Construction, and Support does not manufacture any material or family of materials defined in §63.2435(b)(1)(i) through (v).

bb. 40 C.F.R. 63, Subpart MMMM – "National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products." There are no surface coating activities conducted in Facilities, Construction, and Support subject to the requirements of this rule.

cc. 45CSR§21-19 – "Other Facilities that Emit Volatile Organic Compound (VOC)." The operations of Facilities, Construction, and Support are outside of the SIC grouping to which this section of 45CSR21 applies.

Request for Variances or Alternatives
None.

Insignificant Activities
Insignificant emission unit(s) and activities are identified in the Title V application.

Draft Comment Period
Beginning Date: March 6, 2024
Ending Date: April 5, 2024

Point of Contact
All written comments should be addressed to the following individual and office:

Beena Modi
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street SE
Charleston, WV 25304
Phone: 304/926-0499 ext. 41283 • Fax: 304/926-0478
Beena.j.modi@wv.gov

Procedure for Requesting Public Hearing
During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing, if no public hearing has already been scheduled. A request for public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. The Secretary shall grant such a request for a hearing if he/she concludes that a public hearing is appropriate. Any public hearing shall be held in the general area in which the facility is located.

Response to Comments (Statement of Basis)
On April 4, 2024, comments on the Draft Title V permit were received from AltmanNewman Co. LPA submitted on behalf of the Little Hocking Water Association. The comments and the Division of Air Quality's responses are provided below. The comments did not result in any changes to the Title V permit.

ALTMAN NEWMAN CO. LPA
Protecting Human Health & The Environment

VIA EMAIL

WV Department of Environmental Protection
Division of Air Quality
601 57th Street, SE
Charleston, WV 25304
Attn: Beena Modi
Beena.j.modi@wv.gov

April 04, 2024

Re: Permit No. R30-10700182-2024

Dear Ms. Modi:

These comments are submitted on behalf of the Little Hocking Water Association (Little Hocking or "LHWA") regarding The Chemours Company FC, LLC's ("Chemours," formerly DuPont) application to the West Virginia Department of Environmental Protection ("WVDEP") to renew part 12 of 14 of its existing Title V permits for its Washington Works West Virginia plant ("Washington Works"). Little Hocking, located at 3998 Newbury Road, Little Hocking, Ohio 45742, is a rural non-profit water system in southeastern Ohio. Little Hocking is particularly concerned about the Washington Works air emissions because Chemours and DuPont (the predecessor operator) have long acknowledged that the Little Hocking wellfield and the surrounding environment are adversely affected by air pollution from the facility. As a directly impacted entity, Little Hocking makes two fundamental observations about the permit offered for comment.

First, **Permit No. R30-10700182-2024 is only one of potentially 14 separate Title V permits held at Washington Works**. The fact that it is being evaluated in isolation of all other Washington Works Title V permits circumvents the statutory and regulatory scheme of the Clean Air Act's ("CAA") Title V program. It is imperative that the entire Washington Works plant be considered a "single source" pursuant to CAA Part 70, subject to a single Title V permit that covers the entire facility.

Second, **Washington Works is a "major source"** by virtue of having the potential to emit greater than 10 tons per year of one or more hazardous air pollutants, or greater than 25 tons per year of all (188) hazardous air pollutants (CAA Section 112). As a major source of air pollution, ***all emissions of hazardous air pollutants must achieve "Maximum Achievable Control Technology" (MACT) standards.*** These are stipulated in the HON Rule (Hazardous

15 E. 8th St., Suite 200W, Cincinnati, OH 45202
513 721 2180 environlaw.com

Organic National Emissions Standards for Hazardous Air Pollutants – 40 CFR Part 63). Expedience and convenience for the air pollution source – here Chemours – and for the regulator are not a justification to ignore the CAA-mandated process.

The CAA's Title V operating permit is the regulatory mechanism for assuring that, among other things, the entire facility (i.e., the Washington Works facility in this case) has ***all emission points*** deploying MACT. Having multiple Title V permits for the same facility is materially inconsistent with USEPA policy and circumvents the CAA Title V process. (See Memorandum from Anne Idsal, Acting Assistant Administrator to Regional Administrators 11/26/2019, attached). This is not merely a technical defect.

For example, having multiple Title V permits allows Chemours to escape the requirements and safeguards triggered by a "major modification" to the plant by instead permitting many separate minor modifications. Rather than this fragmented approach, modifications must be considered together to determine whether such collective changes constitute a "major modification" to the plant.

WVDEP and Chemours' multiple Title V permit handling strategy will result in Chemours' continued circumvention of MACT standards at Washington Works, resulting in greater cumulative emissions of hazardous air pollutants, just by improperly fragmenting the Title V permitting process. For example, LHWA's February 28, 2024 comments on Chemours' Construction Permit R13-3645 and Title V Permit R30-10700182-2021 note that Chemours provided no basis for the "assumed" 50% collection efficiency listed on its Air Pollution Control Device Sheet. It appears highly unlikely that a technology with only a 50% collection efficiency would constitute MACT.

LHWA requests that WVDEP provide an explanation of the factual and legal basis for its piecemeal Title V permitting at Washington Works. Please contact either me or Justin Newman directly if you have any questions about these comments.

Comments submitted on behalf of the Little Hocking Water Association by:

/s/ D. David Altman
D. David Altman
Justin D. Newman
AltmanNewman Co. LPA
15 E. 8th St., Suite 200W
Cincinnati, OH 45202
(513) 721-2180
daltman@environlaw.com
jnewman@environlaw.com

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

11/26/2019

MEMORANDUM

SUBJECT: Interpreting "Adjacent" for New Source Review and Title V Source Determinations in All Industries Other Than Oil and Gas

FROM: Anne L. Idsal
Acting Assistant Administrator

TO: Regional Administrators, Regions 1-10

The purpose of this memorandum is to communicate the Environmental Protection Agency's (EPA's or the Agency's) interpretation of regulations that determine the scope and extent of a "stationary source" for the major New Source Review (NSR) pre-construction permit programs under title I of the Clean Air Act (CAA) and the scope and extent of a "major source" for the title V operating permit program.[1] EPA generally refers to such a determination regarding the scope and extent of a stationary source as a "source determination."

The Agency understands that among both the regulated community and permitting authorities there continues to be uncertainty regarding the meaning of the term "adjacent," as that term is used in the relevant definitions in EPA's NSR and title V regulations. This uncertainty results in part from court decisions and from case-specific letters from EPA over the past many years. To promote clarity for regulated entities and permitting authorities, EPA is providing its interpretation of the term "adjacent," as used in this context in the NSR and title V regulations. This memorandum describes how EPA interprets "adjacent" for all industrial categories except for oil and natural gas activities covered by Standard Industrial Classification (SIC) major group 13.[2]

[1] References to "NSR" in this memorandum refer to both the Prevention of Significant Deterioration (PSD) program and the Nonattainment New Source Review program. This memorandum does not address definitions in other programs, such as the CAA section 112 hazardous air pollutant program.
[2] EPA has established a specific meaning of "adjacent" in a rulemaking for that source category. *See* 81 FR 35622 (June 3, 2016). As described in this memorandum, the interpretation of "adjacent" set forth here differs somewhat from the approach taken in the oil and gas rulemaking (where facilities located within a quarter mile of each other, with shared equipment, are considered to be adjacent).

In previous instances where EPA has provided its views to state and local permitting authorities regarding whether two or more facilities were located on adjacent properties, the Agency often looked beyond the physical proximity of the properties and took into consideration the functional relationship, or functional interrelatedness, that existed between those facilities to form our opinion.[3] After a review of these past actions and recent court decisions, and after considering comments from stakeholders on a September 4, 2018, draft of this guidance memorandum, EPA has determined that the better approach is to apply the Agency's original interpretation expressed in the 1980 development of the Prevention of Significant Deterioration (PSD) portion of the NSR program, where we focused exclusively on proximity when considering whether properties are adjacent. This memorandum provides an interpretation of the NSR and title V regulations that better aligns with both the text of those regulations and our original interpretation of them.

In the interest of consistency and clarity, EPA encourages those permitting authorities that administer EPA-approved NSR and title V programs to also apply this interpretation in determining whether pollutant-emitting activities in these other source categories are located on "adjacent" properties and should be aggregated into a single source in cases where the activities are under common control and belong to the same industrial grouping.[4] However, this revised interpretation is neither a regulation subject to notice-and-comment rulemaking requirements nor a final agency action. This memorandum itself does not amend the definition of "adjacent" in EPA regulations and does not create or change any legal requirements applicable to EPA, state, local, or tribal permitting authorities, permit applicants, or the public. The revised determination of "adjacent" does not itself determine whether any specific set of activities are located on contiguous or adjacent properties or should be treated as a single stationary source. Source determinations are made by permitting authorities on a case-by-case basis after consideration of the relevant administrative record. EPA-approved state, local, and tribal permitting authorities are not required to apply this interpretation and retain the discretion to determine when pollutant-emitting activities are located on contiguous or adjacent properties.

BACKGROUND

Relevant Statutory and Regulatory Provisions

The NSR program requires a permit before beginning construction of a new major stationary source of air pollutant emissions or a modification of such a source that significantly

---

[3] *See, e.g.*, Letter from Richard R. Long, Director, Air and Radiation Program, Region 8, to Dennis Myers, Stationary Sources Program, Air Pollution Control Division, Colorado Department of Public Health and Environment (April 20, 1999) (stating that whether two facilities are "adjacent" is based on the "common sense" notion of a source and the functional interrelationship of the facilities, and is not simply a matter of the physical distance between two facilities). Additional EPA source determination letters are available at *https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index* and *https://.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index*.

[4] Some air agencies that do not have EPA-approved permitting programs issue PSD and title V permits under a delegation of federal authority from EPA. *See, e.g.*, 40 CFR 52.21(u). Typically, as a condition of such delegation, the delegated air agency agrees to follow EPA permitting guidance. Thus, EPA expects these delegated air agencies to apply the interpretation described in this memorandum.

increases emissions. The CAA generally defines the term "stationary source" as "any source of an air pollutant" except those emissions resulting directly from certain mobile sources or engines.[5] For NSR, EPA regulations define "stationary source" as "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant."[6] Those regulations, in turn, define the term "building, structure, facility, or installation" to mean "all of the pollutant-emitting activities which [1] belong to the same industrial grouping, [2] are located on one or more contiguous or adjacent properties, and [3] are under the control of the same person (or persons under common control)." The phrase "same industrial grouping" refers to the same Major Group, two-digit SIC code.[7] Many state and local permitting authorities have EPA-approved NSR permitting regulations that contain identical or similar definitions.

Title V of the CAA requires that a "major source" and sources subject to specific CAA requirements obtain an operating permit, known as a title V permit.[8] 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, 42 U.S.C. § 7412), the general CAA definition of major stationary source (CAA section 302, 42 U.S.C. § 7602), and the specific definitions of major stationary source that apply in some areas under the nonattainment NSR program.[9] Each of these programs have different numerical emissions thresholds at which requirements apply. EPA's operating permit regulations incorporate these thresholds in the definition of "major source" and define such a 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 . . . ."[10] As in the NSR programs, "major industrial grouping" refers to the Major Group, two-digit SIC code.[11] Many state, local, and tribal permitting authorities have EPA-approved title V permitting regulations that have adopted similar definitions.

Historical EPA Implementation of Statutory and Regulatory Definitions

Under the regulations described above, permitting authorities must assess three factors—same industrial grouping, location on contiguous or adjacent properties, and under common control—to determine whether or not pollutant-emitting activities should be considered a single source when determining applicability of NSR and title V permitting requirements. With one exception,[12] EPA's regulations do not define "adjacent." In the original promulgation and later application of these three factors, EPA has been mindful of the direction provided by the U.S. Court of Appeals for the District of Columbia Circuit in *Alabama Power Co. v. Costle*, 636 F. 2d 323 (D.C. Cir. 1979), that for permitting purposes, "source" should be understood to approximate

[5] CAA section 302(z), 42 U.S.C. § 7602(z). Mobile sources and engines are defined in CAA section 216, 42 U.S.C. § 7550.
[6] 40 CFR 52.21(b)(5); 40 CFR 51.165(a)(1)(i); 40 CFR 51.166(b)(5).
[7] 40 CFR 52.21(b)(6); 40 CFR 51.165(a)(1)(ii); 40 CFR 51.166(b)(6).
[8] CAA section 502(a), 42 U.S.C. § 7661a(a).
[9] CAA section 501(2), 42 U.S.C. § 7661(2); 40 CFR § 70.2.
[10] 40 CFR 70.2; 40 CFR 71.2; *see* CAA section 501(2), 42 U.S.C. § 7661(2).
[11] 40 CFR 70.2; 40 CFR 71.2.
[12] *See, e.g.*, 40 CFR 52.21(b)(6)(ii) (definition of "building, structure, facility, or installation" applicable to onshore activities under SIC Major Group 13: Oil and Gas Exploration).

the "common sense notion of a plant."[13] With this general consideration in mind, permitting authorities make individual source determinations on a case-by-case basis.

When EPA promulgated the PSD regulations in 1980, we explained that the three-part test (same industrial grouping, location on contiguous or adjacent properties, and under common control) would satisfy this direction from the *Alabama Power* court decision by reasonably approximating the "common sense notion of a plant," and by avoiding the aggregation of pollutant-emitting activities that would not fit within the ordinary meaning of "building, structure, facility or installation."[14] In so doing, we considered but chose ***not*** to add a "functional interrelationship" factor or test to the regulatory criteria for defining a source, because, at that time, we believed that such a test would have "embroiled the agency in numerous, fine-grained analyses."[15] In the same rulemaking, EPA intentionally did not set a specific distance that would be considered too far apart for adjacency, stating such determinations must be made case-by-case.[16] However, the Agency did explain that it did not intend that a single source include activities that were many miles apart, as may be the case, for instance, with multiple sources located along the same pipeline or transmission line.

EPA later promulgated the title V major source definition found at 40 CFR 70.2 (57 FR 32250 (July 21, 1992)) and 40 CFR 71.2 (61 FR 34202, 34210 (July 1, 1996)).[17] Not only were these title V definitions consistent with each other, but EPA was also clear that the language and application of the title V definitions were intended to be consistent with the language and application of the PSD definitions contained in section 40 CFR 52.21. 61 FR 34210 (July 1, 1996).

A review of the NSR and title V regulatory history, guidance, and numerous case-specific source determinations makes clear that EPA has looked to common dictionary definitions when interpreting the terms "contiguous" and "adjacent."[18] Based on those dictionary definitions, EPA

---

[13] *See* 45 FR 52676, 52695 (August 7, 1980) (citing *Alabama Power*, 636 F. 2d at 397). 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" included in section 111(a)(3) of the Act ("building," "structure," "facility," and "installation"). The court further said that EPA should "provide for the aggregation, where appropriate, of industrial activities according to considerations such as proximity and ownership." *Id.* at 397. For further discussion of EPA's understanding of the *Alabama Power* decision in light of subsequent case law, see Source Determination for Certain Emission Units in the Oil and Natural Gas Sector Response to Comments, Docket No. EPA-HQ-OAR-2013-0685-0281 at 243–44 (May 2016).

[14] 45 FR at 52694.

[15] 45 FR at 52695. Instead, EPA decided to use the SIC code as the criterion for aggregating activities on the basis of their functional interrelationships, to maximize the predictability and to minimize the difficulty of administering the definition. *See id.*

[16] In this regard, EPA noted that it was "unable to say precisely at this point how far apart activities must be in order to be treated separately." 45 FR at 52695.

[17] EPA's regulations at 40 CFR Part 70 govern state operating permit programs, and the regulations at 40 CFR Part 71 comprise the federal operating permit program.

[18] While many of EPA's source determinations interpret the term "adjacent," some appear to interpret the collective phrase "contiguous or adjacent" without making a distinction between the two terms. *See, e.g.*, Letter from Douglas M. Skie, Chief, Air Programs Branch, Region 6, to Cathy Rhodes, Air Pollution Control Division, Colorado Department of Public Health and Environment (August 22, 1991) (stating "[a]djacent or contiguous facilities can mean facilities that are physically separated by some distance"). As explained below, this memorandum follows the

has interpreted "contiguous" to mean that the parcels of land associated with the pollutant-emitting activities in question are in physical contact with one another. EPA has considered properties to be "adjacent" when, while physically separate, they are "nearby" one another.[19] At the same time, however, it is also clear that over the years, EPA has considered, and at times heavily weighed, whether pollutant-emitting activities share some functional interrelatedness in determining whether the properties where those pollutant-emitting activities reside, while separated by some physical distance, are close enough to be considered "adjacent." For example, in a 1981 memorandum regarding two General Motors operations, EPA concluded that pollutant-emitting activities a mile apart with a dedicated railroad line between them and a shared production line were "adjacent," emphasizing that they were "functionally equivalent" to a source.[20] In incorporating the idea of functional interrelatedness into the interpretation of "adjacent," EPA has repeatedly explained that the guiding principle behind how close properties need to be in order to be considered adjacent is "the common sense notion of a plant," which involves a fact-specific analysis of the pollutant-emitting activities that comprise or support the primary product or activity of the operations.[21] EPA has also noted that pollutant-emitting activities that have historically been considered one source should not be separated into two sources at a later date based on reconsideration of whether the properties are adjacent.[22] This is particularly so where, for purposes of NSR netting analyses, sources have themselves considered their activities to be one source to offset emissions increases from one activity's modification or construction with emissions decreases from another activity's reduced operation (or production), closure, installation of controls, or initiation of operational changes.

In 2007, EPA issued a memorandum specific to the oil and gas industry that focused on close proximity as the most informative factor for determining whether properties were "adjacent."[23] In 2009, however, the Agency withdrew that memorandum.[24] The 2009 memorandum rejected the use of a separate approach for the oil and gas industry. Instead, under the 2009 memorandum, EPA returned to applying, for the oil and gas industry, the same approach employed for all other industries for determining whether properties were adjacent. In so doing, EPA explained that "in some cases, 'proximity' may serve as the overwhelming factor" but that

---

approach taken by the majority of relevant guidance and interprets the meaning of the term "adjacent," rather than the phrase "contiguous or adjacent."

[19] *See, e.g.*, Letter from Richard R. Long, Director, Air Program, Region 8, to Lynn Menlove, New Source Review Section, Utah Division of Air Quality (May 21, 1998) (1998 UT letter) (quoting the Webster's New College Dictionary definition of "adjacent" as "1. Close to; nearby, or 2. Next to; adjoining.").

[20] Memorandum from Edward E. Reich, Director, Division of Stationary Source Enforcement, to Steve Rothblatt, Chief, Air Programs Branch, Region 5, PSD Definition of Source (June 30, 1981).

[21] *See, e.g.*, 1998 UT letter (stating any evaluation must relate to the guiding principle of "a common sense notion" of a source, citing to the 1980 PSD rule preamble's use of that phrase).

[22] Letter from Cheryl L. Newton, Chief, Permits and Grants Section, Region 5, to Donald Sutton, Permits Section, Division of Air Pollution Control, Illinois Environmental Protection Agency (March 13, 1998).

[23] Memorandum from William L. Wehrum, Acting Assistant Administrator, to Regional Administrators 1-10, Source Determinations for Oil and Gas Industries (Jan. 12, 2007) (2007 Wehrum Memo). The memorandum also maintained that the "foremost principle" guiding source determinations was the "common sense notion of a plant." *Id.*

[24] Memorandum from Gina McCarthy, Assistant Administrator, to Regional Administrators 1-10, Withdrawal of Source Determinations for Oil and Gas Industries (September 22, 2009).

"such a conclusion can only be justified through reasoned decision making after examining whether other factors are relevant to the analysis."[25]

In *Summit Petroleum Corp. v. EPA*, 690 F.3d 733 (6th Cir. 2012), the U.S. Court of Appeals for the Sixth Circuit overturned a title V source determination in the oil and gas industry by EPA that relied, in part, on functional interrelatedness in determining whether properties were "adjacent." In the decision, the court said that EPA's use of interrelatedness in determining whether sources were "adjacent" was unreasonable and contrary to the plain meaning of the term as then used in EPA's regulations. In reaching that conclusion, the court relied in part on dictionary definitions of "adjacent," [26] and concluded that dictionaries agree that entities are adjacent when they are "[c]lose to; lying near . . . [next] to, adjoining."[27] The majority opinion found that the term "adjacent" was unambiguous, insofar as its plain meaning related only to physical proximity. Thus, the court found, "functional interrelatedness" was not a factor that EPA could take into account in making an "adjacency" determination.

In response to *Summit Petroleum*, EPA issued a memorandum in 2012 explaining that the Agency would follow the court's decision in those areas within the Sixth Circuit's jurisdiction but would continue to consider functional interrelatedness in NSR and title V source determinations for sources in other areas.[28] However, the U.S. Court of Appeals for the D.C. Circuit later struck down the 2012 memorandum on the grounds that establishing inconsistent permit criteria in different parts of the country conflicted with EPA regulations that promote uniform national regulatory policies.[29] The court found that EPA had bound itself to consistency through its own regulations, but noted that EPA could also revise those regulations to account for regional variances created by a judicial decision that applies in only one part of the country or differences in opinion between federal appellate courts (otherwise known as a "circuit split").[30] The D.C. Circuit decision did not address the meaning of the term "adjacent" or the extent to which the language in the NSR and title V regulations (rather than the regional consistency regulations) required application of the reasoning of *Summit Petroleum* across the country.

DISCUSSION

---

[25] *Id.* As noted above, EPA subsequently established a specific meaning for "adjacent" in a rulemaking for the oil and gas industry which considers pollutant-emitting activities located within a quarter mile of each other, with shared equipment, to be adjacent. *See* 81 FR 35622 (June 3, 2016).

[26] The court also examined the etymology of the term and relevant caselaw.

[27] 690 F.3d at 742 (quoting American Heritage Dictionary of the English Language, available at *http://www.ahdictionary.com*). The court referenced two additional dictionary definitions as well, Meriam-Webster Dictionary, available at www.meriam-webster.com ("not distant: nearby <the city and *adjacent* suburbs>; having a common endpoint or border <*adjacent* lots> . . . ; immediately preceding or following"), and Oxford Dictionaries, available at *http://www.oxforddictionaries.com* ("next to or adjoining something else; *adjacent rooms*; *the area adjacent to the fire station*").

[28] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors 1-10, Applicability of the Summit Decision to EPA Title V and NSR Source Determinations (December 21, 2012).

[29] *National Environmental Development Association's Clean Air Project v. EPA*, 752 F.3d 999, 1009 (D.C. Cir. 2014) (discussing 40 CFR part 56).

[30] EPA has since revised those regional consistency regulations at 40 CFR part 56 to more clearly address the implications of adverse federal court decisions that result from challenges to locally or regionally applicable actions, and this revision was upheld by the D.C. Circuit. 81 FR 51102 (August 3, 2016); *National Environmental Development Association's Clean Air Project v. EPA*, 891 F.3d 1041 (D.C. Cir. 2018).

For the reasons discussed below, for industries other than oil and gas, EPA interprets the term "adjacent" to entail physical proximity, and the perceived "functional interrelatedness" of pollutant-emitting activities is not a relevant consideration in this inquiry.[31] This interpretation is consistent both with the Agency's original understanding of the term, as was explained by EPA in the preamble to the 1980 rule for the PSD program, and with the reasoning of the court in the *Summit Petroleum* decision.[32]

Focusing exclusively on physical proximity when considering whether pollutant-emitting activities are on adjacent properties is a more objective and reasonable approach, and one that is more consistent with the dictionary meaning of "adjacent" and the "common sense notion of a plant." Dictionaries define "adjacent" as "close to; lying near," "next to," "not distant: nearby," or "having a common endpoint or border."[33] While these definitions may leave some uncertainty regarding what distance is "close" or "near" enough, they all unquestionably convey the idea of physical proximity. Another important consideration is the context in which the word is used in EPA's regulations. The relevant definitions use the phrase "contiguous or adjacent." While these words are sometimes considered synonyms, in that "adjacent" *can* mean "contiguous," it does not follow that two things *must* be "contiguous" in order to be reasonably considered "adjacent." We think our reasoning in the oil and gas rulemaking is also relevant for other industries, specifically that the use of both the words "contiguous" and "adjacent" in our regulations is reasonably interpreted as including both activities located on properties that are touching ("contiguous") and also activities located on properties that are not contiguous but are in proximity to each other ("adjacent").[34] For "adjacent" to be construed to mean exactly the same as "contiguous" would render the term "adjacent" superfluous. Thus, EPA thinks a reasonable reading that gives meaning to both terms is to interpret "adjacent" to include properties that are not physically touching—including those that are to some degree separated by a right of way or other type of similar intervening property—but that are otherwise in reasonable proximity to one another. The Sixth

[31] This memorandum interprets the meaning of the term "adjacent," rather than the regulatory phrase "contiguous or adjacent," because the term "adjacent" has caused more confusion in practice than the word "contiguous." As EPA has stated in the context of regulations promulgated under CAA section 112 authority, "'contiguous' is clear in its meaning of actually touching, [while] 'adjacent' is subject to broader interpretation, including that of being nearby but 'not touching.'" 58 FR 42760, 42767 (Aug. 11, 1993). Notwithstanding this focus on the term "adjacent," in EPA's view, functional interrelatedness is not a relevant consideration in determining whether operations are either "contiguous" or "adjacent," or accordingly to the "contiguous or adjacent properties" criterion as a whole.

[32] EPA understands that it must apply the holding in *Summit Petroleum Corp. v. EPA*, 690 F.3d 733 (6th Cir. 2012) within the jurisdiction of the Sixth Circuit when determining whether properties are adjacent under the title V regulations for industries other than oil and gas. EPA recommends that permitting authorities within that jurisdiction also be mindful of this decision when interpreting their regulations.

[33] *See* American Heritage Dictionary of the English language, available at *http://www.ahdictionary.com* (last visited May 8, 2018) ("1. Close to; lying near: *adjacent cities*. 2. Next to: adjoining: *adjacent garden plots*."); Oxford Dictionaries, available at *http://www.oxforddictionaries.com* (last visited May 8, 2018) ("Next to or adjoining something else; *adjacent rooms, the area adjacent to the station*."); Merriam-Webster Dictionary, available at *http://www.merriam-webster.com* (last visited May 8, 2018) ("a. Not distant: Nearby; the city and adjacent suburbs. b. having a common endpoint or border; *adjacent lots; adjacent sides of a triangle*.") (emphases added).

[34] 81 FR at 35625.

Circuit's reasoning in the *Summit Petroleum* decision, based in part on the dictionary definition of "adjacent," supports this interpretation.[35]

While EPA has at times previously considered "functional interrelatedness" in its evaluation of the term "adjacent," after a review of these past actions and the *Summit Petroleum* decision, EPA now believes that the better interpretation of the term "adjacent" does not consider functional interrelatedness. Considering functional interrelatedness in the "adjacent" portion of the source determination process departs from the original interpretation EPA expressed in the 1980 PSD rule preamble.[36] Use of functional interrelatedness when determining adjacency has resulted in less clarity and the burdensome, fine-grained analyses in source determinations that EPA in 1980 predicted would occur, and which the Agency wished to avoid. Furthermore, in contrast to the oil and gas industry, EPA does not currently think that the inclusion of a criterion similar to "shared equipment" between physically proximate activities is appropriate for all other industries. EPA included this criterion in the 2016 oil and gas source determination rulemaking because oil and gas sources can be located within a quarter mile of each other without having any operational ties, which prompted concerns that sources might be over-aggregated in a manner inconsistent with the "common sense notion of a plant" if adjacency were determined based on physical proximity alone. *See* 81 FR at 35624, 26. In EPA's judgment, such concerns over potential over-aggregation through the consideration of physical proximity alone are unlikely to be present with respect to most (if not all) other industries.

Therefore, in sum, for purposes of making source determinations for NSR and title V, EPA interprets the term "adjacent" to entail physical proximity between properties. From this point forward, EPA will consider properties that do not share a common boundary or border, or are otherwise not physically touching each other, to be "adjacent" only if the properties are nevertheless nearby, side-by-side, or neighboring (with allowance being made for some limited separation by, for example, a right of way). This is inherently a case-specific inquiry where determining the appropriate distance at which two properties are proximate enough to reasonably be considered "adjacent" may vary depending on the nature of the industry involved. Therefore, EPA is not here establishing or recommending a "bright line," or specifying a fixed distance, within which two or more properties will be deemed (or presumed) by EPA to be in close enough physical proximity to be considered "adjacent." In each case, this determination should ultimately approximate the "common sense notion of a plant." Moreover, importantly, for those properties *not* in physical proximity to each other, EPA will not invoke the existence of some functional interrelationship to establish "adjacency."

---

[35] Additionally, the reasoning of the 2007 Wehrum Memo is also generally consistent with our approach today, focusing on physical proximity with some allowance for separation between activities. While the 2007 Wehrum Memo concerned only the oil and gas industry, and EPA ultimately concluded that a different interpretation of "adjacent" was reasonable and appropriate for oil and gas sources due to the unique nature of that industry, EPA thinks that the focus of the 2007 Wehrum Memo on physical proximity is appropriate for industries other than oil and gas.

[36] As discussed above, EPA considered but rejected an approach that would have relied on functional interrelatedness as a regulatory criterion for source determinations, deciding instead to use the major industrial grouping (SIC code) as the criterion that would account for operational relationships. EPA did not, in 1980, give any indication that some notion of "functional interrelatedness" should also be used for determining questions of adjacency. *See supra* note 15 and accompanying text.

State, local, and tribal permitting authorities with EPA-approved NSR and title V permitting programs remain responsible for determining in the first instance on a case-by-case basis whether specific facilities are located on adjacent properties.[37] EPA encourages these permitting authorities to focus exclusively on physical proximity, following the interpretation expressed in this memorandum. However, these permitting authorities are not required to apply the interpretation set forth in this memorandum and retain discretion in determining what information supports a conclusion that pollutant-emitting activities are "close" or "near" enough to be "adjacent" while approximating a "common sense notion of a plant" in a reasonable manner.[38] Notwithstanding this flexibility available to permitting authorities, EPA believes that applying an interpretation focusing exclusively on physical proximity will provide greater clarity and consistency in permitting decisions.

EPA encourages permitting authorities that choose to apply EPA's current interpretation of "adjacent" to do so prospectively and not retroactively. Thus, EPA recommends that state, local, and tribal permitting authorities apply this interpretation from this point forward when those authorities are for the first time assessing the relevant facts and circumstances governing whether a given set of activities should be considered a single source for purposes of NSR and title V. In most situations, EPA expects that it would not be appropriate or necessary for permitting authorities to revisit prior source determinations based solely on a change in an EPA policy or interpretation.[39] Not only could this upset potential settled expectations, but it could result in an unmanageable strain on limited resources for permitting authorities (and, in some cases, EPA).[40] However, there may be circumstances where it could be appropriate (and not unduly burdensome) for a permitting authority to re-evaluate a prior source determination, such as where relevant facts change that impact whether the three criteria are met. If a permitting authority does revisit a prior source determination (e.g., based on changed facts), EPA recommends that such a re-evaluation apply prospectively to future permitting actions and not retroactively to permitting actions that have been completed. Therefore, in most circumstances, EPA does not think it would be appropriate to revisit or revise previously-issued final permit actions that were based on a

[37] As noted above, some air agencies that do not have EPA-approved permitting programs issue PSD and title V permits under a delegation of federal authority from EPA. *See, e.g.*, 40 CFR 52.21(u). Typically, as a condition of such delegation, the delegated air agency agrees to follow EPA permitting guidance. Thus, EPA expects these delegated air agencies to apply the interpretation described in this memorandum.

[38] EPA maintains that focusing exclusively on physical proximity is the better interpretation of "adjacent." However, except where *Summit Petroleum* is binding (see *supra* note 32), EPA does not consider its interpretation to be the only reasonable interpretation of the relevant statutory and regulatory terms due to the ambiguity resulting from the need for—and lack of—context within the meaning of "adjacent." Accordingly, EPA does not agree with the suggestion of some commenters that EPA's prior interpretation was an unlawful interpretation or foreclosed by the Act.

[39] This is particularly true where EPA's prior policies and the permitting authority's prior decisions were not unreasonable or contrary to the Act.

[40] Additionally, in some cases, such a re-evaluation could raise potential concerns related to the appearance of circumvention of NSR requirements. EPA generally discourages re-evaluation where multiple pollutant-emitting activities previously relied on their classification as a single source to avoid additional requirements (e.g., by relying on source-wide emission reductions during a NSR netting analysis) and where these same activities later request to be treated as separate sources based only in this change in EPA's interpretation, particularly where such a change would result in removal of requirements that would otherwise apply if the activities continued to be considered a single source.

reasonable application of regulatory requirements and then-existing policies to a given set of facts.[41] Like other aspects of the memorandum, EPA's recommendations on this issue are not binding on permitting authorities.

Please share this memorandum with air agencies in your Region. For any questions regarding this memorandum, please contact Scott Mathias, Acting Director of the Air Quality Policy Division in the Office of Air Quality Planning and Standards at (919) 541-5310 or *mathias.scott@epa.gov*.

[41] EPA's existing regulations and policies regarding any existing authority that permitting authorities have under their EPA-approved rules to modify or rescind previously-issued permits or permit terms are not affected by, and are beyond the scope of, this guidance.

west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304
(304) 926-0475

Harold D. Ward, Cabinet Secretary
dep.wv.gov

May 28, 2024

VIA EMAIL

D. David Altman daltman@environlaw.com
Justin D. Newman jnewman@environlaw.com
AltmanNewman Co., LPA
15 E. 8th St., Suite 200W
Cincinnati, OH 45202

RE: Response to Comments
The Chemours Company FC, LLC
Facilities, Construction, and Support (FC&S)
Title V Renewal R30-10700182-2024 (12 of 14)

Dear Mr. Altman and Mr. Newman:

Your comments, submitted on behalf of the Little Hocking Water Association, regarding the Title V operating permit renewal for The Chemours Company FC, LLC (Chemours) at Washington Works, for their Facilities, Construction, and Support (FC&S) Business Unit, R30-10700182-2024 (12 of 14) were received by the Division of Air Quality (DAQ) on April 4, 2024. The comments allege that DAQ is allowing circumvention of the Title V program and Maximum Achievable Control Technology (MACT) standards by issuing multiple Title V permits to the facilities at the Washington Works plant (Chemours, Delrin USA, LLC (Delrin), and Celanese Polymer Products LLC (Celanese)). Furthermore, the comments suggest that DAQ should consider the entire Washington Works plant as a "single source" pursuant to CAA Part 70, subject to a single Title V permit that covers the entire facility (Chemours, Delrin, and Celanese).

DAQ does not agree that the entire Washington Works plant is a "single source" pursuant to Title V. DAQ's rule 45CSR30 provides for the establishment of a comprehensive air quality permitting system consistent with the requirements of Title V of the Clean Air Act and 40 C.F.R Part 70. Section 2.26 of 45CSR30 and Section 70.2 of 40 C.F.R. 70 both define a "Major source" as:

1) Any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties); and

2) Are under common control of the same person (or persons under common control); and

3) Belong to a single major industrial grouping; and

4) Are a major source of hazardous air pollutants (10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants) or a major source of air pollutants (one hundred tons per year or more of any pollutant subject to regulation).

The definition sets forth criteria that must all be true for a facility to be classified as a major source under Title V. Although the facilities at the Washington Works plant are contiguous and adjacent and belong to the same industrial grouping, they are not under common control of the same person as explained below.

When making the source determination for the facilities at the Washington Works plant (Chemours, Delrin, and Celanese), one must refer to *Meadowbrook* in which EPA interpreted the term "control" for its Title V regulations to require more than the ability to merely influence, but on control over "operations relevant to air pollution, and specifically control over which operations that could affect the applicability of, or compliance with, air permitting requirements,"[1] such as Title V. The justification behind EPA's definition of control in *Meadowbrook* is that since EPA's regulations reference air pollution-emitting activities when defining what constitutes a single source, source determinations made in the context of Title V permitting programs and its requirements should pertain to the control and monitoring of air pollution emissions. Furthermore, "if the authority one entity has over another cannot actually affect the applicability of, or compliance with, relevant permitting requirements, then the entities cannot control what permit requirements are applicable to each other and whether another entity complies with its respective requirements."[1] EPA determined that when one entity does not have control over another's permitting requirements, "it is more logical for such entities to be treated as separate sources, rather than being grouped together artificially for permitting purposes."[1] EPA further clarified in *Meadowbrook* that "aggregating entities that cannot control decisions affecting applicability or compliance with permitting and other requirements would create practical difficulties and inequities. For Title V purposes, it may be impossible for the responsible official of one entity to accurately certify the completeness of a permit application for a permit modification (e.g., to incorporate requirements that are applicable to a new unit) that is entirely within the control of another entity, or to certify that the other entity has complied with existing permit requirements, as required by Title V."[1] A review of DAQ's files for Chemours, Delrin, and Celanese indicated

[1] *Meadowbrook* – Letter from William L. Wehrum, Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency, to the Honorable Patrick McDonnell, Secretary, Pennsylvania Department of Environmental Protection (April 30, 2018)

that each entity does indeed have a different responsible official, so as outlined in *Meadowbrook*, it would be inappropriate for the responsible official for Chemours to certify compliance with the requirements of Delrin's Title V permit when it has a different responsible official.

Chemours operates steam producing boilers and the wastewater treatment plant which services the Washington Works plant. Because of the relationship between the facilities at the Washington Works plant regarding the wastewater treatment system and the boilers, DAQ also reviewed the EPA source determination for Ameresco and JCL (referred to as *Ameresco*). In this source determination, EPA provided an example of two separately owned manufacturing companies that operate independently with respect to all their emissions-related activities, except for a shared wastewater treatment plant over which they share control due to practical and economic convenience. While this is not exactly the same as Chemours is the sole owner and operator of the wastewater treatment system and boilers and just supplies these services to the other facilities at the Washington Works plant, it is similar enough to apply EPA's determination from *Ameresco* that in the case of the shared wastewater treatment system, "it would stretch the plain meaning of 'persons under common control', and the notion of a 'common sense notion of a plant,' to consider these two entities to be a single source due to one piece of shared equipment. Such an overbroad reading could result in inequitable outcomes. The potential inequities associated with this situation mirror the concerns addressed in the Meadowbrook Letter: one entity could be unfairly held accountable for, or otherwise impacted by, the actions of another entity that were entirely beyond the first entity's control."[2]

Based on the definitions of "control" in *Meadowbrook* and *Ameresco*, DAQ concluded that Chemours does not have "control" over decisions that could affect air permitting obligations of Delrin and Celanese at the Washington Works plant and that they are separate business entities.

Furthermore, by issuing separate Title V permits to Chemours, Delrin, and Celanese, there was no improper avoidance of the legal requirements to obtain a Title V operating permit as the facilities are considered Title V major sources and have Title V operating permits. Section 5.1 of 45CSR30 states that each Title V operating permit issued shall include all applicable requirements that apply to the source at the time of permit issuance. The DAQ has done this. It does not matter how many Title V permits we issue to facilities at the Washington Works plant, all applicable requirements have been included in the Title V permits. Issuing multiple Title V permits to one facility has been a practice used by DAQ since the first Title V permits were issued for the larger chemical facilities more than twenty years ago. These permits were divided by process groups and instead of issuing one large permit with hundreds of pages of requirements, it was more manageable to divide the facility into smaller Title V permits. This did not change the Title V applicability of the facility and it did not change the applicable requirements included within the Title V permits. In addition, dividing the process groups into separate Title V permits did not change any of the public comment requirements under Title V. For each Title V permit, a Class I

[2] *Ameresco* – Letter from Anna Marie Wood, Director, Air Quality Policy Division, United States Environmental Protection Agency, Research Triangle Park, to Ms. Gail Good, Director, Bureau of Air Management, Wisconsin Department of Natural Resources (October 16, 2018)

legal notice is published which begins the comment period; there is a mailing list that is free to join on WVDEP's website (https://apps.dep.wv.gov/ListServ/) which provides a copy of the notice; and all current Title V permits are included on DAQ's website with those currently out for public comment indicated. This is common practice as many large complex facilities are managed this way. US EPA conducted the last Title V Program Evaluation for West Virginia in 2021 and did not identify issuance of multiple Title V permits for a single source as an area of concern.

In the comments, you state that "Washington Works is a 'major source' by virtue of having the potential to emit greater than 10 tons per year of one or more hazardous air pollutants, or greater than 25 tons per year of all (188) hazardous air pollutants (CAA Section 112)". This is true, Chemours and the other facilities at the Washington Works plant are major sources of criteria pollutants and hazardous air pollutants and have been treated as such for the purposes of Title V and the National Emission Standards for Hazardous Air Pollutants (NESHAPs, CAA Section 112). However, you also mention that "having multiple Title V permits for the same facility is inconsistent with USEPA policy and circumvents the CAA Title V Process)." This is not true. Chemours is a major source and the other facilities at the Washington Works plant are major sources and have Title V permits which include all their applicable requirements, including those from Section 112 of the CAA. In fact, they are subject to many different regulations promulgated under Section 112 of the CAA, not just the HON Rule as you mentioned in your comments. Each regulation in Section 112 has limitations and standards, monitoring, testing, recordkeeping, and reporting specified in that specific regulation and these applicable requirements have been included in the Title V permits for facilities at the Washington Works plant. There was no circumvention because separate Title V permits were issued; applicability was based on the source's total potential to emit.

In the comments, you gave an example of construction permit R13-3645, recently issued for the Fluoropolymer Business Unit (Part 2 of 14) at Chemours, and alleged that DAQ allowed circumvention of the MACT standards which resulted in the facility being allowed to install a control device with a lower efficiency than would be required under a MACT standard. DAQ will address this comment here even though it is unrelated to the Title V permit renewal for the Facilities, Construction, and Support (FC&S) Business Unit, R30-10700182-2024 (12 of 14). In the Engineering Evaluation for R13-3645, the new process was reviewed for applicability to 40 C.F.R. 63, Subpart FFFF ("National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing", MON MACT). The new process is subject to the MON MACT, however, because the new process will not be introducing any new Group 1 process vents and the new process vents will instead be classified as Group 2 process vents, no controls were required under the MON MACT. It should be noted that just because a facility is a major source of HAPs, does not mean that every process vent emitting hazardous air pollutants at the facility is subject to MACT level controls. Some process vents are; some are not.

In summary, the DAQ does not agree that issuing separate Title V permits to the Washington Works facilities circumvented the Title V permitting requirements, MACT standards, or major source status. The definition of major source under Title V, includes the requirement that sources are under common control of the same person which is not the case for the facilities at the Washington Works plant. Also, there is no circumvention of Title V permitting requirements or MACT standards. The Washington Works facilities are considered major sources for Title V and MACT, and the Title V permits include all the facilities' applicable air quality requirements, including those from MACT.

Should you have any questions regarding this response, please contact me at (304) 926-0499 ext. 41283.

Sincerely,

Beena Modi

Beena Modi
Title V Engineer