



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

[Original dated NOV 12 1998]

Ref: 8P-AR

Julie Wrend
Legal Administrator
Air Pollution Control Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive, South
Denver, CO 80246-1530

Re: Single Source Determination for Coors/TriGen

Dear Ms. Wrend:

The U.S. Environmental Protection Agency (EPA), Region 8, has reviewed your October 6, 1998 letter to Terry Lukas in the Office of Regional Counsel, concerning whether the TriGen power plant located at the Coors Brewery in Golden, Colorado should be considered part of the brewery, rather than a separate source. In particular, you asked us to confirm your analysis (1) that the power plant is a "support facility" belonging to the same major industrial grouping (same two-digit SIC code) as the brewery and (2) that the power plant and the brewery are under "common control." We agree with both parts of your analysis. The power plant and brewery are properly considered to be single source for purposes of pre-construction permitting (PSD and nonattainment area New Source Review) and Title V.

As we understand the pertinent facts, the TriGen power plant is located on the Coors site, adjacent to the brewery. Originally, Coors owned and operated the power plant, but recently sold the plant to TriGen. TriGen operates the plant under a 30-year contract that requires TriGen to supply 100 percent of the power needs of the brewery. Any additional electricity generated may be sold to outside users, although TriGen does not have any other other customers at this time. Under a settlement agreement between Coors and the Air Pollution Control Division, VOC emissions from the brewery must be ducted to the power plant and destroyed in its utility boilers.

EPA regulations define "major source" as any stationary source (or any group of stationary sources located within a contiguous or adjacent area, under the common control of the same person, and classified under the same 2-digit Standard Industrial Classification (SIC) code) that meets the "major" source threshold of one of various sections of the Clean Air Act. See, e.g.,

40 C.F.R. § 51-166(b)(1) and (6); 40 C.F.R. § 70.2. To take the second point of your analysis first, EPA has established several mechanisms by which sources and permitting authorities can determine whether there may be "common control" over a group of stationary sources. First, common control can be established through ownership of multiple sources by the same parent corporation or by a parent and a subsidiary of the parent corporation. Second, common control can be established if an entity such as a corporation has the power to direct the management and policies of a second entity, thus controlling its operations, through a contractual agreement or a voting interest.. If common control is not established by the first two mechanisms, then one should consider whether there is a contract for service relationship between the two companies or if a support/dependency relationship exists between the two companies in order to determine whether a common control relationship exists.¹

In the case of Coors and TriGen, the brewery and power plant which were once held in common by Coors are now held under separate ownership. TriGen is not a subsidiary of Coors, so the first mechanism does not apply. Nor do the facts suggest the kind of contractual agreement between Coors and TriGen or voting interest that would meet the general definition of "control" used by the Securities and Exchange Commission and establish common control under the second mechanism. However, there is a contract between Coors and TriGen that creates a support/dependency relationship: TriGen's power plant supports the Coors brewery by providing not less than 100 percent of its power needs. With no other customers at present, the power plant is a wholly dedicated support facility for the brewery. For its part, the brewery depends on the TriGen facility for electrical power, as well as for pollution control under the settlement agreement between the Division and Coors. Both the product (power) provided by Tri-Gen and the use of its equipment for pollution control are integral to the operation of the brewery.

Thus the third mechanism, establishing control through a support/dependency relationship, appears to apply. See, John S. Seitz Memorandum, page 8. In addition to the evidence already discussed, the power plant is located not just adjacent to the brewery, but "on" the brewery site." If the power plant is located on Coors property, that fact alone creates a presumption of common control. See letter from William Spratlin, Air, RCRA and Toxics Division Director, Region 7, to State and Local Air Directors (September 18, 1995) (enclosed), discussing how a company may be able to rebut the presumption that locating on another company's land establishes a "control" relationship. Among the criteria for "common control" of co-located sources discussed in that letter are sharing pollution control equipment, limiting sales of one source's products, and using operation of one source to support the operation of the other. Each of these criteria support a finding of common control for Coors and TriGen.

Just as the Coors-TriGen contract establishes common control, the contract also makes the TriGen power plant a "support facility" for purposes of determining major industrial grouping under the Standard Industrial Classification Manual. As the manual explains, the SIC code is a system for classifying facilities according to type of economic activity. Here, the power plant lacks

¹See John S. Seitz Memorandum, "Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act" (August 2, 1996) (enclosed)(also available on EPA's Technology Transfer Network).

a primary economic activity of its own; instead, it serves to support the activity of another facility. Therefore, the power plant is properly classified under the same SIC code as the brewery, which is the primary economic activity on the site.

We conclude, as you did, that the power plant and the brewery should be treated as a single source, because they are a "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 C.F.R. § 70.2). The power plant has always been a support facility and a part of the larger stationary source. When Coors owned the power plant, the single source determination was without question. The source should not be separated into two separate sources now, when Coors has only divested itself of ownership of the power plant, not of control over its operation and output.

If you have any questions, please contact Meredith Bond of my staff, at (303) 312-6438 or Terry Lukas at (303) 312-6898..

Sincerely,

[Original signed by Richard R. Long]

Richard R. Long
Director
Air Program

Enclosures

cc: Jim King, Colorado APCD