

July 15, 1997

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
1600 WaterMark Drive
Columbus, Ohio 43215-1034

Dear Mr. Hodanbosi:

The purpose of this letter is to advise your agency on how three facilities in Cleveland, Ohio--LTV Steel, Stein, Inc., and Allega, Inc.--should be classified under the Title V operating permit program. LTV Steel produces slag as a by-product of its steel production. The LTV facility sells its basic oxygen furnace (BOF) slag to Stein, and its blast furnace slag to Allega. Stein and Allega process the slag into aggregates to sell to other companies. The issue presented is whether these three facilities should be considered as separate Title V sources or as one Title V source. Our analysis indicates that they should be considered a single source.

The prevention of significant deterioration regulations in 40 CFR 52.21(b)(5) and (6) and the Title V operating permit regulations in 40 CFR 70.2 define a stationary source as any building, structure, facility, or installation whose pollutant-emitting activities belong to the same industrial grouping, are located on contiguous or adjacent properties, and are under the control of the same person or entity (or entities under common control). According to the March 16, 1979, USEPA memorandum from the Division of Stationary Source Enforcement director titled "Definition of a Source," determinations of what entities are under common control with the applicant are to be made on a fact-specific case-by-case basis. A number of factors could decide common control status.

USEPA is guided by the definition of control used by the Securities Exchange Commission (SEC). For SEC purposes, control means, "[T]he possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person (or organization or association) whether through the ownership of shares, contract, or otherwise." See 17 CFR 210.1-02(g) (1996). If two sources are under different ownership, but one company has some decision-making ability in the second facility through a contractual agreement or a voting interest, the sources can be considered under common control.

Adjacent sources under different, independent ownership, may be considered under common control due to the nature of their operations. It is our understanding that, by contract: LTV Steel provides 100 percent of its slag product to the Stein and Allega facilities; the Stein and Allega facilities receive all of their slag product from the LTV Steel facility; and Stein and Allega are required by contract to accept 100% of LTV's BOF slag and blast furnace slag, respectively. Accordingly, but for the existence of the LTV Steel facility, there would be no slag processing plants at this location.

Although the three facilities may be independently owned and operated (and the companies operating them may run facilities elsewhere in the nation that do not interact with each other), the

operations of the Stein and Allega facilities at this particular location appear to be entirely dependent upon agreements or contracts with the LTV Steel facility. Thus the functions of the Stein and Allega facilities at this location are subject to control by LTV Steel through contract, as LTV would have power to cause the direction of the management decisions and policies of the Stein and Allega facilities. Therefore, for Title V purposes, LTV Steel, Stein, and Allega here are considered under common control.

USEPA's position is reflected in Engineering Guide # 58, a policy statement issued by the Ohio Environmental Protection Agency (OEPA). This Engineering Guide serves to clarify the definition of "facility" for new source review and Title V permitting. It states that two independently owned facilities may be under common control if there is a financial interest between them. The examples provided therein illustrate that if the two facilities are co-located and have the same 2-digit SIC code, and if the primary function of one facility is to support the production of the other facility's principal product, then the two facilities should be considered as one source for permitting.

The other factors important in determining whether facilities should be aggregated as a single source are clearly satisfied. LTV Steel, Stein, and Allega have the same 2-digit SIC code, so they belong to the same industrial grouping. Stein and Allega operate on property owned and leased by LTV Steel. The three facilities are located on contiguous property. Since the three factors are satisfied, it is USEPA's position that LTV Steel, Stein, and Allega should be aggregated together as a single source for Title V permitting.

Another independent rationale for aggregating Stein and Allega with LTV Steel as a single major source is because Stein and Allega are "support facilities" for LTV. As indicated in the August 7, 1980, Federal Register (45 FR 52695), "one source classification encompasses both primary and support facilities, even when the latter includes units with a different two-digit SIC code. Support facilities are typically those which convey, store, or otherwise assist in the production of the principal product." Stein and Allega are the sole recipients of LTV Steel's slag. Since the removal of slag is essential to LTV Steel's lawful production process, Stein and Allega assist in the production of LTV Steel. Therefore, they are support facilities and together constitute a single source.

While the three facilities are to be considered the same source for Title V applicability, individual Title V permits may be issued to them separately, or to different responsible parties. I hope this information is useful. We will consider any further information submitted by OEPA with regard to the issues presented in this matter. If you have any questions, please call Kaushal Gupta, of my staff, at (312) 886-6803.

Sincerely yours,

/s/

Cheryl L. Newton, Chief
Permits and Grants Section

cc: Jeanne Mallet, OEPA