UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8960

May 19,1999

4APT-ARB

Mr. Randy C. Poole
Air Hygienist II
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700 N. Tryon Street, Suite 205
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SUBJ: Applicability of Title V Permitting Requirements to Gasoline Bulk Terminals Owned by Williams Energy Ventures, Inc.

Dear Mr. Poole:

Thank you for your letter of April 15, 1999 requesting an opinion on the applicability of Title V major source operating permit requirements to two bulk gasoline terminals owned by Williams Energy Ventures, Inc. (WEV) in the Paw Creek area of Mecklenburg County. The specific question is whether emissions from the two terminals should be aggregated for Title V applicability purposes. Our determination is that the terminals can be considered as separate sources without aggregation of emissions, subject to certain qualifications.

Background

Under the Title V permit program, a major source is defined in 40 CFR 70.2 as follows:

> "Major source means any stationary source (or any group of 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."

Paragraph (1) referred to in this definition pertains to major source classification based on potential emissions of hazardous air pollutants; paragraph (2) pertains to major source classification based on

potential emissions of any air pollutant in amounts of 100 tons per year or more; and paragraph (3) pertains to major source classification based on emissions of regulated pollutants in ozone, carbon monoxide, and particulate matter nonattainment areas.

The Environmental Protection Agency (EPA) Region 4 understands that Mecklenburg County Department of Environmental Protection (MCDEP) has determined conclusively that the two WEV terminals are under "common control of the same person" and belong "to a single major industrial grouping." The remaining question is whether they should be considered as "located on one or more contiguous or adjacent properties." In developing our determination, we have taken note of the following information presented in your letter, in the letter from Williams Energy Services attached to your letter, and during telephone calls to you to obtain additional information.

- The two terminals are approximately nine-tenths of a mile apart "by public road." (The quoted phrase is from your April 15, 1999 letter.) We assume that this is the approximate straight-line separation distance as well.

- The only operating relationship between the two terminals currently is that some WEV employees have responsibilities at both terminals and the terminals are served by common delivery pipelines. The two terminals are not connected by pipelines or other utilities that allow the terminals to exchange liquid fuels or utilities such as water and electric power. Therefore, neither terminal is a support facility for the other, and each terminal can be operated independently.

- Other terminals occupy most of the land area between the two WEV terminals.

- If the two WEV terminals were combined as one source, the combination would be a major Title V source for volatile organic compounds but not for hazardous air pollutants.

Further, although not specifically stated in either your letter or the Williams Energy letter, we assume that WEV does not own, lease, or otherwise control the properties between the two terminals.

Regulatory and Policy Guidance

EPA has never specifically defined by regulation an exact separation distance that would cause two facilities to be considered as located on adjacent or contiguous properties. Case-by-case variations preclude a "one size fits all" definition that would be reasonable in every instance. Nevertheless, regulatory and policy guidance exists to help us develop a determination in response to your request. The following discussion summarizes some of the numerous EPA documents that are available as guidance. The ordering of these documents is chronological and not degree of importance. We can provide copies of any or all of these documents at your request. Also, please note that some

of these documents refer to prevention of significant deterioration (PSD) and to nonattainment area determinations and not to Title V determinations specifically. Use of documents not directly related to Title V is appropriate because the Title V
definition of major source is an outgrowth of the definitions used for PSD and nonattainment area new source review purposes.

The Williams Energy letter included with your request letter refers to a discussion with a representative of the Georgia Environmental Protection Division (GA EPD) concerning decisions that the agency might make in the future. Since GA EPD has no jurisdiction over terminals in Charlotte, North Carolina, the comments Williams Energy may have received during this discussion with GA EPD are neither persuasive nor relevant.

Summary of documents:

1. Preamble to the August 7, 1980 final PSD regulations.

   The preamble language at 45 FR 52695 is often cited as confirmation that "contiguous and adjacent" assessments are case-by-case and that two facilities separated by a distance of 20 miles would be too far apart to treat as one source. Relevant language in the preamble includes the following: "EPA is unable to say precisely at this point how far apart activities must be in order to be treated separately. The Agency can answer that question only through case-by-case determinations."

2. Memo dated June 30, 1981 from EPA Division of Stationary Source Enforcement to EPA Region 5 concerning treatment of two separated facilities as one source. (This is document No. 3.18 in the New Source Review (NSR) Guidance Notebook series.)

   The situation addressed in this memo consisted of two General Motors plants separated by a distance of approximately 4,500 feet. One plant made auto bodies that were transported to the other plant by truck for use in final assembly. Additionally, the two plants were the only facilities served by a rail spur for materials delivery. The Division concurred that the two General Motors plants should be considered as one source "Based on the unique set up of these facilities," namely, that they "are approximately one mile apart, have a dedicated railroad line between them and are programmed together to produce one line of automobiles."

3. Letter dated May 18, 1995 from EPA Region 4 to the GA EPD regarding two separated fuel terminals in the context of Title V (part 70) applicability.

   The two terminals in question were under common ownership and located approximately one-half mile apart. In addition, diesel fuel and water pipelines linked the two terminals. EPA concluded that the two facilities should be treated as one source based on the following

reasoning: "Based on the information provided, we have concluded the two facilities are in close proximity and should be treated as one source under Part 70. Additionally, we have noted that both facilities use the same access road, share diesel fuel and water pipelines, and interestingly, have their storage tank numbers listed sequentially on the air quality permits issued to both facilities." Physical proximity was the main factor in the determination.

4. EPA summary discussing the topics for a January 25, 1996 conference call on contiguous or adjacent properties as related to Title V.

This summary contains the following comments:

> "A physical separation of property does not in itself constitute separate sources, for example, the fact that some property at a plant site is divided by a highway or railroad right-of-way does not create separate and distinct sources;"
>
> "EPA made a determination that two GM auto plants, separated from each other by approximately one mile (and connected by a private rail), could be considered one major source;" [The referenced determination is discussed above.]
>
> "Region 4 determined that two bulk gasoline terminals located approximately one-half mile from each other should be considered one source primarily based upon geographic proximity and secondarily upon shared diesel and water pipelines;" [The referenced determination is discussed above.]
>
> "There are some other factors you may wish to consider when evaluating sources which are physically separated: like whether there are any unique structures (i.e., private rail line, pipelines, etc.) that 'tie' the sources together;"

5. Memo dated August 27, 1996 from the Office of Air Quality Planning and Standards (OAQPS) to EPA Region 8 concerning whether a brewery and an off-site land farm under common ownership should be treated as a single source.

This memo concerned a brewery and an associated wastewater disposal land farm separated by a distance of about 6 miles and connected by a pipeline. OAQPS agreed with Region 8 that the land farm and brewery should be considered a single source for PSD applicability purposes. The opinion from OAQPS reads in part as follows:

> "A specific distance between pollutant emitting activities has never been established by EPA for determining when facilities should be considered separate or one source for PSD purposes. Whether facilities are contiguous or adjacent is determined on a case-by-case basis, based on the relationship between the facilities. The EPA considers the

brewery and land farm to be contiguous or adjacent since the land farm operation is an integral part of the brewery operations, i.e., land application at the land farm is the means chosen by Anheuser-Busch to dispose of the ethanol contaminated process water from the brewery operations. Without a means of waste water disposal the brewery cannot operate. The additional fact that a pipeline physically connects the brewery and land farm strengthens the conclusion that the brewery operation is dependent on land farm operations. For this case, the distance between the brewery and land farm does not support a PSD determination that the brewery proper and the land farm constitute separate sources for PSD purposes."

6. Letter dated March 13, 1998, from EPA Region 5 to the Illinois Environmental Protection Agency regarding a NSR permitting action.

The facilities addressed in this letter were two steel mill facilities located 3.7 miles apart. One of EPA's concluding statements is as follows: "Although the two sites are separated by Lake Calumet, landfills, I-94, and the Little Calumet River, ISOPIA considers that the close proximity of the sites, along with the interdependency of the operations and their historical operation as one source, as sufficient reasons to group these two facilities as one."

7. Letter dated May 21, 1998, from EPA Region 8 to the Utah Division of Air Quality responding to a request for guidance in defining "adjacent" for Title V and NSR source aggregation purposes.

The issue involved can be summarized by the following statement from the letter: "We could not find any previous EPA determination for any case that is precisely like Utility Trailer, i.e., two facilities under common control, with the same primary 2-digit SIC code, located about a mile apart, both producing very similar products, but claimed by the company to be independent production lines." In providing a response to the state agency, EPA first stated that deciding what "adjacent" means should take into account a "common sense notion" of source. (This phrase appears in the August 7, 1980 final PSD rule preamble discussed above and in the prior *Alabama Power* court case.) The letter then goes on to recommend that the state agency ask the following questions to decide if the two facilities should be considered "adjacent" and therefore one source:

"Was the location of the new facility chosen primarily because of its proximity to the existing facility, to enable the operation of the two facilities to be integrated? In other words, if the two facilities were sited much farther apart, would that significantly affect the degree to which they may be dependent on each other?"

"Will materials be routinely transferred between the facilities? Supporting evidence for this could include a physical link or transportation link between the facilities, such as a

pipeline, railway, special-purpose or public road, channel or conduit."

"Will managers or other workers shuttle back and forth to be involved actively in both facilities? Besides production line staff, this might include maintenance and repair crews, or security or administrative personnel."

"Will the production process itself be split in any way between the facilities, i.e., will one facility produce an intermediate product that requires further processing at the other facility, with associated air pollutant emissions?"

The letter concludes by saying that, if the facilities are treated as separate sources, "no emission netting between them can be allowed, to avoid major source NSR permitting at either facility, in the event of future facility modifications."

Determination

Before restating our determination, we list first some of the considerations on which our determination is based:

- For this and future such determinations, our position is that separate facilities could be considered a single source for Title V permit applicability purposes strictly on the basis of proximity without regard to whether the facilities are dependent on each other or physically connected in some way.

- The separation distance of nine-tenths of a mile between the two WEV terminals certainly does not eliminate consideration of the two facilities as one source. Many of EPA's past determinations that two separated facilities should be treated as one source have involved situations where the separation distance was considerably more than a mile.

- In most of the EPA documents we reviewed, the key factor in deciding that separate facilities should be considered as one source was that the facilities were interdependent or linked in some sense. Our understanding of the WEV terminals is that they can and do operate independently, that one terminal does not act as a support operation for the other, and that they are not physically connected by a structure such as a pipeline dedicated to the transfer of material or energy between the two terminals. Although this understanding is based solely on information supplied by MCDEP and Williams Energy and not independently verified, it is supported by the fact that the two terminals were at one time under separate ownership and presumably operated independently when

owned separately.

EPA Region 4 considers the separation distance of nine-tenths of a mile close enough for the two terminals to be considered one source; however, based primarily on the lack of interdependence, we conclude that the two WEV terminals can be considered as two separate

sources for Title V (part 70) permit applicability purposes. Furthermore, we add the following qualifications to our determination:

1. If MCDEP does in fact separate the two terminals for Title V purposes, WEV (or any future owner) will not be allowed to use emission decreases at one terminal in a netting analysis to avoid major or minor source NSR permitting for a future modification at the other facility.

2. WEV must notify MCDEP if property is purchased to expand the boundaries of either terminal. Likewise, WEV must notify MCDEP if partial or total ownership interest is acquired in any of the other liquid fuels terminals in the Paw Creek area. Upon receipt of such notifications, MCDEP should determine whether to reopen the question of Title V permit applicability.

3. If WEV adds a physical link between the two terminals or otherwise changes operations to increase the interrelationships between the two terminals, the determination in this letter is no longer applicable.

If you have any questions or comments concerning this letter, please contact Jim Little at (404) 562-9118 or Kelly Fortin at (404) 562-9117.

Sincerely,

Winston A. Smith
Director
Air, Pesticides and Toxics
Management Division