From:	McFadden, Kelly
To:	Bill Britt
Cc:	Hardesty, Doug; Drew Anderson; Greaves, Natasha; Gallagher, Shirin; Viswanathan, Krishna
Subject:	EPA Air Permitting
Date:	Friday, December 20, 2019 2:30:12 PM

Mr. Britt,

During our conference call on November 22, 2019, we discussed EPA Region 10's letter of November 4, 2019 to Hilcorp Alaska wherein we explained that emissions from engines on the drill rig and support vessels, when within 25 miles of the drill rig, must be counted to determine air permit applicability. During the call, you asked whether each well location is considered a separate source, noting that some lease blocks are neighboring (contiguous) and some are not (but might be adjacent). We committed to quickly getting an answer. After researching previous permitting decisions and discussing the question with EPA's headquarters office, we have confirmed that for portable sources, such as an exploratory drill rig, air permit applicability is determined on an annual basis regardless of location which, in your case, would require summation of emissions from all the well locations.

EPA's aggregation policy applies three criteria (common control, industrial grouping and contiguous and adjacent property) to decide when to treat two or more sources as a single source for determining air permit applicability. That policy does not address how to determine applicability for a single, portable source that may operate at multiple locations over the course of a year, the timeframe for determining air permit applicability. However, the PSD and Title V air permitting programs, in 40 CFR 52.21(i)(1)(viii) and 71.6(e) respectively, both provide the option to issue a single permit to a portable plant that allows operation at multiple locations. There is also significant precedent for issuing a single permit to a portable source operating at multiple locations.

In 2007, EPA Region 10 issued OCS permits to Shell for exploration in the Beaufort and Chukchi Seas off the north slope of Alaska using a jack-up drill rig and a drill ship. In those permitting actions, EPA attempted to apply EPA's aggregation policy to Shell's rig/ship, counting emissions from each well location separately to determine air permit applicability. That permit was challenged before the Environmental Appeals Board and remanded back to EPA Region 10, in part because EPA failed to adequately support this approach in the permitting record. Then, in 2011, EPA Region 10 reissued the permits to Shell treating each rig/ship as a portable source allowing Shell to drill in any of their lease blocks and counting the emissions from all locations to determine permit applicability. The applicability determinations in those permits were not challenged.

Since 2011, several other OCS permits have been issued by EPA Region 4 for oil exploration off the coast of Florida. See Region 4's website for related documents: https://www.epa.gov/caa-permitting/caa-permitting-epas-southeastern-region#OCS. Those permits have consistently treated the drill ships as portable sources allowing them to drill in any of the approved lease blocks and counting emissions from all locations to determine air permit applicability. All of those projects were subject to PSD.

In EPA's Tribal New Source Review regulations (see 40 CFR 49.156), general permits have been

developed for a number of onshore, portable industrial operations (e.g. asphalt plants, rock crushers, batch concrete plants). The general permits were designed to allow construction and operation of a portable plant as a synthetic minor source by limiting the monthly production of the plant such that annual emissions will not exceed the major source air permit thresholds without any regarding for location. The synthetic minor limitation assures the source will remain minor for the entire year no matter where the source operates or how long it operates at any one location.

Keep in mind that the option to issue a single permit that allows a portable drill rig to operate at multiple locations creates valuable operational flexibility. If adequately addressed in the application and permit, neither the duration at each well location nor the number of well locations will have to be restricted. We also anticipate that a single permit approach is less likely to be challenged by third parties, possibly avoiding the inherent delays that challenges and potential remands can cause to your project schedule. Finally, following precedent generally results in quicker policy decisions and faster permitting. We welcome setting up a conference call to discuss this and any other questions you have regarding air permit applicability. Doug Hardesty, project manager will call Drew Anderson this afternoon to touch base, answer any immediate questions and explore options for scheduling a conference call in early January, after people return from holiday vacations. After that call, assuming you plan to proceed with your project, we would like to arrange a meeting between Region 10's and Hilcorp's executive management to discuss the air permitting process, schedule and expectations. Please contact me, or have your staff contact Doug Hardesty 208-378-5759 to arrange a day for this meeting. We are hoping that have this meeting during the month of January well before an air permit application is developed and submitted.

We look forward to talking with you further about your exploratory project and the information that we need in order to initiate the formal permitting process.

Kelly McFadden, Branch Chief
U.S. EPA Region 10
Air Permits and Toxics Branch
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March 16, 2021

EPA Region 10
Office of Air Quality
M/S OAQ-107
1200 Sixth Avenue
Seattle, WA 98101

Subject: Request for Concurrence on the Definition of "Stationary Source" for Prevention of Significant Deterioration Permitting; Lower Cook Inlet Outer Continental Shelf Exploration Project

Dear Administrator:

Hilcorp Alaska, LLC (Hilcorp) requests concurrence from the U.S. Environmental Protection Agency (EPA) that the definitions of "*stationary source*" and "*building, structure, facility, or installation*" provided at 40 Code of Federal Regulations (CFR) 52.21(b)(5) and (6) and 51.166(b)(5) and (6), as amended through July 1, 2017, apply to the Hilcorp Lower Cook Inlet Outer Continental Shelf (OCS) Exploration Project (Project) for Prevention of Significant Deterioration (PSD) permitting purposes.

Project Background

On October 1, 2019, Hilcorp submitted a Notice of Intent (NOI) to EPA for the Project which will be located in the OCS waters of Lower Cook Inlet. The Project will be a new OCS source and an exploratory OCS source as defined at 40 CFR 55.2, and will be located within 25 miles of the Alaska seaward boundaries. The Project will include 6 drill sites located more than ¼ mile apart and they will not be drilled simultaneously.

Per 40 CFR 55.6(a), Hilcorp will be required to submit a construction permit application to EPA for Project approval. In accordance with 40 CFR 55.3(b), the Project will be subject to certain requirements under 40 CFR 55.13 and 55.14, including, but not limited to, PSD permitting requirements provided under 40 CFR 52.21 and 40 CFR 51.166 if the Project includes a major stationary source.

The EPA promulgated an OCS Air Regulations consistency update for Alaska on September 8, 2020, effective October 8, 2020. The consistency update addressed the State of Alaska air quality requirements applicable to OCS sources per 40 CFR 55, Appendix A, which included the PSD requirements. Notably, the update incorporates most, but not all, provisions of 18 Alaska Administrative Code (AAC) Chapter 50.

Stationary Source Definition

The definitions of *stationary source* and *building, structure, facility, or installation* are consistent between the Federal PSD requirements of 40 CFR 52.21 and the Alaska requirements found in 40 CFR 51.166. A *stationary source* is defined as "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant." See 40 CFR 52.21(b)(5), Alaska Statute (AS) 46.14.990(27), and 40 CFR 51.166(b)(5) as adopted into OCS regulations at 40 CFR 55.14(e)(2)(i)(A).

A *building, structure, facility, or installation* is:

> (i) "All of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same ''Major Group'' (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00716–0, respectively).
>
> (ii) Notwithstanding the provisions of paragraph (b)(6)(i) of this section, building, structure, facility, or installation means, for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices. Surface site, as used in this paragraph (b)(6)(ii), has the same meaning as in 40 CFR 63.761." See 40 CFR 52.21(b)(6) and 40 CFR 51.166(b)(6) as adopted into the OCS regulations at 40 CFR 55.14(e)(2)(i)(A).

Project Exploratory Drill Sites are not a Single Building, Structure, Facility, or Installation

The Project exploratory drill sites, as a group, are not contiguous or adjacent within the meaning of 40 CFR 52.21(b)(6) or 40 CFR 51.166(b)(6) for a *building, structure, facility, or installation* and therefore are not a single *stationary source* under 40 CFR 52.21(b)(5) or 40 CFR 51.166(b)(5). The Project exploratory drill sites will be located within OCS lease blocks separated by open water and owned by the United States of America. The public will continue to have access to these waters at all times during the Project except for the immediate vicinity of a drill site during the period that exploratory drilling will be undertaken at that site. To meet the definition provided in 40 CFR 52.21(b)(6) or 40 CFR 51.166(b)(6), the exploratory drill sites must be contiguous or adjacent properties and under the control of the same person. Hilcorp does not control public access to water of the United States and cannot bar the public from entering the lease blocks. As a result, the exploratory drill sites are not contiguous or adjacent.

Although the Project is not located on-shore, the definition provided in 40 CFR 52.21(b)(6)(ii) and 40 CFR 51.166(b)(6)(ii) further highlight that the exploratory drill sites are not a single building, structure, facility or installation. Each exploratory drill site will not be contiguous or adjacent since they will be located at a distance greater than ¼ mile from one another. This interpretation is consistent with the Alaska Department of Environmental Conservation (ADEC) PSD applicability determinations for Hilcorp petroleum production platforms in the Alaska State waters of Upper Cook Inlet. Each platform is more than ¼ mile from any other Hilcorp platform, and each platform is a separate stationary source for PSD purposes.

Consistency with Environmental Appeals Board (EAB) Decision

The Environmental Appeals Board (EAB) examined the definition of stationary source in RE SHELL OFFSHORE, INC., KULLUK DRILLING UNIT AND FRONTIER DISCOVERER DRILLING UNIT, OCS Appeal Nos. 07-01 and 07-02, decided on September 14, 2007. That case involved two permits issued by EPA Region 10 to Shell Offshore, Inc. (SOI) to mobilize, operate and demobilize two drilling vessels for placement and anchoring in the Beaufort Sea OCS sea floor, off the North Slope of Alaska, for the purpose of oil exploration.

In deciding that case, the EAB made the following determination.

> "The Board rejects NSB's contention that the boundaries of Shell's mineral leaseholds necessarily define what constitutes "contiguous or adjacent properties" under the PSD regulations, which in turn determines which emissions sources constitute a single stationary source. However, the Board finds that the Region did not provide an adequate analysis and record support for its conclusion that each OCS source separated by more than 500 meters is a separate stationary source. The Region concluded that such sources are not "contiguous or adjacent properties" within the meaning of the applicable PSD regulations. The Board remands the Permits so the Region may provide an adequate explanation of its rationale, supported by record evidence, for determining the 500-meter perimeter to be the boundary of a single stationary source, or to modify its determination of what constitutes a single stationary source."

This decision is consistent with determining the construction permit applicability based on the PSD definitions of *stationary source* and *building, structure, facility, or installation*. The EAB determined that each OCS source separated by 500 meters is not necessarily a separate stationary source because adequate analysis and support was not provided to support the EPA Region 10 decision that a 500-meter distance is appropriate.

In an unrelated action after the EAB decision, EPA conducted rulemaking that established on-shore oil and gas activity surface sites located more than ¼ mile apart are separate stationary sources [81 Federal Register 35622, August 2, 2016]. See Stationary Source Definition, above. Because EPA undertook a rulemaking process to establish in current PSD rules that on-shore oil and gas activity surface sites more than ¼ mile apart are separate stationary sources, adequate analysis and support exists to determine that OCS sources located more than ¼ mile apart are separate stationary sources for PSD permitting purposes.

"Portable Source"

In an email to Mr. Bill Britt dated December 20, 2019, EPA Region 10 noted that the SOI permits were ultimately issued in 2011 "treating each rig/ship as a portable source allowing Shell to drill in any of their lease blocks and counting the emissions for all locations to determine permit applicability." Hilcorp notes that the SOI permits were issued before EPA established the definitions of *stationary source* and *building, structure, facility, or installation* as applied to on-shore oil and gas activity surface sites. Based on those definitions, "counting the emissions for all locations to determine permit applicability" for a rig/ship is no longer appropriate because the distance between locations is a factor in defining the stationary source for PSD permitting purposes.

Hilcorp would be willing to discuss the possibility of obtaining a single permit to authorize exploration drilling activity at multiple locations, so long as the PSD permit applicability for each location is determined on the appropriate definitions of *stationary source* and *building, structure, facility, or installation.*

Concurrence Request

The Project exploratory drill sites do not meet the requirements stipulated under 40 CFR 52.21(b)(6) and 40 CFR 51.166(b)(6) for a *building, structure, facility, or installation* and therefore should not be considered a single *stationary source* under 40 CFR 52.21(b)(5) or 40 CFR 51.166(b)(5). The consistency requirements of 40 CFR 55 mandate that this definition of *building, structure, facility, or installation* be applied to the Project for PSD applicability purposes, including determining whether each drill site is a major stationary source per 40 CFR 52.21(b)(1) and 51.166(b)(1). Per this rationale and consistent with 51.166(b)(6)(ii), the potential to emit (PTE) will be determined separately for each drill site that is located more than ¼ mile from another drill site. If drill sites are within ¼ mile of each other, the PTE will be determined using the total PTE for such drill sites.

Hilcorp appreciates a timely review of this request for concurrence. Please contact Kate Kaufman at (346) 237-2275 or kkaufman@hilcorp.com should you have any questions.

Sincerely,

David S. Wilkins
Senior Vice President
Hilcorp Alaska, LLC

Cc: Alaska Department of Environmental Conservation, Air Permits Program

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

AIR & RADIATION
DIVISION

April 19, 2021

Mr. David S. Wilkins
Senior Vice President
Hilcorp Alaska, LLC
P.O. Box 244027
Anchorage, Alaska 99524-4027

Dear Mr. Wilkins:

On March 16, 2021, the U.S. Environmental Protection Agency, Region 10 received your letter requesting concurrence with your interpretation of how the definition of "stationary source" applies to Prevention of Significant Deterioration (PSD) permitting on the Outer Continental Shelf. Your request relates to Hilcorp Alaska, LLC's plans for exploratory drilling in Lower Cook Inlet, Alaska. As explained below and in the email from me to Bill Britt on December 20, 2019 (enclosed), the EPA's practice has been to determine air permit applicability for portable sources, such as an exploratory drill rig, on an annual basis regardless of location. The EPA, Region 10 does not concur with your proffered analysis, and we have again confirmed this interpretation with our headquarters offices.

My December 2019 email pointed to OCS permits issued by the EPA, Region 10 as precedent. Your letter noted that those permits were issued prior to the EPA's revision of the definition of "building, structure, facility, or installation" (used in the definition of "stationary source") to add 40 C.F.R. § 52.21(b)(6)(ii) to address onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction. However, the rulemaking you cited is inapplicable to OCS sources such as Hilcorp's and does not alter the analysis in our original response to you. Paragraph 52.21(b)(6)(ii) is expressly applicable to "onshore" sources. When adopting this provision for onshore activities, the EPA described other provisions that address the scope of an OCS source and observed how the portable source framework continued to be an appropriate approach for permitting exploratory drilling as portable PSD sources.[1]

My December 2019 email noted that the EPA's source aggregation regulations and policies do not apply to portable sources. As stated earlier, the EPA's practice has been to determine air permit applicability for portable sources, such as an exploratory drill rigs on the OCS, on an annual basis regardless of

[1] Source Determination for Certain Emission Units in the Oil and Natural Gas Sector. 80 FR 56579, 56588 (September 18, 2015). "The EPA is proposing to limit this rulemaking to onshore oil and gas operations for a number of reasons. First, the CAA already contains a specific definition of ''outer continental shelf source' which includes any 'equipment activity, or facility which emits or has the potential to emit any air pollutant' specifically including 'platform and drill ship exploration, construction, development, production, processing, and transportation.' In addition, 'emissions from any vessel servicing or associated with an outer continental shelf (OCS) source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source' must be included when determining the OCS source [CAA section 328(a)(4)(C)]. In our permitting experience, these OCS sources are more likely than onshore operations to be stand-alone major PSD sources. The EPA has issued permits for exploration rigs to operate as portable PSD sources, allowing them to operate in a number of locations under one permit. We believe that this current approach provides sufficient streamlining for both sources and permitting authorities and propose to continue the existing case-by-case approach for offshore sources."

location. Thus, to permit the activities you propose, we would sum emissions from all well locations and cover all locations in a single PSD permit.

Doug Hardesty, of my staff, has been communicating with Kate Kaufman of your staff regarding a pre-application meeting for your project, during which we can discuss the scope of your air permit application and other related topics. Doug will reach out to Kate soon to schedule the application meeting. I

I look forward to working with you regarding this issue. If you have any questions about this letter, please feel free to contact me at mcfadden.kelly@epa.gov or (206) 553-1679 or Doug at hardesty.doug@epa.gov or (208) 378-5759.

Sincerely,

KELLY MCFADDEN

Digitally signed by KELLY MCFADDEN
Date: 2021.04.19 11:56:50 -07'00'

Kelly McFadden, Chief
Air Permits & Toxics Branch

Enclosure

cc: Mr. James Plosay
Alaska Department of Environmental Conservation)

Ms. Kate Kaufman
Hilcorp Alaska, LLC