	AIR QUALITY DIVISION POLICY AND PROCEDURE		DEPARTMENT OF ENVIRONMENTAL QUALITY
Original Effective Date: June 21, 1996 Revised Date: February 14, 1997 Reformatted Date: January 29, 2014	Subject: Stationary Source Determinations		Category: <input type="checkbox"/> Internal/Administrative <input checked="" type="checkbox"/> External/Non-Interpretive <input type="checkbox"/> External/Interpretive
Program Name: Rules			
Number: AQD-011		Page: 1 of 4	

A Department of Environmental Quality (DEQ) Policy and Procedure cannot establish regulatory requirements for parties outside of the DEQ. This document provides direction to DEQ staff regarding the implementation of rules and laws administered by the DEQ. It is merely explanatory; does not affect the rights of, or procedures and practices available to, the public; and does not have the force and effect of law.

INTRODUCTION:

Originally, Operational Memorandum No. 11 was developed in response to numerous Air Quality Division (AQD) staff and regulated community members' requests for clarification on what constitutes a "stationary source." The term "stationary source" is the common building block upon which all of the various "major source" definitions in the federal Clean Air Act are founded. The memorandum elaborated on the definition of the term "stationary source" as found in AQD's rules and provided background information and guidance on the steps involved in making a determination of which components of a facility are required to be included in specific stationary source determinations. Op Memo No. 11 has been reformatted, updated to include the *Summit Petroleum Corp. v. United States EPA, et al. decision*, and renamed Policy and Procedure AQD-011.

AUTHORITY:

The use of the term "stationary source" is found in Section 302(z) of Title III of the Clean Air Act, 77 Stat. 400, 42 U.S.C. 7602, and Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.

POLICY:

In determining whether or not specific components associated with a facility are included in a "stationary source," the steps listed below should be followed. If any of the listed criteria do not apply, the entities should be treated as separate stationary sources. When developing a Renewable Operating Permit application pursuant to Michigan's Rule 210, facilities should contact AQD staff as early as possible in the process to determine what constitutes the stationary source if there is any question of interpretation.

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PROCEDURES:

Step	Who	Does What
Step 1	Facility Personnel and/or District Office Staff	<p>Evaluate the spatial relationship if multiple properties are involved, i.e., are they "adjacent or contiguous?"</p> <p>The Sixth Circuit Court of Appeals Opinion in <i>Summit Petroleum Corp. v. United States EPA, et al.</i> clarified that in a source determination, activities are aggregated "only if they are located on physically contiguous or adjacent properties".</p>
Step 2	Facility Personnel and/or District Office Staff	<p>Evaluate the "control" relationship, i.e., are the entities "under the control of the same person?"</p> <p>United States Environmental Protection Agency (EPA) permit regulations do not provide a definition for control. Therefore, the common definition is relied upon. <u>Webster's Dictionary</u> defines <i>control</i> as "to exercise restraining or directing influence over," "to have power over," "power of authority to guide or manage," and "the regulation of economic activity." Obviously, common ownership constitutes common control; however, common ownership is not the only evidence of control.</p> <p>EPA internal documents discuss the control relationship issues and conclude that companies do not typically locate on another's property and do whatever they want. Such relationships are usually governed by contractual, lease, or other agreements that establish how the facilities interact with one another. Therefore, it is presumed that one company locating on another's land establishes a "control" relationship; however, the existence of such contractual, lease or other agreements do not necessarily constitute "control" in every instance.</p> <p>The EPA concludes: "If after asking the obvious control questions the permit authority has any remaining doubts, it may be necessary to look at contracts, lease agreements, and other relevant information... Our approach to looking at control is based in part on regulatory background information, prior EPA guidance materials, common sense, and limited formal decisions on the matter."</p>

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Step 3	Facility Personnel and/or District Office Staff	<p>Determine the industrial grouping relationship.</p> <p>a) Do the entities share the same 2-digit major group code associated with the primary activity?</p> <p>The August 7, 1980 Federal Register states "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 two-digit code) as described in the <i>Standard Industrial Classification Manual...</i>" This Manual describes Standard Industrial Classification (SIC) as the statistical classification standard underlying all establishment-based Federal economic statistics classified by industry. Each operating establishment is assigned an industry code on the basis of its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered.</p> <p>The Federal Register citation and the Manual specify that each source is to be classified according to its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered.</p> <p>b) If the entities have different major group codes, to what extent do they support the primary activity?</p> <p>The August 7, 1980 <u>Federal Register</u> specifies that "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 principle product. Where a single unit is used to support two otherwise distinct sets of activities, the unit is to be included within the source which relies most heavily on its support."</p> <p>Buildings, structures, facilities, or installations are considered to support the primary activity if at least 50% of their output is dedicated to the primary activity.</p> <p>As an example, the primary activity at a location is Automobile Assembly. This manufacturing facility includes a foundry (SIC 33), power plant (SIC 49), and assembly plant (SIC 37). They are situated at the same site, under common ownership and the foundry and power plant are used solely to supply the assembly plant.</p>
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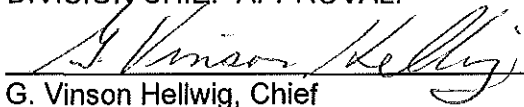
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		<p>These are all part of one stationary source. If less than 50% of the output of the foundry was dedicated to the auto assembly plant, it would be considered as a separate stationary source. If the power plant supported both the foundry and the assembly plant, it would be considered part of the stationary source that consumes the largest percentage of the power generated.</p> <p>Also, special evaluations must be made in the case of research and development (R & D) facilities: R&D operations should not generally be considered support facilities, since the "support" provided is directed towards development of new processes or products and not to current production.</p>
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If any of the above criteria do not apply, the entities should be treated as separate stationary sources. When developing a renewable operating permit application pursuant to Michigan's Rule 210, facilities should contact AQD staff as early as possible in the process to reach a mutual agreement on what constitutes the stationary source if there is any question of interpretation.

Questions regarding this policy and procedure should be directed to Thomas Hess at 517-284-6767.

DIVISION CHIEF APPROVAL:



G. Vinson Hellwig, Chief