

## Source Aggregation/ Clean Air Act : April 30th U.S. EPA Assistant Administrator (Air) Wehrum Letter Referencing "Re-Evaluation"



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05/07/2018

U.S. Environmental Protection Agency ("EPA") Assistant Administrator William L. Wehrum addressed in an April 30th letter to the Pennsylvania Department of Environmental Protection the question of whether:

... emissions from a biogas processing facility under development by Meadowbrook should be aggregated with an existing landfill owned by Keystone Sanitary Landfill, Inc. (KSL) for Clean Air Act (CAA) permitting purposes.

The Pennsylvania Department of Environmental Protection ("DEP") had requested that EPA review a document submitted on behalf of Meadowbrook Energy, LLC, addressing this issue.

The determination when operations in the vicinity of each other should be aggregated for Clean Air Act purposes is an issue that periodically arises. This can be a critical determination since sources falling within the scope of the phrase "located on adjacent properties" can be "aggregated" for purposes of determining whether a Clean Air Act Title V permit or New Source Review determinations must be obtained. The issue has arisen with some frequency in addressing oil and natural gas production facilities.

Assistant Administrator (Air) Wehrum's April 30th letter notes that DEP's request relates to whether Meadowbrook and KSL should be considered part of the same "major source" under the operating permit under Title V and/or part of the same "stationary source" for the New Source Review preconstruction permit programs under Title I of the Clean Air Act. These are denominated "source determinations."

The federal rules governing such permitting programs and the portions of which address this issue are quoted as stating:

... entities may be considered part of the same "stationary source" or "major source" if they (1) belong to the same industrial grouping; (2) are located on one or more contiguous or adjacent properties; and (3) are under the control of the same person (or persons under common control).

Meadowbrook is stated to have submitted an analysis asserting that it and KSL's facilities are not under "common control."

The Wehrum letter notes EPA's historical practice of making common control determinations on a case-by-case basis. Further, the agency is stated to have previously interpreted the term "common control" in a manner that may support viewing the Meadowbrook and KSL facilities as a single "stationary source" or

“major source” by virtue of the support or dependency relationships between the two entities that might be viewed as providing each entity with some degree of influence of the operations of the others.

The Wehrum letter concludes:

. . . however, the potential for that interpretation to produce inconsistent and impractical outcomes in this and other cases has caused EPA to re-evaluate and revise its interpretation of the term “common control” in the title V and NSR regulations.

The agency is now stated to believe that clarity and consistency can be “restored” to source determinations if:

. . . the assessment of “control” for title V and NSR permitting purposes focuses on the power or authority of one entity to dictate decisions of the other that could affect applicability of, or compliance with, relevant air pollution regulatory requirements.

Wehrum therefore states EPA agrees with Meadowbrook that DEP may conclude that the Meadowbrook and KSL facilities are not under common control. As a result, they are deemed to not constitute a single “stationary source” or “major source” for Title V or NSR purposes.

A 12-page attachment to the letter addresses:

1. Meadowbrook and KSL Background
2. Background on EPA Interpretations of Common Control
3. Need for Revision to EPA’s Approach to Common Control Assessments
4. Refining EPA’s Interpretations and Policy Concerning “Common Control”
5. Evaluation of Meadowbrook and KSL Under Revised Interpretation and Policy for “Common Control”

[A copy of the letter can be downloaded here.](#)