

# Source Aggregation/Clean Air Act: Industry Trade Associations' October 5th Comments on U.S. Environmental Protection Agency Draft Guidance



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10/11/2018

A number of industry trade associations (“Associations”) submitted collective October 5th comments on the United States Environmental Protection Agency’s (“EPA”) draft guidance titled:

*Interpreting ‘Adjacent’ for New Source Review and title V Source Determinations in All Industries Other Than Oil and Gas*

The Associations submitting the comments included:

- American Chemistry Council
- American Coke and Coal Chemicals Institute
- American Forest & Paper Association
- American Fuel & Petrochemical Manufacturers
- American Petroleum Institute
- Council of Industrial Boiler Owners
- National Mining Association
- Portland Cement Association
- The Fertilizer Institute
- Tile Council of North America

The draft guidance relates to a key Clean Air Act issue.

This issue involves a determination as to when operations in the vicinity of each other should be aggregated for Clean Air Act purposes. This can be a critical determination since sources falling within the scope of the phrase “located on adjacent properties” may be “aggregated” for purposes of determining whether a Clean Air Act Title V or New Source Review determination must be obtained.

By way of summary, the Associations recommend when the draft EPA guidance is finalized that it:

- Address the entirety of the phrase “contiguous and adjacent properties,” rather than just the component term “adjacent”;
- Recognize that EPA’s interpretation applies for purposes of Section 112 Maximum Achievable Control Technology (MACT) stationary source determinations;
- Use the term “pollutant-emitting activities,” rather than “operations”;
- Focus on proximate “properties,” not “operations”;

- Consider using distance ranges as parameters for explaining the level of rationale needed to aggregate properties;
- Recognize that “contiguous and adjacent properties” unambiguously refers to proximity and that states have no discretion to interpret such language differently in their approved State Implementation Plans (“SIPs”).
- Encourage permitting authorities to provide stationary sources with fair notice and reasonable time periods to comply when they disagree with a stationary source’s determination; and,
- Recognize that reliance interests support leaving existing stationary source determinations undisturbed unless an owner or operator requests that the permitting authority re-evaluate a prior decision.

A copy of the October 5th comments can be found [here](#).