



EPA Modifies Source Determination Test; Narrows Common Control Criteria

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Pursuant to EPA's NSR and Title V regulations, air permitting authorities must consider three factors—industrial grouping, location on contiguous or adjacent property, and common control—in assessing whether air emission sources are treated as a single stationary source or a major source. Traditionally, EPA considered a number of factors in determining whether two entities were under common control, including shared workforces, shared management or administrative functions, shared equipment and shared pollution control responsibilities. EPA also relied upon the presence of support or dependency relationships between two or more entities that resulted in one entity either directing or influencing the operations of another entity. These situations often involved a primary facility that was wholly or partially dependent on a support facility. EPA now claims that this historically broad view of common control relationships resulted in the potential for inconsistent outcomes and an overall lack of clarity and certainty for sources and permitting authorities.

EPA's updated interpretation focuses exclusively on the power to control—that is, whether one entity can expressly or effectively force another entity to take a specific course of action, which the other entity cannot avoid through its own independent decision-making. EPA's decision may have significant ramifications for interdependent air emission sources—if they are owned by separate entities, EPA's updated source determination test opens the door for them to be treated as separate sources and be subject to less stringent air-permitting requirements.

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