



EPA Permit Withdrawal Signals Potential Significant Shift in Policy on Air Regulation and Permit Issues

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A recent permit action by EPA may signal a significant shift in air regulation and permit policies for the oil and gas industry. On April 24, 2008, EPA withdrew a minor source air permit issued to Shell Offshore, Inc. This permit relied upon an EPA guidance memorandum in authorizing oil and gas operations to disaggregate emissions for purposes of major source determinations under the Clean Air Act. EPA's permit withdrawal does not invalidate EPA's guidance memorandum, but does eliminate the precedent EPA set in issuing the permit and essentially codifying the memorandum.

The issue of source aggregation has been a prominent for the oil and gas industry, particularly in the Intermountain West. In the last five years, EPA Region 8 in Denver has attempted to aggregate oil and gas development and production activities for purposes of determining whether these activities collectively qualify as a "major stationary source" under the permitting programs for major New Source Review (NSR) and Title V under the Clean Air Act.

Under this expansive interpretation, emissions from separate well sites and facilities within a field must be aggregated for source determinations for permitting purposes. For example, natural gas wells must be aggregated together with gathering and compressor facilities and considered a single "facility" for purposes of making source determinations for NSR and Title V permits.

Industry would be confronted with substantial financial and regulatory compliance burdens in the event EPA requires companies to aggregate emissions from drilling and production operations with other upstream and

mid-stream activities within a field. The interpretation favored by Region 8 could force aggregated sites and facilities into the major stationary source definition and subject these operations to the Prevention of Significant Deterioration (PSD) regulations and all NSR and Title V permit requirements, such as emission limitations, monitoring, record keeping, and reporting.

For the past five years, EPA officials in Washington D.C.—both career and political employees—disagreed with attempts by Region 8 to aggregate oil and gas operations and expand the definition of a “facility.” The Clean Air Act defines a facility for “any stationary source or any group of stationary sources located within a contiguous area and under common control.”

On January 12, 2007, the EPA headquarters staff issued a guidance memorandum that explains the contours of making aggregation decisions and source determinations for the oil and gas industry. This document emphasizes a “common sense” approach for facility determinations, recognizes the unique characteristics of land ownership and control in oil and gas fields, and recommends that permitting authorities first examine the approach of segregating each individual oil and gas surface site for purposes of source determination. The EPA guidance memo also underscores the discretion afforded to state permitting authorities in making source determinations.

With the new Presidential Administration in place, some in the EPA have begun to support revising all decisions made by the previous Administration. EPA’s recent permit withdrawal suggests that certain staff may want to eliminate the “disaggregation” guidance memorandum. There is strong support for this memorandum within the ranks of the EPA headquarters career staff, but EPA Region 8 may interpret the actions taken in this article and the presence of the new Administration as opportunities for a return to the Region’s preferred approach.