



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

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Reply To
Attn Of: OAQ-107

Andy Ginsberg, Manager
Program Operations Section
Air Quality Division
Oregon Department of Environmental
Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Dear Mr. Ginsberg:

EPA has reviewed the additional information that you provided regarding the Title V permitting issue for the ESCO Corporation plants in Portland, Oregon. Nothing in the additional information changes EPA's position that the Main Plant and Plant 3 must be considered to be one major stationary source for purposes of major source permitting under the Federal Clean Air Act and the EPA-approved Oregon rules. In fact, as discussed in more detail below, the additional information provides a more clear basis for the determination that the two plants constitute a single major stationary source.

The definition of "major stationary source" requires a tripartite test for determining the geographic extent of a single stationary source. Specifically, a major stationary source is defined as all of the pollutant emitting activities that are (1) located on one or more contiguous or adjacent properties; (2) are under common control of the same person (or persons under common control); and (3) belong to a single major industrial grouping or are supporting the major industrial group (as determined by the Major Group codes in the Standard Industrial Classification Manual). In the case of the ESCO Main Plant and Plant 3, there is no dispute that the two plants are under common control (ESCO) and have the same Major Group SIC code (Major Group 33 - Primary Metal Industries). The only question is whether the two plants are "located on contiguous or adjacent properties."

The term "contiguous" is defined as "1. touching; in contact. 2. in close proximity without actually touching; near." The term "adjacent" is defined as "1. near or close; next or contiguous." (The Random House Dictionary of the English Language, College Edition). Therefore, by using the phrase "contiguous or adjacent properties" the definition of major stationary source clearly requires that properties that are located near each other, but are not actually touching, be grouped together as one stationary source if they meet the other two criteria. EPA has issued guidance as to how "near" properties need to be in order to be required to group them as a single stationary source. The guiding principle behind this guidance is the

common sense notion of a plant. That is, pollutant emitting activities that comprise or support the primary product or activity of a company or operation must be considered part of the same stationary source.

In the case of the ESCO Main Plant and Plant 3, the primary product of both plants are coated (painted) metal castings. Essentially all of the castings produced by the foundries at both the Main Plant and Plant 3 are coated at the coating facility located at the Main Plant. Furthermore, all final production, packaging, shipping, etc. of the finished product is done at the Main Plant. Therefore, the Main Plant and Plant 3 together function in a manner which meets the common sense notion of a plant. While the Plant 3 foundry may function independently of the foundry facility at the Main Plant, that fact alone does not provide a basis for a finding that it is a separate stationary source in light of the dependent nature of Plant 3 on facilities located at the Main Plant.

ESCO's attorneys argue that the use of a common support facility should not form the basis of a determination that the two plants are contiguous or adjacent. EPA disagrees for two reasons. First, as discussed above, Plant 3 is entirely dependent upon the facilities at the Main Plant for production of the company's finished product. Second, ESCO's attorneys assertion that the coating facility is covered by a separate SIC code is incorrect. ESCO's attorneys claim that the coating facility is covered by SIC code 3479 is contradicted by the language of the SIC Manual itself which states "Establishments that both manufacture and finish products are classified according to their products." (see description of code 3479 in the Manual). Therefore, the coating facility is not considered part of the Main Plant simply because it is a collocated support facility with a separate SIC code. Rather, it is considered part of the same industrial grouping as the foundry facility because the primary activity of the Plant is the manufacturing and finishing of cast metal products.

ESCO's attorneys claim that EPA has never indicated that two plants that share common facilities should be grouped together as one stationary source. EPA disagrees and can point to several instances where two plants were required to be grouped together as one stationary source when one plant produced an intermediate product and the finished product was produced at the other plant. ESCO's attorneys also point to EPA's guidance for addressing situations where a support facility supports two stationary sources as a basis for their argument that a support facility cannot be the basis for grouping the two plants as one stationary source. However, EPA's guidance addresses situations where the two sources are clearly separate stationary sources (due to ownership and/or SIC code) and the support facility needs to be assigned to one or the other sources. However, where two sources are on contiguous or adjacent properties, are under common ownership, and are within the same SIC code, there would be only one stationary source and there would be no need to assign the support facility to one source or the other. Finally, ESCO's attorneys also point to an Illinois court decision as a basis for their argument that use of a common support facility should not form the basis for grouping two plants together as one source. This decision involved a challenge of a permit issued by an Illinois permitting authority and was decided based on the provisions of the Illinois Clean Air Act. As such, it has no relevance to the Federal Clean Air Act or Oregon's statutes. Moreover, the Illinois case involved

the issue of whether two facilities with different 2-digit SIC codes were required to be grouped together as a single stationary source. Since all of the facilities involved in the ESCO situation have the same 2-digit SIC code, the Illinois case is irrelevant.

EPA's position on this issue represents the opinions of Region 10 Office of Air Quality and Office of Regional Counsel, EPA's Office of Air Quality Planning and Standards, and EPA's Office of General Counsel. If you have any further questions on this issue, please contact either David Bray, Office of Air Quality, at (206) 553-4253, or Adan Schwartz, Office of Regional Counsel, at (206) 553-0015.

Sincerely,

Joan Cabreza
Permits Team Leader
Office of Air Quality