August 2, 1996

MEMORANDUM

SUBJECT: Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act (Act)

FROM: John S. Seitz, Director /s/
Office of Air Quality Planning and Standards (MD-10)

TO: See Addressees

Purpose of Guidance

The purpose of this memorandum is to provide guidance on implementing the section 112 air toxics, title I (Part D) nonattainment new source review (nonattainment NSR), title I (Part C) prevention of significant deterioration (PSD), and title V operating permit programs with regard to "major source" determinations at Federal military installations. (The nonattainment NSR and PSD programs together are hereafter referred to as the new source review (NSR) program.) The attachment to this memorandum, entitled "Guidance for Major Source Determinations at Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act (Act)," outlines today's guidance in greater detail.

For the purposes of this guidance, the term "military installation" refers to a stationary source, or group of stationary sources, located on one or more contiguous or adjacent properties that are owned, operated, supervised, or controlled by one or more Department of Defense (DOD) components which include the military services, the defense agencies, and the National Guard. (Defense agencies are components of the DOD that are established by the Secretary of Defense to perform a supply or service activity common to more than one military department. For example, the Defense Finance and Accounting Service handles the payroll for all the military services.) This definition of the term military installation has been developed solely for the

purpose of providing a starting point in the analytical process for making major source determinations that is described in this guidance. It is not intended to be equivalent to the term "major source."

Background

In recent months, the requirement for sources to prepare and submit title V operating permit applications has led to greatly increased interest in understanding how to make "major source" determinations. At issue are questions about which pollutant-emitting activities at stationary sources must be aggregated for the purpose of determining the applicability of emission control and permitting requirements under the Act.

In particular, given the wide variety of functions performed at military bases and the array of "control" arrangements associated with them, the DOD has requested that the Environmental Protection Agency (EPA) issue guidance addressing how determinations of major sources may be made at military installations. Compared to most industrial sources, military installations include a wider variety of functions and activities including residential housing, schools, churches, recreational parks, shopping centers, industrial operations, training ranges, airports, gas stations, utility plants, police and fire departments, and hospitals. In addition, military installations include a variety of tenant activities, including other DOD service, non-DOD Federal agency, contractor, and leased commercial activities.

Section 118(a) of the Act states that each department, agency, and instrumentality of the Federal government is subject to and must comply with all Federal, State, and local requirements in the same manner and to the same extent as any nongovernmental entity. The EPA believes that the effect of today's guidance is to assure that military installations are treated consistently with how the Agency's regulations and policies are applied at nonmilitary stationary sources.

Summary of Guidance

Common Control Determinations

When making major source determinations at a military installation, the Agency believes it is appropriate to consider pollutant-emitting activities that are under the control of different military services *not* to be under common control. In other words, all pollutant-emitting activities at an installation under the control of the Army could be considered under separate

control from those activities "owned or operated" by the Navy, the Air Force, or the Marine Corps. In addition, activities under the control of the National Guard may be considered under separate control from activities under the control of military services, as can activities under the control of the defense agencies; however, the defense agencies are considered under common control with each other.

While separate military controlling entities may be treated as under separate control, determinations for military installations should be made on a case-specific basis after examining the operations and interactions at those sites. Consequently, there may be situations in which the air pollution control agency or the permitting authority determines that it is appropriate to consider a military installation a single source, notwithstanding the presence of multiple controlling entities at that military installation. Nothing in this guidance precludes such a finding by an agency or permitting authority.

In general, leased activities at military installations may be considered under separate control from activities under the control of the military controlling entities at that installation. These leased activities would be considered "tenants" on military bases. In contrast, contract-for-service (or contractor-operated) activities at military installations usually would be considered under the control of the military controlling entity that controls the contract. Thus, leased activities may be considered under common control when they also have a contract-for-service relationship to provide goods or services to a military controlling entity at that military installation. Given the variety and complexity of leased and contract-for-service activities at military bases, the Agency expects that case-by-case determinations will often be necessary for such situations.

Industrial Grouping and Support Facility Determinations

Historically, all activities at a military installation have been grouped under the Standard Industrial Classification (SIC) Manual Major Group 97, "National Security and International Affairs" (or, more specifically, within Major Group 97, Industry Number 9711, "National Security"). Upon evaluating the application of the SIC-code approach to classifying military installations, the EPA has determined that Major Group 97 is inappropriate for major source determinations at some military installations. In these instances, the 97 Major Group inappropriately aggregates activities at a military installation with the result that portions of the installation could be subject to requirements under the Act that would not otherwise

apply if a comparable source determination were made as if for a nonmilitary facility.

The EPA believes it is appropriate to think of military installations as combinations of functionally distinct groupings of pollutant-emitting activities that may be identified and distinguished the same way that industrial and commercial sources are distinguished, that is, on the basis of a "common sense notion of a plant." Thus, the following approach may be used to determine how military facilities should be aggregated in making major source determinations: the "industrial groupings" at a military installation may be assigned appropriate 2-digit SIC codes (as if they were nonmilitary facilities) and classified into "primary" and "support" activities. As is now done for nonmilitary sources, support activities at military bases would be aggregated with their associated primary activity regardless of dissimilar 2-digit SIC codes.

The EPA also believes that certain personnel-related activities at military installations may appropriately be considered *not* to be support facilities to the primary military activities of a base and, therefore, they can be considered separate sources. Examples of these types of activities include residential housing, schools, day care centers, churches, recreational parks, theaters, shopping centers, grocery stores, gas stations, and dry cleaners. These activities may be treated as separate sources for all purposes for which an industrial grouping distinction is allowed, but they should be separately evaluated for common control, SIC code, and support facility linkages to determine if a major source is present.

Title V Permitting

After determining that stationary sources at a military installation are subject to title V permitting, permitting authorities have discretion to issue more than one title V permit to each major source at that installation, so long as the collection of permits assures that all applicable requirements would be met that otherwise would be required under a single permit for each major source. In other words, all stationary sources that are subject to title V permitting within a major source must be covered by one of these permits, and a major source may not be divided in a way that changes how it would be subject to or comply with applicable requirements compared with what would otherwise occur if a single title V permit were issued to that major source.

Permitting authorities may accept multiple permit applications from each major source, provided that each permit

application is certified by a responsible official who is selected in accordance with the requirements of 40 CFR 70.2 or 71.2. The EPA recommends that military controlling entities that wish to obtain multiple title V permits for major sources under their control meet with their permitting authorities well in advance of permit application submission deadlines to discuss how their major sources may be divided to receive separate title V permits. Where military installations have already filed title V permit applications and these submittals are being processed for permit issuance, these applications should be reevaluated in light of the approaches described in this guidance, if appropriate.

Effect of Guidance

This guidance explains the EPA's interpretations of what is minimally required under its regulations; it is not intended to supersede or replace more stringent approaches taken by any particular agency or permitting authority. State and local agencies may choose to implement the approaches described here, or they may exercise their discretion to implement more stringent approaches provided there is a rational basis for the treatment of military installations compared with other types of facilities. The EPA recommends that military installations consult with their permitting authorities to determine the application of this guidance to their installations.

For major stationary source determinations under the NSR program, this guidance applies prospectively only and it does not affect any preexisting major source determination made by a permitting authority (e.g., one that resulted in the issuance of a major NSR permit or one that resulted in a determination that major NSR was not applicable). Such determinations generally would continue to be valid, provided they were made in accordance with relevant State and Federal requirements that applied at the time they were made.

The interpretations and policies set forth in this document are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create rights enforceable by any party. The EPA will continue to evaluate the need for guidance on major source determinations for military installations and may issue additional guidance in the future.

Distribution/Further Information

The Regional Offices should send this memorandum, including the attachment, to State and local air pollution control agencies

within their jurisdictions. Regional Offices should distribute these materials promptly because title V permit application deadlines are approaching for military installations in numerous locations. Questions concerning specific issues and cases should be directed to the appropriate Regional Office. In addition, copies of cited materials that are not otherwise readily available may be obtained from the air permitting contacts at the Regional Offices. Regional Office staff may contact Michele Dubow of the Integrated Implementation Group at (919) 541-3803. This document is also available on the technology transfer network (TTN) bulletin board, under "Clean Air Act" - "Title V" - "Policy Guidance Memos." (Readers unfamiliar with this bulletin board may obtain access by calling the TTN help line at (919) 541-5384.)

Attachment

Addressees:
Director, Office of Ecosystem Protection, Region I
Director, Division of Environmental Planning and Protection, Region II
Director, Air, Radiation and Toxics Division, Region III
Director, Air, Pesticides and Toxics Management Division, Region IV
Director, Air and Radiation Division, Region V
Director, Multimedia Planning and Permitting Division, Region VI
Director, Air, RCRA, and TSCA Division, Region VII
Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance, Region VIII
Director, Air and Toxics Division, Region IX
Director, Office of Air, Region X

cc: Air Branch Chiefs, Regions I-X
Regional Air Toxics, NSR, and Title V Contacts, Regions I-X
Michele Dubow (MD-12)
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ATTACHMENT

Guidance for Major Source Determinations at Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act (Act)

I. Introduction

The relevant programs to which this guidance applies are the section 112 air toxics, title I (Part D) nonattainment new source review (nonattainment NSR), title I (Part C) prevention of significant deterioration (PSD), and title V operating permit programs. (The nonattainment NSR and PSD programs are hereafter referred to collectively as the new source review (NSR) program.) Regulations implementing these programs are found, respectively, in 40 CFR parts 63, 51 and 52, and 70 and 71.[1] This guidance explains the Environmental Protection Agency's (EPA) interpretation of what is minimally required under these regulations; it is not intended to supersede or replace more stringent approaches taken by any particular air pollution control agency or permitting authority provided there is a rational basis for the treatment of military installations compared with other types of facilities. The EPA recommends that military installations consult with their agencies or permitting authorities to determine the application of this guidance to their installations.

For the purposes of this document, the term "military installation" refers to a stationary source,[2] or group of stationary sources, that are located on one or more contiguous or adjacent properties that are owned, operated, supervised, or controlled by one or more Department of Defense (DOD) components

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[1] The use of this guidance in determining what constitutes a major source does not affect the scope of what constitutes a "Federal action" for the purposes of the General Conformity Rule (40 CFR 93.150-160).

[2] The term "stationary source" is used here with its meaning under 40 CFR part 70: "any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act." § 70.2 "Stationary source."

which include the military services, the defense agencies, and the National Guard.[3]

The interpretations and policies set forth in this document are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create rights enforceable by any party. Furthermore, this guidance applies prospectively only for major stationary source determinations under the NSR program and it does not affect any preexisting major source determination made by a permitting authority (e.g., one that resulted in the issuance of a major NSR permit or one that resulted in a determination that major NSR was not applicable). Such determinations generally would continue to be valid, provided they were made in accordance with the relevant State and Federal requirements that applied at the time they were made.

II. Background

Many stationary source requirements of the Act apply only to "major sources" (or "major stationary sources" as they are defined under the NSR program). Therefore, the determination of whether a stationary source, or group of stationary sources considered together, is a major source is critical to determining whether a particular requirement under the Act applies to that "source."[4] Major sources (or major stationary sources) are those stationary sources that emit or have the potential to emit air pollutants in excess of threshold emission levels specified in

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[3] This definition has been developed solely for the purpose of providing a starting point in the analytical process for making major source determinations that is described in this guidance. It is not intended to be equivalent to the term "major source," nor is it used to define the "source" that is the basis for a major source determination at a military facility. (See footnote 4 for an explanation of how the term "source" is used in this document in relation to major source determinations.)

[4] "Source" is not a defined term in the EPA's regulations for the programs addressed by this guidance. It is used in today's guidance to refer generically to the collection of pollutant-emitting activities (i.e., to the stationary source or group of stationary sources considered together) that, when aggregated appropriately under the regulations and policy of a particular program, forms the basis for the "major source" determination. Depending upon the context, "source" also is used here as it is colloquially to refer to entire facilities or plant sites that emit air pollutants.

the Act (or established by regulation by the EPA) and that meet other criteria defined by regulation.

The definitions that appear in parts 51, 52, 63, 70, and 71 consider a stationary source, or group of stationary sources considered together, to be a major source if the stationary source (or group of stationary sources) is located on one or more contiguous or adjacent properties and is under "common control" of the same person (or persons under common control).[5,6] In making major source determinations under the relevant programs, sources and permitting authorities generally would, first, determine which pollutant-emitting activities that are located on one or more contiguous or adjacent properties are under common control of the same persons (or persons under common control)[7] and, second, determine whether the initial "source" may be disaggregated into two or more "sources" based on appropriate industrial groupings and support facility relationships.

III. Guidance for Military Installations

A. **Common Control Determinations**

1. Activities Under the Control of Different Military Services, Defense Agencies, or the National Guard

Applicability:

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[5] In addition, for making major source determinations under NSR and title V, these programs provide that sources can be aggregated on the basis of industrial groupings and support facility relationships, but this approach is not available under the section 112 air toxics regulations. This topic is addressed in the next section of this guidance.

[6] The EPA believes that Congress intended the term "located within a contiguous area," as it is used to define major source in section 112 and 40 CFR 63.2, to have the same meaning as the term "located on one or more contiguous or adjacent properties," as it is used to define major source in 40 CFR 70.2. The Agency's policy on the meaning of "contiguous or adjacent" property was addressed in the preamble to the proposed General Provisions for part 63 (58 FR 42767, August 11, 1993). The Agency interprets and applies this term the same way under the air toxics, NSR, and title V programs.

[7] This step is sometimes referred to as a "site determination." It may also be referred to as an initial "source" determination.

Section 112, NSR, and title V.

Summary:

Pollutant-emitting activities under the control of the following entities may be considered under separate control when making major source determinations at military installations: the Army, the Navy, the Air Force, the Marine Corps, the National Guard, and the defense agencies taken collectively (i.e., all the defense agencies at a military installation would be considered under common control).

Discussion:

Because "control" of all Executive Branch entities resides with the Office of the President, a literal approach to determining common control would result in a finding of common control among every Federal government entity not in the Judicial or Congressional branches. To the EPA's knowledge, this has never been the EPA's practice. Similarly, a literal approach to determining common control at military installations would result in a finding of common control among all the DOD components at an installation. While such an approach has been taken in the past, the EPA believes it is appropriate to settle on an approach to common control for the military that is reasonable as the minimum approach required to implement the relevant Clean Air Act requirements.

There are four separate military services within the DOD: the Army, the Navy, the Air Force, and the Marine Corps. The administrative functions of these services, including management control over facility operations, are the province of the separate military services. Effectively, there is no "control" relationship among these services regarding facility operation below the Secretary of Defense. In addition, there are a number of defense agencies and defense field activities established by the Secretary of Defense as necessary to perform a supply or service activity common to more than one military department. Overall supervision of each agency or field activity is assigned to the Office of the Secretary of Defense or to the Chairman of the Joint Chiefs of Staff.

National Guard units have a dual mission: while Army and Air National Guard units are reserve components of the U.S. Army and U.S. Air Force, the National Guard is also the official State militia of individual States and is under the control of the State governors unless called to active Federal duty. State

Guard units support the Federal missions of the Army and Air Force and use Federal resources to meet these missions; however, Army and Air Guard commanders report to a State's Adjutant General, who is appointed by the governor of the State.

When different military services control separate groups of pollutant-emitting activities at a single military installation, the Agency believes it is appropriate to consider these activities *not* to be under common control when making major source determinations. In other words, all pollutant-emitting activities at a military installation under the control of the Army could be considered under separate control from those activities "owned or operated" by the Navy, the Air Force, or the Marine Corps. In addition, activities under the control of the National Guard may be considered under separate control from activities under the control of the military services, as can activities under the control of the defense agencies; however, as mentioned above, the defense agencies are considered under common control with each other.

Because the National Guard is controlled by States, the EPA believes it is appropriate to treat National Guard units located at military installations as being under separate control from the military services. Moreover, because the States may vary in the control relationships between Air and Army National Guard units, the EPA believes that control determinations for Air and Army National Guard units that are present together at a military installation should be made by permitting authorities.

Hereafter, for the purposes of this guidance, the term "military controlling entities" is used to refer to the controlling entities at a military installation that are considered under separate control. Figure 1 includes a complete list of the military controlling entities that may be considered under separate control under this guidance. Figure 2 includes a complete list of the defense agencies that are considered under common control with each other.

Under this approach, all portions of a military installation under the control of a military controlling entity are considered to be under common control regardless of their actual contiguity at that military installation, i.e., regardless of whether they share a reasonably continuous border. In other words, at this stage of the major source determination process, all portions of an installation that are part of a separate military service, the National Guard, or one or more defense agencies taken together are considered the same "source" on the basis of being located on the same property or on contiguous or adjacent properties.

Nevertheless, while separate military controlling entities may be treated as under separate control, determinations for military installations should be made only after examining the specific operations and interactions at those sites. Consequently, there may be situations in which the air pollution control agency or the permitting authority determines that it is appropriate to consider a military installation a single "source," notwithstanding the presence of multiple controlling

FIGURE 1:

MILITARY CONTROLLING ENTITIES THAT MAY BE CONSIDERED UNDER SEPARATE CONTROL

Air Force
Army
Defense agencies
Marine Corps
National Guard
Navy

FIGURE 2:

DEFENSE AGENCIES THAT ARE CONSIDERED UNDER COMMON CONTROL

Advanced Research Projects Agency
Ballistic Missile Defense Organization
Central Imagery Office
Defense Commissary Agency
Defense Contract Audit Agency
Defense Finance & Accounting Service
Defense Information Systems Agency
Defense Intelligence Agency
Defense Investigative Service
Defense Legal Services Agency
Defense Logistics Agency
Defense Mapping Agency
Defense Security Assistance Agency
Defense Nuclear Agency
General Defense Intelligence Program Support Staff
National Security Agency Central Security Service
On-Site Inspection Agency

entities at that military installation.[8] Nothing in this guidance precludes such a finding by an agency or permitting authority.

2. Leased and Contract-for-Service Activities

Applicability:

Section 112, NSR, and title V.

Summary:

In general, leased activities are considered under separate control and any contract-for-service activities[9] are considered under the control of the military controlling entity that controls the contract.

Discussion:

In determining which activities are under common control, a variety of factors must be considered including the nature of any contractual, lease, or other agreements that establish how facilities located at a military installation interact with one another. In essence, the relevant economic, legal, and functional relationships between or among facilities must be examined in making common control determinations. Because of the great variability that exists in control relationships at military installations, permitting authorities should make determinations of common control only after evaluating the particular operations and interactions at an installation.

In general, the controlling entity[10] is the highest authority that exercises restraining or directing influence over a source's economic or other relevant, pollutant-emitting

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[8] Furthermore, because common control criteria are applied the same way under the section 112, NSR, and title V programs, common control determinations at a military installation must be consistent across applicable programs.

[9] The term "contract-for-service" is used in this guidance to distinguish this type of operation from leases which are also contractual arrangements.

[10] While the controlling entity is usually referred to as the "owner or operator," this person (or persons) may not be the literal owner or operator of an activity that he or she is considered to control.

activities.[11] In considering interactions among facilities, what must be determined is who has the power of authority to guide, manage, or regulate the pollutant-emitting activities of those facilities, including "the power to make or veto decisions to implement major emission-control measures"[12] or to influence production levels or compliance with environmental regulations.[13]

A determination of common control may be made on the basis of direct control, such as when collocated activities are "owned or operated" by the same military controlling entity, or on the basis of indirect control, such as when the goods or services provided by a collocated, contract-for-service entity are integral to or contribute to the output provided by a separately "owned or operated" activity with which it operates or supports. To overcome the presumption of common control when more than one entity is located at a military installation, the permitting authority may require the "owners or operators" to explain how their entities interact. In addition, the permitting authority may find it necessary to look at contracts, lease agreements, and other relevant information.

a. Leased Activities

In general, leased activities may be considered separate "sources" when they are *not* under the direct or indirect control of a lessor (e.g., through a contract-for-service arrangement) and they do not support another activity that is owned or operated by the lessor. A typical landlord/tenant or lessor/lessee arrangement exemplifies this situation, e.g., a dry cleaner in a shopping center.

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[11] It is important to emphasize that legal relationships are not the sole basis for determining control.

[12] See the memorandum from Edward E. Reich, Director, Stationary Source Compliance Division, to Diana Dutton, Director, Enforcement Division, Region VI, dated March 16, 1979, which established the Agency's operative policy on this matter. The phrase, "the power to make or veto decisions to implement major emission-control measures," comes from 44 FR 3279, January 16, 1979, the Agency's Interpretive Ruling on PSD regulations from June 19, 1978 (43 FR 26404).

[13] See the letter from William Spratlin, Director, Air, RCRA, and Toxics Division, EPA Region VII, to State and Local Air Directors, dated September 18, 1995, in which this concept is explained further.

The EPA believes that leased activities at military bases may be considered under separate control when they do not also have a contract-for-service relationship to provide goods or services to a military controlling entity at that military installation. These leased activities generally would be considered "tenants" on military bases.[14,15] For example, leased activities that may be considered under separate control could include commercial (e.g., "civilian reuse"[16]) or academic (e.g., university) activities, and activities under the control of other Federal, State, interstate, or local entities, provided that these activities are not contracted to provide services to a military controlling entity located at that military installation.

b. Contract-for-Service Activities

Contract-for-service activities must be included as part of the source with which they operate or support.[17] Contract-for-service (or contractor-operated) activities are inherently

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[14] When determining common control at military installations, a straightforward landlord/tenant type of relationship may or may not be determined to exist when the appropriate relationships are examined.

[15] The particular control relationships within the military controlling entity that oversees a contract are not relevant to the determination of "source" on the basis of common control. Thus, the typical landlord/tenant relationship should not be confused with a "military tenant command" relationship, a term used by the DOD to refer to the responsibilities of military commanding officers at particular installations.

[16] "Civilian reuse" is a term used to describe the use by nonmilitary entities of property that is part of a military installation but has been scheduled for closure or realignment pursuant to the Base Closure and Realignment Act of 1988 or the Defense Base Closure and Realignment Act of 1990. This property may be used by other Federal, State, or local agencies or for private residential or commercial purposes.

[17] See the letter from John S. Seitz to Lisa J. Thorvig, Division Manager, Minnesota Pollution Control Agency, dated November 16, 1994, in which the Agency stated its policy that "temporary and contractor-operated units [must] be included as part of the source with which they operate or support" under titles I and V of the Act.

different from leased activities and, therefore, it is appropriate to consider them differently in making source determinations. Among other considerations, the contracting entity can control the relevant aspects of the contract operator's performance through the terms of the contract (e.g., the level of production, the requirement to implement and maintain emission control measures, the requirement to comply with all applicable environmental regulations, etc.). For these reasons, leased activities or properties that are also contractor-operated for the benefit of the lessor would be considered part of the source with which they operate or support.[18]

Examples of contract-for-service activities that are collocated at military installations and are likely to be under indirect control of a military controlling entity include missile rocket motor and munitions plants, food service operations that feed troops housed on the base, aircraft or ship repair/refinishing operations, and hazardous waste cleanup operations when these activities are owned or operated by private companies. When these same activities are owned or operated by a military controlling entity they would be considered under the direct control of that entity.

For leased activities that contract only part of their output (i.e., less than 100 per cent) to a military controlling entity that is located at that military installation, the permitting authority should consider on a case-by-case basis whether the leased/contracted activity is under common control with that entity. Among the factors that would need to be considered are: how integral the leased/contracted activity's output is to the entity's operations; the percentage of the output that goes to the entity; whether the activity must be on site to perform its service or produce its product; whether the activity would remain on site if the entity no longer received the output; and the terms of the contract between the entity and

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[18] See the April 5, 1995 letter from Kenneth Eng, Chief, Air Compliance Branch, EPA Regional Office II, to Thomas Micai, Chief, Bureau of Operating Permits, New Jersey Department of Environmental Protection, in which the EPA wrote: "EPA interprets the term 'common control' of an owner to include an operator (who is different from an owner) of a source that is operating under a contractual obligation with the owner and funded by the owner. An owner and operator having landlord-tenant or lessor-lessee type of relationship *in most cases*, however, is not considered as under common control of the owner." [emphasis added]

the activity. For example, the fact that less than 50 percent of the leased/contracted activity's output is provided to the military controlling entity could be one factor supporting a determination that the leased/contracted activity can be considered under separate control.[19]

B. **Industrial Grouping and Support Facility Determinations**

Applicability:

NSR and title V.

Summary:

Pollutant-emitting activities under common control at a military installation may be disaggregated further based on appropriate industrial groupings and the support facility test.

Each primary activity and support activity is assigned the 2-digit Standard Industrial Classification (SIC) Manual code that best describes it. Each support activity is considered to be part of the same source as the primary activity that it supports.[20,21,22]

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[19] The permitting authority may need to consider which military controlling entity controls the leased/contracted activity when it provides output to multiple military controlling entities at that installation.

[20] To make an industrial grouping determination, activities are assigned appropriate SIC codes, and then all those activities with codes that share the same first 2 digits are *aggregated* to form an industrial grouping.

[21] The order of determining common control first and SIC code groupings second is by no means absolute. Where source grouping by SIC code is available, it may be easier to group emission units by SIC codes first before determining common control. This will sometimes eliminate the need to make complex control determinations where the activities are clearly in a separate SIC code from and do not support the primary activity.

[22] While the EPA regulations provide for SIC code groupings, not all State and local permitting regulations do. Military installations are advised to check with their permitting authorities regarding the use of SIC codes. In addition, grouping pollutant-emitting activities by SIC code is available

only under NSR programs and parts 70 and 71 and not under part 63.

Discussion:

Historically, all activities at a military installation have been grouped under SIC Major Group 97, "National Security and International Affairs" (or, more specifically, within Major Group 97, Industry Number 9711, "National Security"). Upon evaluating the application of the SIC-code approach to classifying military installations, the EPA has determined that Major Group 97 is inappropriate for major source determinations at some military installations. In these instances, aggregating all pollutant-emitting activities at a single military installation (under common control) under the 97 SIC-code umbrella could result in the determination that the military installation must be treated as a single "source" for NSR and title V applicability. While a single "source" determination confers benefits to the military installation such as netting opportunities under NSR,[23] it may also subject portions of the installation to requirements under the Act that would not otherwise apply if a comparable source determination were made as if for a nonmilitary facility.

The EPA believes the following approach is appropriate for determining how military facilities can be aggregated in making major source determinations. The approach involves thinking of military installations as combinations of functionally distinct groupings of pollutant-emitting activities that may be identified and distinguished the same way that industrial and commercial sources are distinguished, that is, on the basis of a "common sense notion of a plant." Thus, the "industrial groupings" at a military installation would be assigned appropriate 2-digit SIC codes (as if they were nonmilitary facilities) and classified into "primary" and "support" activities. As is now done for nonmilitary sources, support activities at military bases would be aggregated with their associated primary activity regardless of dissimilar 2-digit SIC codes. Consequently, emissions from support facilities would be added to the emissions from the primary activity when determining the major source status of the "source."[24]

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[23] A single "source" determination also would establish consistency between the NSR "source" and the section 112 "source."

[24] Nevertheless, in some cases it may be appropriate to classify all stationary sources under common control at a military installation as a single "source" belonging to the 97 Major Group.

The EPA is basing this approach on a consideration of the unique type and diversity of activities at military installations and the procedures given in the SIC code manual for assigning industry codes. An SIC code is assigned based on the primary activity at a facility, which is determined by the facility's principal product, group of products, service, or activity. SIC codes are thus assigned based on *what* an activity or product is, rather than on *why* an activity is performed or *why* a product is produced. Assigning each activity at a military installation to Major Group 97, "National Security," even when there are SIC codes that more appropriately describe an installation's primary activity(ies), generally has resulted in assigning an SIC code to these activities based on their purpose instead of their product or service.

Where no appropriate SIC code exists that correlates to the distinct functional grouping that may be considered a primary activity at a military installation (e.g., combat troop training), the 97 SIC code should be used. In some instances it will not be necessary to use any other SIC code besides 97 to characterize the primary and support activities at the base; this would typically be the case for a base with a single primary activity and no other collocated ancillary activities (such as defense contractors).

The 97 SIC code should also be used, when necessary, to classify any support activity that is associated with the primary activity when a more appropriate SIC code does not exist to describe the support activity. (The need for this should be less common.) When other distinct major industrial groupings exist on the base that are not support functions for the primary activity of the base, these groupings would be described by other 2-digit SIC codes, if available, or 97. The determination of what constitutes a support facility would be made consistent with existing guidance, focusing on the concepts of "convey[ing], stor[ing], or otherwise assist[ing] in the production of the principal product" or equivalent concepts as they would be relevant to one of the primary activities at the installation.[25] In situations where an activity (e.g., an airport) supports two or more primary activities under same-entity control (e.g., missile testing/evaluation and pilot training), the support activity generally would be aggregated with the primary activity to which its output is mostly dedicated. In other words, a support facility usually would be aggregated with the primary activity to which it contributes 50 per cent or more of its

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[25] See the final PSD regulations promulgated on August 7, 1980, 45 FR 52695.

output.[26] If the activity does not support any single other activity with at least 50 percent of its "product" or "service," then it may be appropriate for the permitting authority to determine that the activity should be considered a separate source instead of a support facility.[27]

Some examples of primary activities at military installations include combat troop training, munitions manufacturing, depot storage and distribution, ship repair, and aircraft repair. While many primary activities at military installations (as well as their support facilities such as public works centers) can be associated with 2-digit SIC codes other than 97, the actual classification of these activities and the associated source determinations for a particular base must be made on a case-by-case basis after analyzing the specific operations of that base.

Under this approach, distinct operations under the direct or indirect control of a military controlling entity may be considered separate sources -- if they do *not* support a primary activity of the base at which they are located. For example, a military contractor that is engaged in manufacturing or another activity broadly related to national defense or security but not related to the specific primary activities at the base usually would be considered a separate source. In contrast, a military contractor performing a recurring activity that is integrally

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[26] However, while the 50 per cent support test is the presumptive test for these programs, it may not be the most appropriate test in certain situations. Support facility relationships should always be established in light of the particular circumstances of the sources being evaluated.

[27] In the August 31, 1995 Federal Register notice proposing changes to part 70, the EPA clarified that research and development activities may be considered separately, and usually need not be aggregated with collocated activities, for purposes of determining whether a major source is present for section 112, NSR, and title V. See 60 FR 45556. Research and development activities that qualify for this separate treatment are proposed to be defined in part as "activities conducted at a research or laboratory facility that is operated under the close supervision of technically trained personnel the primary purpose of which is to conduct research and development into new processes and products and that is not engaged in the manufacture of products for sale or exchange for commercial profit." See proposed revision to §70.2, "Research and Development Activities," 60 FR 45565.

related to the installation's operations would be considered part of the same source as its associated primary activity, e.g., contracted vehicle maintenance would be considered a support service if it is associated with a primary activity on the base such as combat troop training.

Military installations include numerous activities that are not normally found at other types of sources. These types of activities include residential housing, schools, day care centers, churches, recreational parks, theaters, shopping centers, grocery stores, gas stations, and dry cleaners. These activities are located on military installations for the convenience of military personnel (both active duty and retired), their dependents, and DOD civilian employees working on the base, and they often do not represent essential activities related to the primary military activity(ies) of the base. Therefore, the EPA believes these types of activities may appropriately be considered *not* to be support facilities to the primary military activities of a base.[28] As such, these activities may be treated as separate sources for all purposes for which an industrial grouping distinction is allowed. Such activities should be separately evaluated for common control, SIC code, and support facility linkages to determine if a major source is present. This approach is limited to activities that are provided solely as amenities for active duty and retired personnel, their dependents, and DOD civilian employees on an individual transaction, pay-for-service basis; in lieu of a housing allowance; for religious or recreational purposes; or for the education or care of dependent children.

Emissions sources that support these amenities (e.g., boilers and wastewater treatment facilities) would be grouped with the amenities that receive the majority of their products or services. The resulting "sources" would be evaluated like all sources to determine if major sources are present. For example, a boiler supporting an elementary school at the military installation would be grouped with the elementary school and not with other boilers.

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[28] There are instances where these types of activities do function as support facilities to the primary military activities at a military installation and, therefore, in these instances, they should be grouped with the primary military activities that they support. For example, food services that support barracks at basic training camps would be grouped with other "primary" emissions units at the camps.

In contrast to the approach just described, when aggregating HAP to determine major source status under 40 CFR part 63, stationary sources (or groups of stationary sources) must be aggregated without regard to major industrial grouping or support facility classifications. In other words, in determining a major source for HAP, the emissions from all pollutant-emitting activities at that stationary source (or group of stationary sources) on one or more contiguous or adjacent properties under common control must be aggregated; this is commonly referred to as a "fenceline to fenceline" determination.[29]

C. **Title V Permitting**

Applicability:

Title V.

Summary:

After determining that stationary sources at a military installation are subject to title V permitting, permitting authorities have discretion to issue more than one title V permit to each major source at the installation, so long as the collection of permits assures that all applicable requirements would be met that otherwise would be required under a single permit for each major source.

Discussion:

The following discussion applies after the process of determining applicability has been completed (as previously described in this document) and it has been determined that one or more major sources at a military installation are subject to title V permitting.

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[29] As currently promulgated, part 70 allows for the grouping of HAP sources by SIC code and many EPA-approved State and local title V permitting programs provide for this grouping. While the EPA has proposed to revise the part 70 definition of major source for HAP to make it consistent with the definition of major source in part 63, until permitting authorities revise their title V programs to conform to the revised part 70 regulations, HAP sources may be grouped by SIC codes to the extent allowed by the applicable State or local permitting program *for the purposes of determining title V applicability*. For the purposes of determining the applicability of section 112 requirements to sources of HAP, sources and permitting authorities must use the part 63 definition of major source.

At the discretion of the permitting authority, more than one title V permit may be issued to each major source at a military installation. All stationary sources that are subject to title V permitting within a major source must be covered by one of these permits, and the major source must not be divided in a way that is incongruous with its applicable requirements. In other words, the major source may not be divided in a way that changes how it would be subject to or comply with applicable requirements compared with what would otherwise occur if the major source were issued a single title V permit.

Permitting authorities may accept multiple permit applications from each major source, provided that each permit application is certified by a responsible official who is selected in accordance with the requirements of 40 CFR 70.2 or 71.2.

All individual permit applications are due by the deadline established by the permitting authority. Absent a specific scheduling agreement between the controlling entity and the permitting authority, the review periods for both permit application completeness and final action given in the approved State or local part 70 program (pursuant to 40 CFR 70.4(b)(6)), or in 40 CFR 71.5(a)(2) and 71.7(a)(2), do not commence until that deadline has expired.

Finally, the EPA recommends that any military controlling entity that wishes to obtain multiple title V permits for a major source under its control meet with its permitting authority in advance of permit application submission deadlines to discuss how the major source may be divided to receive separate title V permits. This discussion should address controlling entity and responsible official identification for each application and permit, the application submission schedule, and other relevant topics.