**New Clean Air Act Interpretation May Affect Facility Permitting**

Facilities required to have an EPA Title V air permit, New Source Review (NSR) air permit, or a Prevention of Significant Deterioration (PSD) air permit may soon be affected by a proposed new interpretation of the word “adjacent”.

**Adjacent Properties**

In the regulations, the word adjacent comes into play when determining if a facility qualifies for permits. When determining sources, a building, structure, facility or installation must be under the control of the same person, belong in the same industrial grouping, and located on one or more contiguous or adjacent properties. When it came to “adjacent”, EPA wouldn’t give a determination on how far apart the properties needed to be and said that it would be determined on a case by case basis. Besides physical proximity, EPA has been considering “functional interrelatedness” in its adjacent determinations.

Companies determine how their facilities should be permitted within the rules, whether there is one combined source, or whether there are separate sources. In one court case, EPA disagreed with a petroleum company that it had separate sources. EPA said the company’s operations and wells were adjacent, even though they were miles apart. EPA was considering the operations, pipelines and wells as having functional interrelatedness. The petroleum company sued EPA, and the court found in favor of the petroleum company. The court said the definition of “adjacent” was simple and meant only physical proximity.

After the court ruling, EPA tweaked interpretation rules by region to include functional interrelatedness, and they were also thrown out by courts in other lawsuits and challenges.

**The New Interpretation**

EPA has issued a draft guidance for the interpretation of adjacent and it’s available for [public comment](https://www.epa.gov/nsr/forms/interpreting-adjacent-source-determinations). The new interpretation says for all industries other than oil and natural gas production and processing, adjacent is physical proximity only. EPA makes additional comments on the word “contiguous” as well, noting the difference between adjacent and contiguous. Operations don’t have to be contiguous to be adjacent. That is, operations that don’t share a common boundary or border, not physically touching each other will be considered adjacent if the operations are nearby. If there is proximity (neighboring or side-by-side operations where the “common sense notion of a plant” can be deduced) that will be considered adjacent. Railways, pipelines and other conveyances will no longer be used to determine adjacency.

**What’s Next**

The interpretation will be used from now on for new sources only. Operations already considered one source will remain that way as long as common control and industrial grouping code (SIC) criteria exists. States with approved NSR and Title V permitting programs aren’t required to follow the new interpretation but EPA recommends it for greater uniformity in permitting decisions.

Read EPA’s memorandum regarding adjacent properties [here](https://www.epa.gov/sites/production/files/2018-09/documents/draft_adjacent_policy_memo_9_04_2018.pdf).