



GROUP AGAINST SMOG & POLLUTION

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VIA EMAIL

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Group Against Smog & Pollution Comments Regarding Plan Approval 63-00958: MarkWest Liberty Midstream and Resources, LLC Welling Compressor Station, Buffalo Township, Washington County.

Dear Mr. Binder

Please accept these comments regarding Plan Approval 63-00958 for MarkWest Liberty Midstream and Resources, LLC Welling Compressor Station, Buffalo Township, Washington County (41 Pa.B. 52; Jan. 1, 2011) on behalf of the Group Against Smog and Pollution.

If you have any questions or require any additional information please do not hesitate to get in touch.

Sincerely,

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**GROUP AGAINST SMOG & POLLUTION COMMENTS REGARDING PLAN
APPROVAL 63-00958 FOR MARKWEST LIBERTY MIDSTREAM AND
RESOURCES, LLC WELLING COMPRESSOR STATION, BUFFALO
TOWNSHIP, WASHINGTON COUNTY**

**1. The Source Determination Analysis for the Compressor Station and
Associated Well Sites is Inadequate**

Aggregation Policy Background

A stationary source is defined as “any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.”¹ A “building, structure, facility, or installation” is defined as:

All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same “Major Group” (i.e., which have the same first two digit code).²

If pollutant emitting activities are part of the same “building, structure, facility, or installation,” their emissions must be aggregated and treated as a single source for permitting purposes.³ In September 2009, EPA issued a memo (the McCarthy Memo) clarifying the method for making source determinations for oil and gas operations.⁴ While the McCarthy Memo acknowledged the complexity of source determinations for the oil and gas industry, it reaffirmed that the three factors from EPA’s “building, structure, facility, or installation” definition – whether facilities have the same SIC code, are under common control, and are contiguous or adjacent – must be considered on a case-by-case basis in making such determinations. In addition to applying these three criteria, the explanation in the preamble to the 1980 revisions to the PSD/NNSR rules⁵ and past determinations made by Regional Office should be considered in making these determinations.⁶

¹ 40 C.F.R. §§ 51.165(a)(1)(i); 52.21(b)(5).

² 40 C.F.R. §§ 51.165(a)(1)(ii); 52.21(b)(6); while federal title V rules do not define “building, structure, facility, or installation,” the definition of “stationary source” is to be interpreted consistent with the definition in the PSD program, Memo from Assistant Administrator Gina McCarthy to Regional Administrators, “Withdrawal of Source Determination for Oil and Gas Industries” (September 22, 2009) [hereinafter “McCarthy Memo”].

³ 40 C.F.R. §§ 51.165(a)(1)(iv)(A); 52.21(b)(1)(i).

⁴ McCarthy Memo, *supra* note 2.

⁵ 45 Fed. Reg. 52676, 52694-95 (Aug. 7, 1980).

⁶ McCarthy Memo, *supra* note 2.

a. Same SIC Code

As stated in the application review document associated with the Welling Plan Approval, the Welling Compressor Station and associated natural gas production wells share the same two-digit SIC Code.⁷

b. Common Control

The permit review document states that the “Welling Compressor Station and any upstream natural gas production wells will not be under common ownership. Neither the station nor the well owners will have an ownership stake in the other.”⁸ However, the lack of a direct ownership interest is not determinative of whether common control exists.

Common control is a fact-specific inquiry that EPA conducts on a case-by-case basis.⁹ It involves “the power of one business entity to affect the construction decisions or pollution control decisions of another business entity.”¹⁰ While EPA does not have a specific test for determining if common control exists, it adopts the SEC’s definition of control, which “means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting shares, by contract, or otherwise.”¹¹

EPA guidance has established a method by which it can be determined whether common control exists. Common control can be established if:

- (1) There is “ownership of multiple sources by the same parent corporation or by a parent and a subsidiary of the parent corporation,” or if
- (2) “an entity such as a corporation has the power to direct the management and policies of a second entity, thus controlling its operations, through a contractual agreement or a voting interest.”

If neither of these conditions exist, then the permitting authority should:

- (3) “consider whether there is a contract for service relationship between the two companies or if a support/dependency relationship exists between the two companies.”¹²

⁷ PADEP, Review of Plan Approval Application Welling Compressor Station (Dec. 29, 2010, Revised Jan. 12, 2011) at 8 [hereinafter *Review of Welling Plan Approval*].

⁸ *Id.* at 7.

⁹ 45 Fed. Reg. 59874, 59878 (Sept. 11, 1980).

¹⁰ *Id.*

¹¹ 17 C.F.R. § 210.1-02(g), 45 Fed. Reg. at 59,878.

¹² EPA Region 8, *Single Source Determination for Coors/TriGen*, Nov. 12, 1998, at 2, available at <http://www.epa.gov/region7/air/title5/t5memos/coorstri.pdf>; John S. Seitz, Memorandum, *Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operation Permit Programs of the Clean Air Act (Act)*, Aug. 2, 1996, at 3-4, available at <http://www.epa.gov/region7/air/nsr/nsrmemos/dodguid.pdf>.

PADEP's "Interim Guidance for Performing Single Stationary Source Determinations for the Oil and Gas Industries" recognizes each of these sources of common control:

First, common control can be established by ownership. That is, both facilities are owned by the same parent company or a subsidiary of the parent company. Second, common control can be established if an entity such as a corporation has decision-making authority over the operation of a second entity through a contractual agreement or voting interest. If common control is not established by the first two ways, then one should next look at whether there is a contract for service relationship between the two companies⁴¹ or if a support/dependency relationship exists between the two companies, as discussed above, in order to determine if a common control relationship exists.¹³

To be consistent with the federal definition of source and PADEP's source determination guidance the DEP's common control analysis for the Welling Compressor Station must consider each of these potential avenues of common control (direct ownership, ownership through parent-subsidiary relationships, power to direct through voting interest or contract, in its source determination, or if a support or dependency relationship exists between the pollutant emitting activities).

A relationship between the facilities and thus common control can be established if, for example: the facilities share workforces, managers, or executive officers; the facilities share equipment or other property; decisions made at one facility affect pollution control at the other facility; facilities have common payroll, employee benefits, or administrative functions; operations at one facility support operations at the other; or if one facility is dependent on the other.¹⁴ These are just some factors that can indicate that common control exists; EPA will also look to contracts, lease agreements, or other relevant documents to determine the nature of the relationship between facilities.¹⁵

In this case, the operations at the natural gas production wells support the operations at the Welling Compressor Station, and these facilities are dependent on each other for services that allow continued operation. If the production wells did not exist, the Welling Compressor Station would not have product to process and would not have a reason to exist; likewise, if the compressor station did not exist, unless the wells have pipeline connections to additional compressor stations, the well would not be able to produce natural gas and move it off site. There is an operations support and/or dependency relationship between the Welling Compressor Station and associated natural gas production wells. This relationship alone could be sufficient to establish common control.

¹³ PADEP, *Interim Guidance for Performing Single Stationary Source Determinations for the Oil and Gas Industries* (Dec. 25, 2010) at 12-13 (citations omitted).

¹⁴ William Spratlin letter to Peter Hamlin, Sept. 18, 1995, at 1-2, *available at* <http://www.epa.gov/region07/air/policy/control.pdf>.

¹⁵ *Id.*

Further, these facilities presumably have entered into contracts that demonstrate the nature of their support or dependency on each other. For instance, MarkWest Energy Partners L.P. 2009 Form 10-K states, “MarkWest Liberty Midstream currently provides gathering and processing services under an agreement with an affiliate of Range Resources Corporation (“Range”) and has agreements to begin providing these processing services to several other producers in 2010.”¹⁶ PADEP cannot limit its common control inquiries to direct ownership. Consistent with EPA guidance, DEP must also consider contractual control, effective control, or stock ownership.

Additionally, MarkWest Energy Partners L.P. 2009 Form 10-K describes MarkWest Liberty Midstream as “a joint venture with M&R MWE Liberty LLC (“M&R”), an affiliate of NGP Midstream & Resources, L.P. and its affiliated funds, which is a private equity firm.”¹⁷ Commenters note that because a significant ownership stake in MarkWest Liberty Midstream is held by a private equity firm, it is challenging to determine if common ownership exists, because privately-held firms have very limited obligations to disclose their business interests relative to publicly traded companies. Does DEP’s assertion that “neither the station nor the well owners will have an ownership stake in the other” include an investigation of the ownership interests of “M&R MWE Liberty LLC (“M&R”), an affiliate of NGP Midstream & Resources, L.P. and its affiliated funds”?

c. Contiguous or Adjacent

Citing a lack of common control, PADEP did not perform a contiguous and adjacent analysis for the well sites and Welling Compressor Station. As stated in the section above, commenters believe the common control analysis was too narrow because it failed to consider other potential avenues of common control such as contractual control, effective control, or ownership through private equity firms. If, upon further analysis DEP deems the common control factor to be satisfied, the contiguous and adjacent factor must be considered as well.

2. Because the Welling Compressor Station is a “Petroleum and Natural Gas System,” the Greenhouse Gas Reporting Requirements in the Plan Approval Must Also Include Reporting Requirements in 40 C.F.R. Part 98, Subpart W.

Plan Approval Conditions C.IV.008 through C.IV.010 list the Mandatory Greenhouse Gas Reporting requirements found in 40 C.F.R. Part 98. These conditions in the Plan Approval only apply the general GHG reporting requirements and the Subpart C requirements for General Stationary Fuel Combustion Sources. However, because the Welling Compressor Station also qualifies as a “Petroleum and Natural Gas System,” the

¹⁶ MarkWest Energy Partners L.P., 2009 Form 10-k at 7, *available at*: <http://www.sec.gov/Archives/edgar/data/1166036/000104746910001643/a2196773z10-k.htm#ITEM1>

¹⁷ *Id.*

Plan Approval must also include the Subpart W requirements that apply to sources in this category.

The Welling Compressor Station qualifies as an “onshore natural gas transmission compression” facility because it is a “stationary combination of compressors that move natural gas at elevated pressure from production fields or natural gas processing facilities in transmission pipelines to natural gas distribution pipelines or into storage.”¹⁸ It also qualifies as an “onshore natural gas processing” facility because it “separates and recovers natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas . . .”¹⁹ As such, the operator must report emissions from a number of additional sources. Notably, this includes reporting GHGs released via equipment leaks from “valves, connectors, open ended lines, pressure relief valves, and meters.”²⁰ Other sources from which GHG emissions must be reported are: reciprocating compressor rod packing venting; centrifugal compressor venting; blowdown vent stacks; dehydrator vents; acid gas removal vents; flare stack emissions; transmission storage tanks; and natural gas pneumatic device venting.²¹

Also, 40 C.F.R. § 98.230(j) requires that sources in the Petroleum and Natural Gas Systems category report CO₂, CH₄, and N₂O emissions from all flares associated with the source. The Subpart C requirements relating to General Stationary Fuel Combustion Sources still apply and require reporting of CO₂, CH₄, and N₂O emissions from all stationary fuel combustion units.²² The Plan Approval must be amended to include these additional monitoring and reporting requirements, in addition to those already outlined in the Draft Plan Approval.

3. The Facility-Wide Potential to Emit Table Fails to Account for All Hazardous Air Pollutant (HAP) Emissions

Table 7 of the permit review document fails to account for all HAP & VOC emissions generated at the facility.²³ Table 7 facility-wide HAP emissions figures do not include non-formaldehyde HAPs generated by the compressor engines (1.02 additional TPY²⁴). Formaldehyde emissions from the dehydrator appear to have been excluded as well.

4. The Facility-Wide Potential to Emit Table Fails to Account for All Volatile Organic Compound (VOC) Emissions

¹⁸ 40 C.F.R. § 98.230(a)(4) (2010).

¹⁹ 40 C.F.R. § 98.230(a)(3).

²⁰ 40 C.F.R. § 98.232(d)(7), (e)(7).

²¹ 40 C.F.R. § 98.232(d), (e).

²² 40 C.F.R. 98.232(k).

²³ *Review of Welling Plan Approval*, *supra* note 7 at 11.

²⁴ AP-42 Tables 3.2-2 & 3.2-3,

Table 7 of the permit review document fails to include compressor station formaldehyde emissions in total facility-wide VOC emissions.²⁵ While formaldehyde emissions are not included in VOC emissions for the Stationary Spark Ignition Internal Combustion Engines NSPS, formaldehyde emissions must be considered in the VOC PTE calculation for Title V/NSR applicability.²⁶ Thus, compressor engine formaldehyde emissions should be included in table 7 of the Welling TSD (as well as all future PADEP facility-wide PTE calculations for compressor stations) in order to ensure a source that exceeds the 50 TPY VOC major source permit threshold does not avoid major source permitting requirements.

5. No Emissions from Saltwater and Condensate Truck Loading are Included in the Permit Record

The block diagram included in the permit application indicated saltwater and condensate will be loaded on trucks at this facility.²⁷ Condensate loadout can be a significant source of VOCs. The permit record contains no discussion of emissions associated with truck loading; however, the block diagram shows no vapor recovery equipment associated with this activity. Emissions associated with truck loading must be quantified and included in the permit.

²⁵ *Review of Welling Plan Approval, supra* note 7 at 11.

²⁶ 40 C.F.R. § 51.100(s); 40 C.F.R. § 70.2.

²⁷ MarkWest, Welling Compressor Station Plan Approval Application (Nov. 23, 2010) Section 6 – Site Map & Block Diagrams at 3.