

How Plant Co-Location Impacts Air Permitting Evaluations

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Ethanol Emerging Issues Forum

Presented by

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Do I Have a Single Air Contaminant Source? (It Depends!)

HAPs or Criteria Pollutants

Single Source Criteria: HAPs

Group of Stationary Sources Must Be:

1. Under Common Control
2. Located on Contiguous or Adjacent Property

****Must meet both criteria for a group of sources to be considered a single HAP source**



Single Source Criteria *Non-HAPs (Criteria Pollutants)*

Single Source Criteria: Non-HAPs

Group of Stationary Sources Must Be:

1. Under Common Control
2. Located on Contiguous or Adjacent Property
3. Belong to the Same Major Industrial Grouping

****Must meet all 3 criteria for a group of sources to be considered a single source for Non-HAPs (e.g., PM10, NOx, SOx, etc.)**

Single Source Criteria

- Why should being grouped as one source matter to you?
 - Grouped sources have higher actual and potential emissions
 - Easier to be major for PSD/NSR, Title V, or HAPs
 - Higher application fees and emission fees
 - Additional reporting requirements, etc.
 - Changes at one facility can have regulatory impacts on other facilities in the group

Common Control Criterion

Common Control

- EPA Provided Updated Guidance on April 30, 2018
 - Letter to Pennsylvania Department of Environmental Protection regarding single-source determination for new biogas processing facility Meadowbrook Energy LLC (Meadowbrook) and existing landfill owned by Keystone Sanitary Landfill (KSL)

Common Control

- EPA Provided Updated Guidance on April 30, 2018
 - Stated assessment of “control” should be based on the power or authority of one entity to dictate decisions of the other that could impact air pollution regulatory requirements
 - Stressed that permitting authorities with EPA-approved permitting programs are responsible for single-source determinations

Common Control

- EPA Provided Updated Guidance on April 30, 2018
 - Dependency Relationships do not automatically result in common control
 - Entities can be economically or operationally interconnected or mutually dependent without having the power or authority to direct activities of the other
 - Instead, they “can” impact SIC or support facility relationship

Contiguous or Adjacent Criterion

Contiguous or Adjacent

- Court decisions and EPA determinations have caused confusion regarding adjacent facilities
- EPA often looked beyond physical proximity and considered functional interrelatedness to make facilities “adjacent”

Contiguous or Adjacent

- EPA Proposed Draft Guidance for Interpreting “Adjacent” on September 4, 2018
 - Took public comment through October 5, 2018
 - Final guidance not yet issued

Contiguous or Adjacent

- EPA Proposed Draft Guidance for Interpreting “Adjacent” on September 4, 2018
 - Where operations are not contiguous, “adjacent” means physical proximity
 - Operations that do not share a common boundary can be adjacent if operations are nearby
 - No bright line or fixed distance for nearby facilities to be considered “adjacent” – decision depends on stringency of the permitting authorities

Major Industrial Grouping Criterion

Major Industrial Grouping

- This criterion only used when making single source determinations for Non-HAPs
- Major Industrial Grouping is based on first two digits of SIC code as described in Standard Industrial Classification Manual of 1987
 - Example: Ethanol plants in Major Industry Group 28 – Chemicals and Allied Products

Major Industrial Grouping

- Current EPA and NDEQ guidance dictates that dependency relationships can impact Major Industrial Grouping
 - Dependency could result in a “Support-Facility” relationship
 - Relationship between raw material/products
 - Decision depends on stringency of the permitting authorities

Major Industrial Grouping

- SIC Codes of Support Facilities can be changed to match the SIC Code of the primary activity they serve
 - Grain elevators normally in SIC Major Group 51 – Wholesale Trade Non-Durable Goods
 - The SIC Major Group code for a grain elevator that is a support facility to an ethanol plant is changed to SIC Major Group Code 28
 - Courts have disagreed with this approach

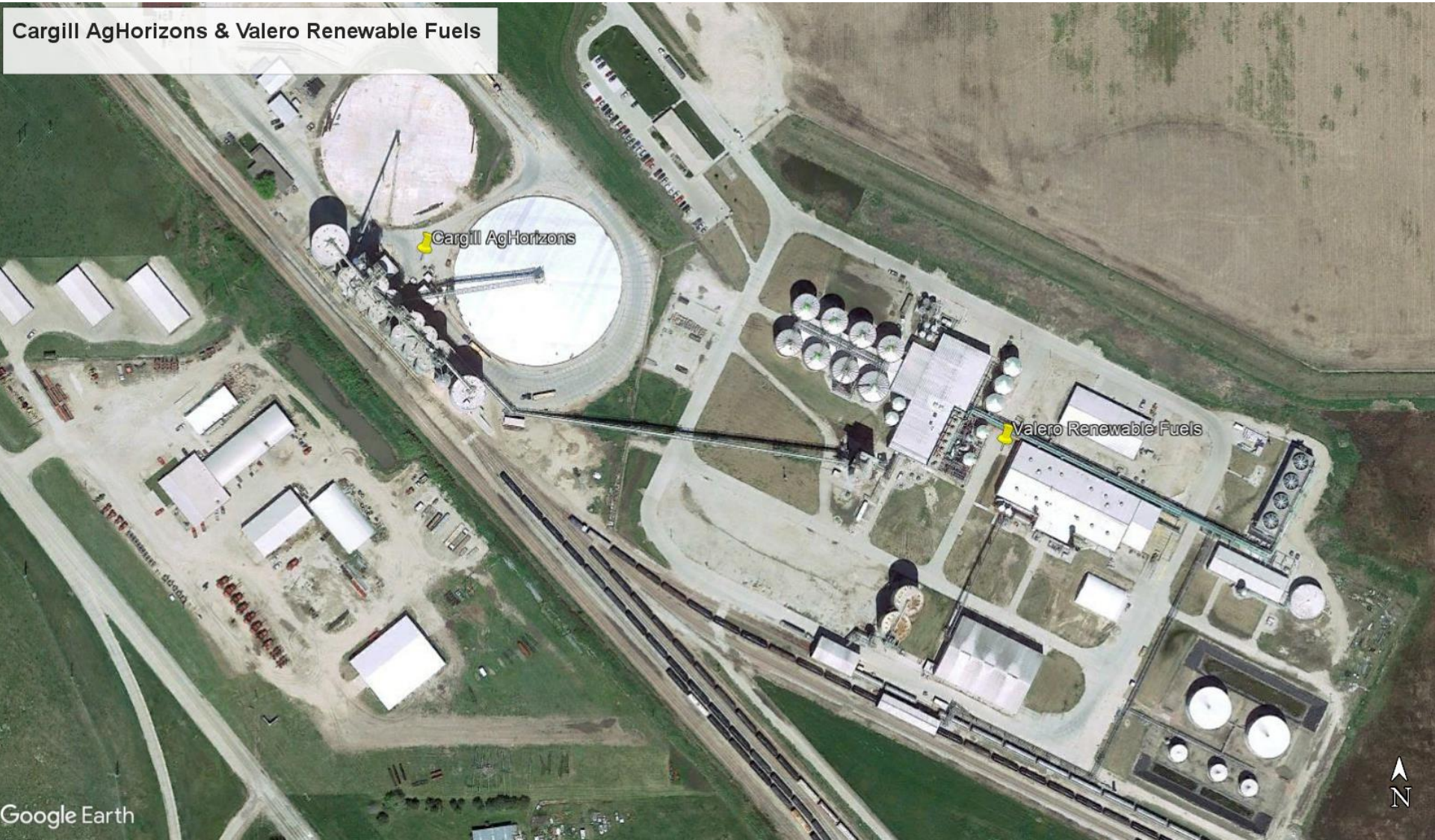
Major Industrial Grouping

- “Support Facility” is not found in federal regulations
 - Based on August 7, 1980 PSD rulemaking preamble and language in the SIC Code Manual regarding auxiliary facilities
 - Some states have incorporated definition of “support facility” directly into regulations
 - In other states, it’s an open question

Example Aerial Photographs

Cargill AgHorizons & Valero

Cargill AgHorizons & Valero Renewable Fuels



QUESTIONS???

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