UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 2 3 2010

REPLY TO THE ATTENTION OF: AR-18J

Don Smith, P.E.
Manager, Air Quality Permits Section
Industrial Division
Minnesota Pollution Control Agency
520 Lafayette Road North
Saint Paul, Minnesota 55155-4194

Dear Mr. Smith:

By letter dated October 14, 2009, the Minnesota Pollution Control Agency (MPCA) requested a determination on their decision to permit Environmental Wood Supply, LLC (EWS) and District Energy St. Paul, Inc (DESP) as a single source under the Prevention of Significant Deterioration (PSD) rules. We have reviewed your analysis of the facts under the new source review criteria for determining whether emissions activities are part of the same stationary source.[1] Based on this review and as explained in more detail below, we agree with MPCA's preliminary finding that EWS and DESP constitute a single stationary source under the existing PSD regulations.

According to your letter, District Heating Development Company, doing business as DESP, is a majority owner of Ever-Green Energy, LLC (Ever-Green). Further, Ever-Green (formerly Market Street Energy Company, LLC) and Duke Energy Generation Services (Duke Energy) jointly own EWS and St. Paul Cogeneration, LLC. St. Paul Cogeneration has a 20 year Power Purchase Agreement with DESP for the sale of electricity generated by a combined heat and power (CHP) boiler owned by St. Paul Cogeneration. St. Paul Cogeneration's CHP boiler is located in the same building as boilers owned by DESP, and is permitted under the Title V program as part of DESP (MPCA Permit No. 12300063-003). Your letter further states that Ever-Green and Duke Energy created EWS in 2000 to locate, purchase, and process wood into biomass fuel for the CHP boiler. Ever-Green operates both EWS and DESP. EWS is located at the city of St. Paul's Wood Recycling Center, which is approximately 3 miles from the CHP boiler. EWS receives wood waste as mulch or unprocessed logs and brush, and grinds or screens the material into a product that is used either as fuel or mulch.

[1] On December 22, 2009, EWS met with representatives of EPA Region 5 to discuss this source determination. At the meeting, EPA offered EWS the opportunity to provide additional information to support their assertion that they should not be determined to be a single source with DESP. On January 15, 2010, EWS submitted additional information to EPA Region 5 for consideration, which we are now forwarding to MPCA as an attachment. As the primary permitting authority in this matter, MPCA should be provided with this information for consideration. In so doing, we note that our review of the information provided by EWS did not change our agreement with your preliminary determination that EWS and DESP are a single source.

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Each day, seven days per week, EWS transports by public roadway up to 40 truck-loads of fuel-grade product to DESP for use in the CHP boiler.

In determining whether emissions activities are part of the same stationary source, the relevant PSD regulations identify three regulatory criteria for identifying emissions activities that belong to the same "building, structure, facility, or "installation." These are: (1) whether the activities are under the control of the same person (or person under common control); (2) whether the activities are located on one or more contiguous or adjacent properties; and (3) whether the activities belong to the same industrial grouping. 40 CFR 52.21(b)(5)-(6); *see also* Minn. R. 7007.3000 (incorporating by reference the federal PSD rules). These are the three factors that MPCA identified in making its preliminary determination that DESP and EWS are a single source for the purposes of PSD applicability.

Industrial Grouping

The PSD regulations state that 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 2 digit code) as described in the Standard Industrial Classification Manual." 40 CFR 52.21(b)(6). Furthermore, the August 7, 1980, preamble to the PSD regulations clarifies that in certain situations, sources under different industrial groupings should be treated as if under the same grouping for purposes of stationary source determinations. As explained in the preamble:

> Each source is to be classified according to its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Thus, one source classification encompasses both primary and support facilities, even when the latter includes units with a different two-digit SIC code. Support facilities are typically those which convey, store or otherwise assist in the production of the principal product. Where a single unit is used to support two otherwise distinct sets of activities, the unit is to be included within the source which relies most heavily on its support.

45 Fed.Reg. 52676, 52695 (emphasis added).

In this case, although the EWS and DESP facilities do not share the same SIC code, your October 14, 2009, letter notes that more than 50 percent of EWS's product is used in the CHP boiler that is located at DESP. In fact, your letter indicates that all fuel-grade wood chips currently produced at EWS are used in the CHP boiler, and all of the biomass fuel used at the CHP boiler is supplied by EWS. Deciding whether a support facility relationship exists is a fact-specific determination, and based on the facts presented here, it appears that EWS is a facility that "convey[s]...or otherwise assist[s]" in providing the fuel that is used in the production of DESP's principal product, electricity. Accordingly, the U. S. Environmental Protection Agency finds that MPCA reasonably determined, consistent with past EPA guidance and practice that a support or dependency relationship exists between EWS and DESP, such that EWS should be

treated as if it is within the same industrial grouping as DESP. *See* 45 Fed.Reg. at 52695; Letter from Robert B. Miller, EPA Region 5, to William Bauman, Wisconsin Department of Natural Resources, RE: Oscar Meyer and Madison Gas & Electric (August 25, 1999).

Contiguous/Adjacent Location

As explained in MPCA's October 14, 2009 letter, EPA has issued guidance regarding different pollutant-emitting activities and whether they are contiguous and adjacent. MPCA correctly notes that EPA policy does not include a bright line or numerical standard for determining how far apart activities may be and still be considered "contiguous" or "adjacent." As explained in the preamble to the August 7, 1980 PSD rules, these decisions are made on a case-by-case basis. EPA has also explained that these determinations depend on the "common sense" notion of a source and the functional interrelationship of the facilities. The analysis does not rely simply on the physical distance between the two facilities, although the physical distance between two facilities is a factor to be considered in determining whether the activities are close enough to be considered one source.

Your letter indicates that although the EWS facility is located approximately 3 miles from DESP, the site was chosen because it was already established for the purpose of wood recycling. While there is no physical connection via pipeline or dedicated conveyance between DESP and EWS, the facts presented show that the operation involves considerable trucking of materials between the facilities – up to 40 truck loads of processed biomass are transported from EWS to DESP per day, seven days per week. This situation is consistent with previous Agency single source determinations where facilities were found to be contiguous and adjacent, despite the physical distance between the activities, based on the specific facts of the case. *See* Letter from Cheryl L. Newton, EPA Region 5, to Donald Sutton, Illinois Environmental Protection Agency, RE: Acme Steel Company (March 13, 1998); Letter from Steven C. Riva, EPA Region 2, to Robert Lenney, Alcoa Inc., RE: Alcoa Massena Modernization Project (March 9, 2009). Accordingly, EPA finds that MPCA reasonably determined that EWS and DESP are contiguous or adjacent.

Common Control

As noted in your October 14, 2009 letter, common control can be established through ownership of two entities by the same parent corporation or subsidiary of the parent corporation. *See* Letter from Richard R. Long, EPA Region 8, to Margie Perkins, Colorado Department of Public Health and Environment, RE: Source Definition Issue for KN Power/Front Range Energy Associated LLC/PSCo Generating Facility (October 1, 1999). Your letter explains that Ever-Green and Duke Energy co-own EWS, as well as St. Paul Cogeneration. Significantly, DESP owns Ever-Green. Ever-Green operates EWS and St. Paul Cogeneration, as well as the city of Saint Paul's Wood Recycling Center, which supplies EWS with the bulk of its material for processing. Ever-Green also manages the energy generation and distribution systems for DESP. St. Paul Cogeneration owns the CHP boiler which is located at DESP, and sells the electricity

generated from the CHP boiler to DESP. Ever-Green and Duke Energy created EWS to supply the CHP boiler with wood biomass fuel. DESP, Ever-Green, Duke Energy, and St Paul Cogeneration share employees, common payroll activities, benefit plans, and insurance coverage. *See* Letter from William A. Spratlin, EPA Region 7, to Peter R. Hamlin, Iowa Department of Natural Resources, RE: common control (September 18, 1995). Finally, you state that in a meeting between the MPCA and Ever-Green on October 5, 2009, all parties agreed that the facilities are under common ownership and, thus, under common control. Accordingly, EPA finds that MPCA reasonably determined that EWS and DESP are under common control.

Conclusion

Based on the regulatory factors and the specific facts outlined above, we have concluded that MPCA made a reasonable preliminary finding that EWS and DESP meet the regulatory criteria for a single stationary source and that they should be treated as one source for the purposes of PSD applicability. If any of the underlying assumptions in this letter are incorrect, or if any of the facts substantially change in the future, we would expect MCPA to evaluate the impact of such changes in terms of permitting requirements and regulatory applicability. If you have any questions, please call me at (312) 886-4447 or Jennifer Darrow, of my staff, at (312) 886-6315.

Sincerely,

Pamela Blakley

Pamela Blakley, Chief
Air Permits Section

Attachment