

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

MAR 29 2001

Mr. John E. Homback, Director
Kentucky Division for Air Quality
803 Schenkel Lane
Frankfort, KY 40601

Dear Mr. Homback:

As you are aware, the U.S. Environmental Protection Agency (EPA) recently lodged a consent decree with the U.S. District Court for the Eastern District of Kentucky with Gallatin Steel Company (Gallatin). This consent decree settles claims by the EPA against Gallatin for violations of the Kentucky State Implementation Plan (SIP). Although the consent decree addresses a number of violations of the Clean Air Act (CAA) by Gallatin, the consent decree does not address possible violations at the slag processing facility located next to the Gallatin plant, which is owned and operated by Heckett MultiServ (a division of Harsco Corporation). We understand, however, that the Commonwealth of Kentucky has determined that the Gallatin steel manufacturing facility and the Heckett MultiServ slag processing facility are a single source for purposes of the prevention of significant deterioration (PSD) program. This letter is to let you know that the EPA agrees with the State's conclusion that these facilities should be considered a single source.

The Federal PSD regulations define "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act" and further define "building, structure, facility, or installation" as all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) 40 C.F.R. § 51.166(b)(5) and (6).

Consistent with the requirement that all SIPs use the definitions set forth in the Federal regulations, 40 C.F.R. § 51.166(b), the Kentucky PSD regulations use the same definition of "stationary source" and "building, structure, facility, or installation." 401 KAR 51:017 Section 1(9) & 1(38). The issue then is whether the Gallatin steel manufacturing facility located near Ghent, Kentucky, and the nearby Heckett MultiServ slag processing facility belong to the same industrial grouping, are located on contiguous or adjacent properties, and are under common control.

It is our understanding that there is no question that the Gallatin facility and the Heckett MultiServ facility are located on contiguous properties. Moreover, the EPA would consider the two facilities to be part of the same industrial grouping and to be under common control. The EPA, thus, agrees with Kentucky's conclusion that the two facilities are a single source for purposes of PSD.

In a relevant determination, EPA's Region 8 office explained recently that "EPA is guided in making case-by-case source determinations by the definition of 'control' found in the regulations of the Securities and Exchange Commission," citing 45 Fed. Reg. 59874 (Sept. 11, 1980). Letter from Richard R. Long, Director, Air and Radiation Program, the EPA's Region 8 office to Margie Perkins, Air Pollution Control Division, Colorado Dept. of Public Health & Environment. The EPA has applied this definition in a number of cases over the past twenty years. The letter from the EPA's Region 8 office also explains that:

In the past, the EPA has looked to see if control has been established through ownership of two entities by the same parent corporation or subsidiary of the parent corporation. The EPA has also considered whether control has been established by a contractual arrangement giving one entity decision-making authority over the operations of a second entity. The EPA also has looked for a contract for service relationship between two entities, in which, one sells all of its product to the other under a single purchaser contract. Finally, the EPA has considered whether there is a support or dependency relationship between the two entities, such that one would not exist "but for" the other.

In this case, based on the information before us, it appears that the operational and contractual relationship between Gallatin and Heckett MultiServ points towards a conclusion that the two are commonly controlled. In short, as we understand it, Gallatin is a steel mini-mill which utilizes an electric arc furnace to melt scrap metal to produce rolled steel coils. Slag is generated as a byproduct of this process. Heckett MultiServ owns and operates the slag processing facility located on contiguous property with Gallatin. All of the slag generated by Gallatin is processed by Heckett MultiServ pursuant to a slag handling and processing agreement between the two parties'. The terms of this agreement provides evidence that Gallatin and the Heckett MultiServ slag processing facility are commonly controlled. It is also relevant to note that the slag processing facility would not have been constructed if the Gallatin Steel plant were not in existence; not only is all of the slag generated by Gallatin processed by Heckett MultiServ, but the only slag processed at Heckett MultiServ is the slag from Gallatin. Moreover, Gallatin's operations in effect initiate pollutant-emitting activities at the slag processing facility because the main pollutant-emitting activity there is the dumping of slag. The quantity and composition of the slag generated by Gallatin directly affect the quantity and composition of the emissions from the slag processing facility owned and operated by Heckett.

' EPA was provided with a copy of the agreement between Gallatin Steel and Heckett MultiServ, but has agreed to treat the terms of the agreement as confidential business information.

Regarding whether Gallatin and the slag processing facility are in the same industrial grouping, the two facilities should be considered to be in the same industrial grouping regardless of whether the first two digits of the Standard Industrial Classification (SIC) codes for the two entities are the same. Under longstanding EPA policy, a facility that conveys, stores, or otherwise assists in the production of the principal product of another facility is considered a support facility and part of the same industrial grouping. 45 Fed. Reg. 52676, 52695 (Aug. 7, 1980). Based on our review of the relationship between the two facilities, it is clear that the Heckett MultiServ slag processing facility is a support facility for the Gallatin Steel plant.

We hope this letter will be useful. It is written as guidance as it remains Kentucky's responsibility to determine whether the Gallatin facility and the slag processing facility are one stationary source for purposes of implementing your PSD program. However, based on the specific facts which have been presented to us, we believe that Kentucky has reached the appropriate conclusion that the two facilities are located on contiguous properties, under common control, and within the same industrial grouping. Therefore, we support Kentucky's determination that the two facilities are one stationary source within the meaning of the Federal PSD regulations. This conclusion is consistent with that reached by the EPA's Region V office in a letter dated July 15, 1997, regarding a steel manufacturing facility in Cleveland, Ohio and the two adjacent slag processing facilities. Applying the same principles outlined in his letter, the EPA's Region V office concluded that the facilities, although, independently owned and operated, comprised a single source for purposes of the Title V operating permit program.

I appreciate this opportunity to be of service and trust that this information is helpful to you. If you have any questions concerning this letter, please contact Raj Rao at (919) 541-5344.

Sincerely,

/s/ Henry Thomas for

John S. Seitz
Director
Office of Quality Planning and Standards