



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

OCT 22 2009

Sharon G. Foley, P.E.
Air Permit Manager
Virginia Department of Environmental Quality
Valley Regional Office
4411 Early Road
PO Box 3000
Harrisonburg, VA 22801

Dear Ms. Foley,

The Virginia Department of Environmental Quality (VADEQ) requested, in a letter dated August 26, 2009, a formal determination from the United States Environmental Protection Agency Region III (EPA) regarding whether the City of Harrisonburg's Resource Recovery Facility (RRF) serves as a "support facility" for James Madison University (JMU). According to your letter,

- The RRF is located on property owned by the City of Harrisonburg (City) but within the perimeter of the JMU Campus;
- The primary purpose of the two waste-to-energy combustors (MSW Combustors) at RRF according to the City is to reduce City waste disposed otherwise in a landfill;
- Operations at RRF include the combustion of trash in two MSW Combustors, the production of steam in two natural gas/distillate-fired boilers (Gas Boilers), and the production of chilled water in three chillers;
- RRF has a 20-year contract with JMU to provide a minimum of 336,384,000 lb/yr of steam to JMU. RRF also has a contract with Harrisonburg Electric Commission (HEC) to provide power to HEC under certain circumstances;
- Chilled water from RRU is exclusively provided to JMU;
- In the last three fiscal years, RRF has provided 85% or more of JMU's total steam consumption. JMU appears to be RRF's sole customer.

EPA has also reviewed additional information including the Agreement for the Sale and Purchase of Steam and Chilled Water between the City and JMU and the July 7, 2009 letter from Mrs. Towana Moore from JMU and Mr. Kurt Hodgen from the City to VADEQ.

40 CFR Part 52 defines "stationary source" as "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant and further defines "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 CFR Part 52.21(b)(5) and (6). EPA has reviewed the information provided to us regarding JMU and RRF to determine the "stationary source" using these criteria.

First, while the SIC codes for RRF and JMU are different, EPA has previously stated that a support facility is considered to be part of the same industrial grouping as that of the primary facility it supports even if the support facility has a different SIC code. See the August 25, 1999 letter from Robert Miller, Chief of Region V Permits and Grants Section, regarding the status of the Oscar Meyer Foods facility in Madison, Wisconsin as a support facility (citing to the draft preamble to the Part 70 revisions (62 FR 30289)). A support facility relationship is presumed to exist when more than 50 percent of the output or services that are provided by one facility is dedicated to another facility that it supports. Upon review of the information VADEQ has provided regarding the relationship between RRF and JMU, RRF appears to be a support facility for steam and chilled water for JMU for determining industrial grouping. RRF has provided 85 percent of more of JMU's total steam consumption in the last three fiscal years. In addition, approximately 70 percent of the maximum demonstrated unit load from the two MSW Combustors at the RRF is provided to JMU. The two Gas Boilers at RRF also provide steam to JMU. According to information from you, JMU appears currently to be the sole customer of the RRF for steam and JMU appears dependent on RRF for steam especially for the College of Integrated Science and Technology (CISAT) campus. Therefore, based on the information EPA has reviewed, RRF is a support facility for JMU for finding that JMU and RRF are in the same industrial grouping.

Second, EPA considers whether the sources are on contiguous or adjacent properties. There is no dispute that RRF is on land contiguous or adjacent to JMU. Thus we are left with whether RRU is under common control with JMU.

Establishment of "common control" is determined by the permitting authority on a case-by-case basis. One factor to consider in determining "common control" is whether a support relationship exists. EPA has already stated that it believes a support relationship exists between RRF and JMU. Based on information EPA has reviewed, JMU is dependent upon RRF for its steam and chilled water needs.

However, a support relationship is not the only evidence of control when determining if "common control" exists. EPA considers many factors when evaluating "common control" including, but not limited to, shared assets, financial interest, and control over compliance responsibilities. While RRF and JMU are separately owned, there are many factors which support common control between JMU and RRF.

Regarding the two Gas Boilers and three chillers at RRF, JMU pays principal and interest on the bond which financed the purchase and installation of the Gas Boilers and three chillers. JMU is paying Clean Air Act Title V permit fees for the Gas Boilers and chillers and for fuel costs for the Gas Boilers. Pursuant to the steam contract with RRF, JMU is financially responsible for repairs and replacements (including what would likely be "capital expenditures") on the Gas Boilers and chillers that exceed \$2,000.00. RRF and JMU make joint decisions regarding which boilers will be used for steam generation and coordinate operations of the Gas Boilers and Chillers. The contract between RRF and JMU for steam requires close coordination between JMU and RRF personnel to "maximize efficiency" and provides that "additional boilers at either location shall run" at JMU's request if JMU's steam demand is not being met by operation of the MSW Combustors.

One consideration regarding "common control" is who has the power to manage the pollutant-emitting activities of the facilities at issue, including the power to make or veto decisions to implement emission control measures or to influence the production levels or compliance with environmental regulations. See the August 2, 1996 memorandum from John Seitz, Director of the EPA Office of Air Quality Planning and Standards, regarding major source determinations for military installations and the August 25, 1999 letter from Robert Miller, Chief of Region V Permits and Grants Section, regarding the Oscar Meyer Foods facility in Madison, Wisconsin.

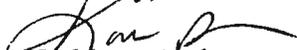
From the information EPA has reviewed, it appears JMU's financial interest in the Gas Boilers and chillers (including responsibility for paying for fuel and for expenses which exceed \$2,000.00) gives JMU authority and responsibility for emission control measures at RRF, particularly at the portion of RRF including the Gas Boilers and chillers. The financial ties between RRF and JMU lead EPA to the conclusion that JMU has involvement in matters that affect pollution control measures for RRF.

Based on the financial involvement of JMU with RRF, the involvement between JMU and RRF on maximizing boiler operations for steam, the involvement of JMU with the Gas Boilers and chillers, and the dependency of JMU on RRF, EPA believes these are factors supporting control between JMU and RRF. While the primary purpose of the RRF MSW Combustors is to combust municipal solid waste including presumptively waste from JMU, the MSW Combustors are providing a significant portion of the steam for JMU's steam demands

Therefore, based on the definition of a "stationary source" and based on the information provided to us, EPA believes that JMU and RRF constitute one stationary source for New Source Review and Title V applicability purposes.

If we may be of further assistance, please contact me or have your staff contact Gerallyn Duke at (215) 814-2084.

Sincerely,



Kathleen Anderson, Chief

Air Permits and Technical Review Branch

