Alaska Oil and Gas Association

AOGA

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Environmental Protection Agency,
Attention Docket No. EPA–HQ–OAR–2013–0685
Mail code 28221T 1200
Pennsylvania Ave. NW.
Washington, DC 20460
Docket ID No. EPA-HQ-OAR-2013-0685

Re: AOGA Comments on Source Determination for Certain Emission Units in the Oil and Natural Gas Sector

Dear Sir/Madam:

The Alaska Oil and Gas Association (AOGA) appreciates the opportunity to submit comments in response to the September 18, 2015 EPA proposal to clarify the term "adjacent" in the definitions of: "building, structure, facility or installation" used to determine the "stationary source" for purposes of the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs and "major source" in the title V program as applied to the oil and natural gas sector. AOGA is a professional trade association whose members account for the majority of oil and gas exploration, development, production, transportation, and refining activities onshore and offshore in Alaska. AOGA and its members are longstanding supporters of environmentally responsible exploration and development. In accordance with those principles, AOGA submits this letter as both an offer of support to the American Petroleum Institute's (API) substantive comments and distinct comments that relate specifically to oil and gas operations in Alaska.

As an initial matter, AOGA is a consistent advocate for cost effective regulations that endeavor to reduce the impacts of oil and gas operations on ambient air quality. When evaluating any proposed regulatory program, AOGA's analysis focuses on the fundamental question of whether the proposed regulation is narrowly and appropriately

tailored to a necessary goal. In addition to endorsing the broader issues articulated in the API comments, AOGA also intends to provide separate commentary.

The two proposed definitions for each Part for the word "adjacent" about which EPA is accepting comments are:

First proposed definition

1. Building, structure, facility, or installation means 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). 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 two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

   Notwithstanding the provision of the above paragraph of this section, building structure, facility or installation means, for ***onshore*** activities under SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site, or on surface sites that are located within ¼ mile of one another, where a surface site has the same meaning as in 40 CFR 63.761. (emphasis added)

The definition of surface site in 40 CFR 63.761 for National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart HH for Oil and Natural Gas Production Facilities is:

> Surface site means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

Second proposed definition

2. Building, structure, facility, or installation means 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). 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 two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively.

Notwithstanding the provisions of the above paragraph of this section, building, structure, facility, or installation means, for ***onshore*** activities in SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered adjacent if one of the following circumstances apply: (emphasis added)

- The pollutant-emitting activities are separated by a distance of ¼ mile or more and there is an exclusive functional interrelatedness; or

- The pollutant-emitting activities are separated by a distance of less than ¼ mile.

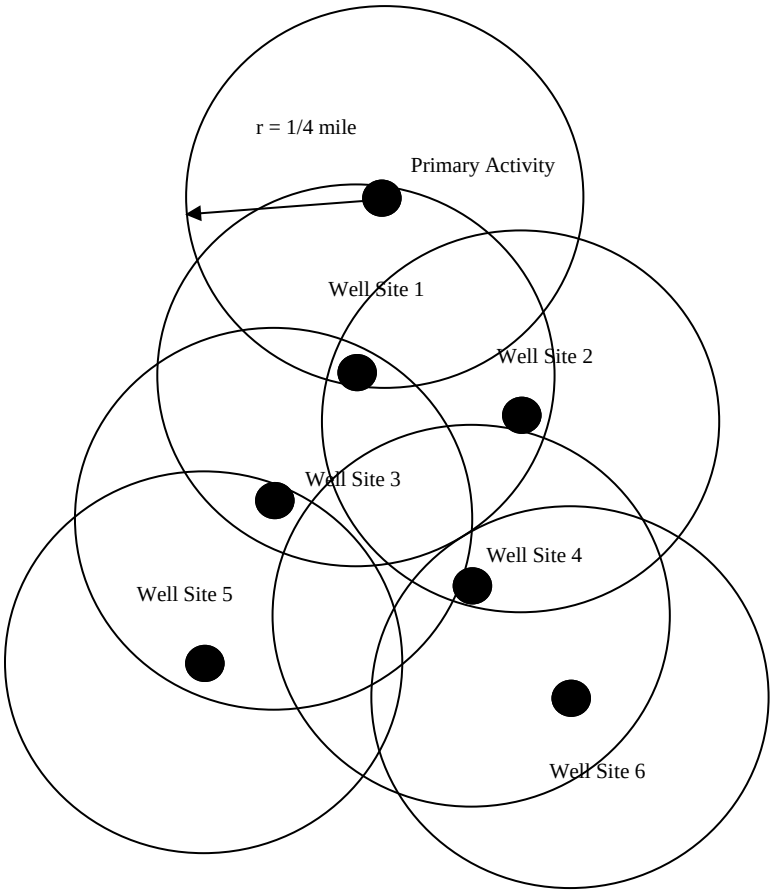
I. Issues Associated with Omitting the Scope to Onshore Oil and Gas Activities

As an initial matter, AOGA notes that the EPA's proposed definition for the term "adjacent" is limited in application to onshore oil and gas facilities. Although the *Summit Petroleum Corp. v. EPA litigation* related to an onshore oil and gas facility, the court, in its holding clearly did not intend to limit the definition to onshore oil and gas facilities. If the EPA chooses to define "adjacent" as only applicable to onshore oil and gas facilities, it will invariably be inconsistent with the EPA mandate to ensure fairness and uniformity in the Clean Air Act (CAA) implementation. Furthermore, such a limitation in defining the term adjacent would create significant regional inconsistency. Taken to its logical conclusion, the definition, as proposed, would require aggregation or disaggregation of onshore oil and gas facilities in conflict with all other sources outside the onshore oil and gas sector. Such a result is unlawful under the conformity requirements of the CAA. The EPA is required to maintain national uniformity in measures implementing the CAA, and to identify and correct regional inconsistencies by standardizing criteria, procedures, and policies (40 CFR 56.3(a) and (b)).

II. Issues Associated with the First Proposed Definition

The first proposed definition only includes a proximity test, which was the clear intent of the *Summit* decision. However, AOGA has legitimate concerns that the EPA's definition could lead to unintended consequences. For example, and particularly relevant to AOGA members, absent appropriate modification of the proposed language, an entire production field (i.e. the entire North Slope of Alaska) could be aggregated due to the spacing

requirements for wells. A gathering center may have wells associated with the process that are within ¼ mile of the actual gathering center. Those wells may be within ¼ mile of additional wells but that are ½ mile from the gathering center (and so on). Although there are some variances on the North Slope depending upon the field being produced, lease acreage, surface rights, allowed pad locations and many other factors, it is not uncommon that well sites will be within a ¼ mile of other well sites. Typically, when permitting, the facility being permitted is considered the "primary activity" and state agencies typically only consider other well sites if near the primary activity. However, the public and other interested parties, or even new regulatory staff can easily misconstrue the definition and require aggregation of the existing well sites or new well sites despite the fact that many of the individual well sites will be farther than ¼ mile from the primary activity. To further illustrate this issue, the following diagram demonstrates how a primary activity could potentially be aggregated with well sites greater than ¼ mile distance away.



AOGA's second concern regarding the definition relates to its omission of any explanation detailing the precise locations from which the ¼ mile measurement should be taken. The EPA's current proposal simply provides that the activities are "considered adjacent if they are on the same surface site, or on surface sites that are located in ¼ mile of one another where a surface site has the same meaning as in 40 CFR 63.761". The 40 CFR 63.761 definition of surface site is any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed. The starting point and ending point of the distance determination is not described and of great consequence. AOGA encourages the EPA to remedy this ambiguity so that interested parties can more fully analyze and evaluate the proposed definition.

III. Issues Associated with the Second Proposed Definition

The second proposed definition is greatly problematic as it directly conflicts the court's ruling in *Summit*, which required the EPA to only use proximity to determine if two facilities are adjacent. Despite the *Summit* ruling, the EPA is now proposing to include a functional test in this definition. In 1980, as a result of the *Alabama Power v. Costle* case, EPA considered but choose not to implement a fourth test for PSD permitting, the functional interrelationship test, because that definition would fail to approximate a common sense notion of a plant, since in a significant number of cases it would group activities that ordinarily would be regarded as separate.[1] This clearly indicates that the EPA also believed a functional inter-relatedness test would create an ambiguous permitting process as functional inter-relatedness is highly subjective. Furthermore, the court specifically held that "EPA's determination that the physical requirement of adjacency can be established through mere functional relatedness is unreasonable and contrary to the plain meaning of the term 'adjacent'". Although the second definition does not solely use functional relatedness, the proposed definition requires that the two activities be greater than ¼ mile apart and have functional relatedness. If the EPA endeavors to comply with the court's ruling, it cannot use a ¼ mile distance in the definition and also impose a functional relatedness concept. The post-*Alabama Power* rule-making clearly instituted a three prong test that included:

1) The sources must belong to the same major industrial grouping (same two digit major Standard Industrial Classification (SIC) Code)

2) Located on one or more contiguous or adjacent properties

3) Are under common control

The EPA added a functional relatedness test under item three as a policy even after the EPA had intentionally omitted a functional relatedness test as described above, because

[1] 45 Feg Reg. at 52,695

using a functional relatedness test as a factor in permitting analyzes would require to fine grain of an analysis that would cause ambiguity to the permitting authorities and to the facilities required to obtain permits. The EPA specifically found that assessing whether activities were sufficiently functionally related to constitute a single source would be highly subjective and would make administration of the definition substantially more arduous, because any attempt to assess those interrelationships have embroiled the Agency in numerous, fine-grained analyses. In lieu of the rejected functional interrelationship test, the EPA elected to incorporate the industrial grouping criterion, a factor which asks whether the multiple activities are engaged in the same type of business (the SIC code). Therefore, the EPA in the past first thought functional inter-relatedness was not appropriate and second used three additional factors in addition to looking at functional inter-relatedness to determine if two facilities were aggregated or not. Therefore, having a ¼ mile test and functional inter-relatedness test is flawed.

Finally, in the *Summit* case conclusion the court specifically remanded the matter to the EPA for "a reassessment of Summit's Title V source determination requires in light of the proper, plain-meaning application of the requirement that Summit's activities be aggregated only if they are located on *physically* contiguous or adjacent properties" (emphasis added).

IV. Suggested Revisions to the First Proposed Definition

Given the previous discussion, AOGA contends that the first proposed definition must be clarified to prevent unintended and unreasonable application. AOGA would advocate for the first proposed definition to be modified as follows:

> Building, structure, facility, or installation means 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). 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 two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).
>
> Notwithstanding the provision of the above paragraph of this section, building structure, facility or installation means, for onshore activities under SIC Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities in the same two digit SIC Major Group, included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site, or on surface sites that are

> located within ¼ mile of one another, where a surface site has the same meaning as in 40 CFR 63.761. The largest distance between any two surface sites shall be no more than ½ mile for a collection of surface sites that are considered adjacent. they are located on the same surface site, or on surface sites that are located within ¼ mile of one another, where a surface site has the same meaning as in 40 CFR 63.761.

40 CFR 63.761 for National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart HH for Oil and Natural Gas Production Facilities defines a surface site as:

> Surface site means any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed.

V. Conclusion

AOGA urges the EPA to adopt the first proposed definition with the alterations outlines above. Adopting the first proposed definition absent modification could lead to unintended and adverse consequences to oil and gas operations in Alaska. Furthermore, given the *Summit* holding, AOGA contends that the EPA's second proposed definition is fatally flawed from a legal perspective, as it contemplates issuing adjacency determinations based on factors separate from proximity.

In addition to the concerns outlined above, AOGA also provides unequivocal support for API's comments, which provide thorough and persuasive support for its contentions and recommendations. In an effort to refrain from offering duplicative and redundant arguments, AOGA simply defers to the substantive positions and recommended modifications to the EPA's proposals outlined in the API comments. Thank you again for the opportunity to comment and, should you have any questions, please contact Joshua Kindred at 907-222-9604 or kindred@aoga.org.

Sincerely,

Joshua M. Kindred
Environmental Counsel
Alaska Oil & Gas Association