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Determination Detail

Control Number: M980007

Category: MACT
EPA Office: Region 1
Date: 01/20/1998
Title: Purchase of Facility Adjacent to Major Source
Recipient: Piper, Stephen
Author: DeVillars, John
Comments:

Subparts: Part 63, A General Provisions
 Part 63, R Gasoline Distribution Facilities

References: 63.2
 63.427
 63.6

Abstract:

Q. Will Part 63, Subpart R apply to a facility that is below the applicability threshold if it is purchased by an adjacent source that is subject to Subpart R? If so, how is the compliance schedule determined?

A. Yes, the facility will be subject to Subpart R. If the facility commenced construction on or before February 8, 1994 it will be given up to three years from the date of purchase to comply. If construction commenced after February 8, 1994 it will need to comply immediately upon becoming a major source.

Letter:

January 20, 1998

Stephen G. Piper, PE
EMCON, Senior Engineer
3 Riverside Drive
Andover, MA 01810-1121

Re: Determination Relative to Applicability of NESHAP Subpart R for Newly Acquired Facility

We are in receipt of your letter dated September 11, 1997, on behalf of your client, requesting a determination on the applicability of 40 CFR Part 63 Subpart R, "National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)", as it applies to the purchase of an existing adjacent terminal that is below the Subpart R applicability threshold. Subpart R requires compliance for an existing source as expeditiously as practicable but no later than December 15, 1997, which is three years from the effective date of the regulation. Based on a previous conversation with you, it is our understanding that if the purchase of the adjacent property moves forward, your client plans to submit a detailed compliance schedule indicating how it plans to achieve compliance with Subpart R. For an existing area facility which becomes major, EPA may grant up to three years from the date of purchase unless compliance can be done more expeditiously. For example, in some cases, emission points may already be in compliance and thus should comply with the monitoring provisions found in Section 63.427. Also, the leak inspection setup and implementation is usually straightforward and can generally be accomplished within a short period of time. Without specific information on your client's situation, EPA can not determine a timeframe for expeditious compliance. If your client chooses not to provide additional documentation, be aware that EPA may later determine the facility could have come into compliance more expeditiously with any or all of the provisions of Subpart R.

Your letter states that your client, a major source subject to Subpart R, is considering the purchase of a small petroleum bulk terminal adjacent to its property. If the small petroleum bulk terminal and your client's facility are now under common control, then the two facilities together would constitute a major source specified under 40 CFR Section 63.2 and therefore would already need to be in compliance with Subpart R. If the facilities are not now under common control, the purchase of the adjacent property will bring the two facilities under common control on a continuous piece of property. Therefore, as stated in your letter, the two facilities would be regulated as one major source.

You requested a determination on when the newly acquired facility's equipment would need to be in compliance with Subpart R. If the small facility being purchased commenced construction or reconstruction on or before February 8, 1994, it should be considered an existing area source. Section 63.6(c)(5) of the General Provisions states that if an unaffected existing area source increases its potential to emit (PTE) such that the source becomes a major source that is subject to an emission standard then the source must come into compliance by the date specified in the standard for existing area sources that become major sources. If no compliance date is specified, then the source shall have a period of time to comply with the relevant standard that is equivalent to the compliance period specified in that standard for major existing sources. Since Subpart R does not specify a

compliance period for an existing area sources that become major, the General Provisions apply. The Section 63.6(c)(5) approach applies under these circumstances, since the small bulk terminal (an unaffected existing area source) will become a major source subject to Subpart R. Subpart R requires compliance "as expeditiously as practicable but no later than December 15, 1997". Accordingly, EPA may grant approval of a compliance schedule providing for compliance as expeditiously as practicable, up to three years from the date of purchase of the small bulk terminal.

If the small facility being purchased commenced construction or reconstruction after February 8, 1994, it would be considered a new area source. Section 63.6(b)(7) of the General Provisions requires a new area source that increases its PTE such that it becomes a major source subject to the emission standard to be in compliance immediately upon becoming a major source.

Clear documentation should be kept by your client that specifies which equipment was purchased as well as documentation regarding the length of time needed to comply. This determination was coordinated with Julie Tankersley of the Office of Enforcement and Compliance Assurance (OECA) and Steve Shedd of the Office of Air Quality Planning and Standards (OAQPS). If you have any questions regarding this determination, please contact Janet Bowen at (617) 565-3049.

Sincerely,

John P. DeVillars
Regional Administrator

cc: Steve Shedd, OAQPS
Julie Tankersley, OECA
Yi Tian, MA DEP