

SINGLE MAJOR TITLE V SOURCE DETERMINATION

Nippon Dynawave Packaging Company, LLC North Pacific Paper Company, LLC Weyerhaeuser NR Company, Longview Lumber Mill

April 2, 2018

The Washington State Department of Ecology (Ecology) has completed a Single Major Title V Source Determination for Nippon Dynawave Packaging Company, LLC, North Pacific Paper Company, LLC, and Weyerhaeuser NR Company (Weyerhaeuser).

Air permitting history

The former Weyerhaeuser Longview Complex, located along the Columbia River in Longview, Washington, consists of a Kraft pulp and paper mill, a thermomechanical pulp and paper mill, and a log/lumber operation. The 700+ acre site was previously owned and operated by Weyerhaeuser, with the thermomechanical pulp and paper mill operating as a 50/50 joint venture between Weyerhaeuser and Nippon Paper Industries.

Date	Action
August 31, 2016	Weyerhaeuser sold the Kraft pulp and paper mill to Nippon Paper Industries. The facility now operates as an affiliate of Nippon Paper Industries, Nippon Dynawave Packaging Company, LLC (NDP)
November 1, 2016	The thermomechanical pulp and paper mill was sold to One Rock Capital Partners, LLC. The facility operates under the name North Pacific Paper Company, LLC (NORPAC). One Rock Capital Partners, LLC has no affiliation with either Nippon Paper Industries or Weyerhaeuser NR Company.
December 11, 2014	The Air Operating Permit (AOP) for the former Weyerhaeuser Longview Complex expired. Due to the expired AOP and the change in ownership at the Kraft pulp and paper mill and the thermomechanical pulp and paper mill, Ecology intended to issue three individual AOPs to each facility.
December 8, 2016	Ecology submitted the proposed AOPs for NDP, NORPAC, and Weyerhaeuser to the Environmental Protection Agency (EPA) for 45-day review. In the proposed AOPs, Ecology had determined that the three stationary sources constituted three separate major sources. During their 45-day review, EPA requested additional analysis confirming (or refuting) the Title V major source status determinations made by Ecology.

In light of EPA's request, Ecology performed an analysis of the stationary sources and the historical regulatory guidance provided by EPA. Based on this analysis, Ecology has determined NDP, NORPAC, and Weyerhaeuser are three separate major sources for Title V permitting.

For the requirements of Title V to be applicable, a source must first be considered *major*. EPA defines a Title V *Major Source* in 40 CFR 70.2 as "any stationary source (or any group of stationary sources that are located on one or more continuous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping" that emits or has the potential to emit 10 tons per year or more of any hazardous air pollutant (HAPs) listed pursuant to 112(b) of the CAA, 25 tons per year or more of any combination of HAPs, or 100 tons per year or more of any air pollutant as defined in Section 302 of the CAA.

Per these definitions, a stationary source is *major* if it meets the following criteria:

1. Located on continuous/contiguous or adjacent properties;
2. Under common control;
3. Belongs to a single major industrial grouping;
4. Meets the defined emission thresholds.

Ecology has used the above criteria to determine whether the three stationary sources (NDP, NORPAC, and Weyerhaeuser) constitute a single *major source* for Title V permitting. It should be noted that the definition of an *affected source* for Hazardous Air Pollutants is defined differently in 40 CFR 63.2. When aggregating HAP emissions to determine *affected source* status, major industrial grouping is disregarded. NDP, NORPAC, and Weyerhaeuser are individually major sources of HAPs. The separation of these sources into three separate major sources would not affect the applicability of MACT standards.

The stationary sources at the Longview site are clearly "located on continuous or adjacent properties." They also individually exceed the emission thresholds. Therefore Ecology will concentrate its "major source" analysis on the remaining two criteria: common control and single major industrial grouping.

Common Control

EPA has provided guidance (45 FR 59878) that *common control* is to be established on a case-by-case basis using the definition of *control* used by the Security and Exchange Commission (SEC). The SEC defines *control* (17 CFR 240.12b-2) as "the possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."

EPA has established additional guidance clarifying methods for establishing common control on a case-by-case basis.

"First, common control can be established through ownership (i.e., same parent company or a subsidiary of the parent company). Second, common control can be established if an entity such as a corporation has decision-making authority over the operations of a second entity through a

contractual agreement or a voting interest. If common control is not established by the first two mechanisms, then one should next look at whether there is a contract for service relationship between the two companies or if a support/dependency relationship exists between the two companies in order to determine whether a common control relationship exists.” (Riva, 1997)

Based on this guidance, Ecology has analyzed the three stationary sources for *common control* based on:

1. Ownership;
2. Decision-making authority through contracts and/or voting interest;
3. Contract-for-Service relationship;
4. Support/dependency relationship.

Note: In addition to these four criteria for establishing common control, EPA has offered a series of questions to ask when establishing the relationship between co-located stationary sources (Spratlin, 1995). Ecology will use the answers to these questions to further clarify the relationship between the three stationary sources at the Longview site. It should additionally be noted that these questions appear to be intended for stationary sources that are located on the property of another source. The three stationary sources in this analysis separately own their properties requiring no lease agreements between them, therefore answers to these questions will only be used to help guide the analysis below.

Ownership

The three stationary sources are owned by Nippon Dynawave Packaging Company, LLC (Nippon Paper Industries), NORPAC (One Rock Capital Partners, LLC), and Weyerhaeuser NR Company, respectively. These are fully independent entities, making it clear that there is no shared ownership. All maintenance and repairs of “property, fixtures, equipment, materials and systems” are the responsibility of the property owner. Compliance with air quality control requirements is handled independently by each stationary source. Violations of any air quality requirements are the responsibility of the individual stationary source.

Decision-Making Authority through Contracts and/or Voting Interest

The three stationary sources do not share workforces, plant managers, corporate executive officers, or a board of directors. The stationary sources do not have any voting interest between the facilities. The contracts between the facilities do not grant decision-making authority to any party. There is a shared maritime security based on ship access to the site via the Columbia River.

Contract-for-Service Relationship

“In determining which activities are under common control, a variety of factors must be considered including the nature of any contractual, lease, or other agreements that establish how facilities (...) interact with one another. In essence, the relevant economic, legal, and functional relationships between or among facilities must be examined in making common control determinations. (...) Among other considerations, the contracting entity can control the relevant

aspects of the contract operator's performance through the terms of the contract (e.g., the level of production, the requirement to implement and maintain emission control measures, the requirement to comply with all applicable environmental regulations, etc." (Seitz, 1996)

Because the three sources were built under the ownership of a single company, there are many utilities and services that are shared, these include: potable water, fire suppression water, process water, caustic soda, waste handling, rail service, electrical power, chip procurement and handling, truck scales, sanitary sewer, effluent/stormwater, and Maritime Security (MARSEC). The service agreements do not grant any level of control (direct or indirect) to any party. No stationary source has the ability to affect production increases or other operations based on these agreements.

Support/Dependency Relationship

As stated previously, there are many utilities and services that are shared. NDP sells steam to and accepts wastewater from NORPAC and Weyerhaeuser. NDP also sells pulp to NORPAC. There also exist additional utilities and services that are shared between the sources.

During 2014 through 2015 NDP produced approximately 1,080 kilopounds per hour (kips/hr) of steam. Of the steam produced, approximately 284 kips/hr of steam (26%) was sold to NORPAC and 24 kips/hr of steam (2%) was sold to Weyerhaeuser. This information was provided to Ecology by email from NDP on January 5, 2017. NORPAC and Weyerhaeuser do not generate fresh steam on-site. However, Weyerhaeuser has not purchased steam from NDP since January 2017. NORPAC and Weyerhaeuser (if necessary) rely on steam from NDP. The sale of steam from NDP to NORPAC and Weyerhaeuser is not unlike a typical utilities agreement between facilities and does not convey common control through a support/dependency relationship.

NDP purchased 318,257 bone-dry tons (BDT) of hog fuel in 2017 for use in the hog fuel boiler on site. Of that purchased hog fuel, 1,005 BDT was purchased from Weyerhaeuser (in Longview). The hog fuel bought from the Weyerhaeuser Longview site accounted for approximately 0.3% of the purchased hog fuel for 2017 at NDP.

During 2017, NDP sold 69 air-dried tons per day (ADT/day) of pulp to NORPAC. NORPAC, on its own, made approximately 1,394 ADT/day of thermomechanical pulp and another 57 ADT/day of deink pulp based on 2017 data. The pulp bought from NDP during 2017 accounted for approximately 4.5% of the pulp used at NORPAC. The pulp bought by NORPAC from NDP could be replaced from other sources.

The remaining service agreements from utilities and other services are legacies of the existing infrastructure rather than inherent dependencies of one source on the services of another which impart indirect control. For example, supply of potable water is received from the City of Longview through the existing infrastructure at NDP and Weyerhaeuser. NORPAC has no direct connection to the City of Longview's potable water system. When the facilities shared common ownership, the three sources only required two connections to the city's water system. Separate connection to the city's water system for each source is possible and common practice at other similar sources. Due to the present configuration of the existing infrastructure, receiving potable

water through a site services agreement between sources is the most practical approach. This service agreement serves as an “easement” or an agreement to allow for access to a utility. Ecology believes that these types of services (including the use of the wastewater treatment plant) fall outside of the definition of control.

The existence of the stationary sources at NDP, NORPAC, and Weyerhaeuser are not dependent upon the services provided or products produced by the other. There are some stationary sources which are dependent on each other and would not exist “but for” the existence of the other. An example would be a boiler built on an adjacent property to provide steam to a stationary source. NDP, NORPAC, and Weyerhaeuser do not exist “but for” the existence of the others. NDP provides steam to both NORPAC and Weyerhaeuser, but NDP exists to produce paperboard products and not to provide steam to NORPAC and Weyerhaeuser.

Single Major Industrial Grouping

EPA has established that sources are to be aggregated by industrial grouping in the Standard Industrial Classification Manual (SIC Code) when determining major source status. More specifically the two-digit categories are to be used for aggregation. EPA has further established that any equipment used to support the primary activity would be considered part of the same major source regardless of the two-digit SIC code.

“One source classification encompasses 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 principle product.” (45 FR 52695)

EPA goes on to state that, “Where a single unit is used to support two otherwise distinct set of activities, the unit is to be included within the source which relies most heavily on its support. For example, a boiler might be used to generate process steam for both a commonly controlled and located kraft pulp mill and a plywood manufacturing plant. If the yearly boiler output is used primarily by the pulp mill, then the total emissions from the boiler should be attributed to the mill.” This example scenario provided by EPA to clarify source aggregation, is similar to the scenario at NDP and Weyerhaeuser and supports a determination that NDP is a separate major source from Weyerhaeuser.

A support facility relationship may be presumed to exist if 50% of the output or services provided by one facility is dedicated to another that it supports (56 FR 21724). It should be noted that, even when this 50% threshold is not met, the permitting authority may still make a support facility determination. Of the steam produced at NDP, 26% is sold to NORPAC and 2% is sold to Weyerhaeuser. Based on the 50% threshold, it does not appear that NDP is a support facility for NORPAC or Weyerhaeuser. This is in agreement with the common sense logic that a large Kraft mill (NDP) is not a support facility for a saw mill (Weyerhaeuser).

Additional support for the conclusion that there is not a support facility relationship between the facilities is the EPA guidance stating, “[e]mission sources that support these amenities (e.g., boilers and wastewater treatment facilities) would be grouped with the amenities that receive a majority of their products or services.” (Spratlin, 1995) This guidance was provided in reference

to military installations, but Ecology sees no reason this logic would not follow for a group of industrial facilities. This would suggest that the steam producing boilers may be considered support facilities/sources and be grouped with the Kraft mill (NDP).

While NDP and Weyerhaeuser do not share a two-digit SIC Code, NDP and NORPAC share the two-digit SIC Code for *Pulp and Allied Products* (26). Although these two stationary sources may be aggregated based on common SIC Code, they are not a single major stationary source based on the previous analysis of *common control*.

Conclusion

Based on the above analysis, Ecology finds that NDP, NORPAC, and Weyerhaeuser at the Longview site are separate major sources for Title V purposes. The stationary sources cannot be aggregated based on a lack of common control.

References

Riva, S. (1997, November 25). *Common Control Question – Dupont and Dupont Dow Elastomer*. Title V Operating Permit Policy and Guidance Document Index.

Seitz, J. (1996, August 2). *Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act*. Title V Operating Permit Policy and Guidance Document Index.

Spratlin, W. (1995, September 18). *Common Control, September 18, 1995 Letter to Peter Hamlin*. Title V Operating Permit Policy and Guidance Document Index.