

individual hazardous air pollutants (HAP) and 25 tpy of total HAP.

ISP has requested a determination from the Agency as to whether the BDO plant is eligible for minor source status since it is no longer part of the BP major source, and on its own, has actual emissions of less than 2 tpy of individual hazardous air pollutants (HAP) and less than 4 tpy of total HAP. ISP also contends that there is no common control or ownership with the BP Chemical Complex, which remains a major source. Furthermore, ISP argues that the BDO facility is a discrete facility that is not contiguous with any BP property or any of the remaining sources listed on the current BP Title V permit.

In support of ISP's argument, ISP provided an actual emission baseline for both HAP and criteria pollutants. The total HAP emissions from the ISP BDO facility for the year 2003 were 2.54 tpy, and the total HAP emissions for the year 2004 were 2.68 tpy. ISP also provided a plot plan showing the geographic relationship of the ISP and BP manufacturing locations.

You noted that potential to emit (PTE) calculations had not been finalized, but that you anticipated that the PTE would also be less than 10 tpy for individual HAP and 25 tpy for total HAP. When determining whether facilities on separate properties are a single major source under common control, the permitting authority relies on such indicators as common ownership, contractual obligations, voting interest, proximity of the facilities as well as the existence of physical or transportation links such as pipeline, railway, channels or conduit, and the functional interrelationship between the facilities.

In reviewing the materials that ISP provided on the physical plot plan of the ISP BDO plant and the surrounding facilities, it is clear that there is no physical proximity of the two facilities. The facilities are separated entirely by a third entity, Premcor. Additionally, ISP states that the two manufacturing locations do not have any material transfer pipes or conduits connecting them, and that ISP does not purchase or receive any raw materials from the BP Chemical complex. Additionally, the ISP BDO plant does not provide any raw materials to the BP Chemical complex. The BDO plant is not connected to any of the BP emission unit sources listed in the existing Title V permit. Based on this information provided, the Agency agrees that there are no issues of common control between the ISP Lima BDO plant and the BP Chemical Complex.

On July 12, 2005, you provided additional clarification to Marcia Mia, of my staff, concerning any interaction with the Premcor facility located adjacent to the ISP BDO plant. In that email response, you stated that there is no interaction between ISP and Premcor in terms of ownership, voting interest, liability, or managerial hierarchy. You stated that ISP is a completely separate and independent corporate entity with no corporate affiliation with Premcor. On the business side, an Ohio Environmental Protection Agency (OEPA) permit allows the ISP Lima BDO plant to discharge stormwater and wastewater to the Premcor refinery's wastewater treatment plant. In addition, the ISP Lima BDO plant sells excess steam generated in one of its air pollution control devices to the refinery. The ISP Lima BDO plant also purchases butane, one of the BDO reactants, from the refinery though this could readily be purchased via rail car from an alternate supplier. EPA believes that the interaction of the ISP Lima BDO plant and Premcor are strictly of an independent business nature and do not constitute common control.

In an April 18, 2003, letter from EPA Region 6 to Huntsman Ethyleneamines, Ltd., the Agency discussed special provisions of the HON for determining area source status. Specifically, 40 CFR subpart 63.100(b)(4) states:

. . . [t]he owner or operator of a chemical manufacturing process unit is exempt from all requirements of 40 C.F.R. part 63, subparts F, G, and H of this part until not later than April 22, 1997 if the owner or operator certifies, in a notification to the appropriate EPA Regional Office, not later than May 14, 1996, that the plant site at which the chemical manufacturing process unit is located emits, and will continue to emit, during any 12 month period, less than 10 tpy of any individual HAP, and less than 25 tpy of any combination of HAP.

For the Huntsman ethyleneamine facility, it was determined that since Huntsman did not own the ethyleneamine facility as of May 14, 1996, they could not have submitted such a notification. However, the previous permit issued to the prior owner was in place by that date and contained federally

enforceable emission limits for the HAPs emitted by the ethyleneamine facility. Therefore, the Agency determined that the Huntsman ethyleneamine facility was an area source based on the fact that its total HAP emissions were below the major source threshold prior to the date specified in 40 CFR subpart 63.100(b)(4). Unlike the Huntsman ethyleneamine facility, the ISP Lima BDO plant was not permitted as a minor source prior to the May 14, 1996 date and is, therefore, not eligible for this exemption.

On May 16, 1995, EPA issued a memo from John Seitz, Director of the Office of Air Quality Planning and Standards (OAQPS) to the Regional Air Toxic Division Directors entitled "Potential to Emit for MACT Standards -- Guidance on Timing Issues". The memo also included a discussion on continuing regulatory requirements for facilities who at one time meet the applicability of a particular rule. This discussion is commonly referred to as the "once in, always in" policy. Specifically, EPA stated the following:

EPA is today clarifying that facilities that are major sources for HAPs on the "first compliance date" are required to comply permanently with the MACT standard to ensure that maximum achievable reductions in toxic emissions are achieved and maintained.

Since the ISP Lima BDO plant was constructed and permitted as a major source on the compliance date for new sources in the HON, according to the "once in, always in" policy, the plant will continue to be subject to the HON rule, even if it subsequently reduces its emissions below major source thresholds.

Please note that the Agency is in the process of developing regulatory language to amend the General Provisions to the National Emission Standards for Hazardous Air Pollutants (NESHAP). These amendments may replace the "once in, always in" policy. The Agency plans to propose these amendments before the end of the 2005 calendar year. For more information on the proposal, please contact Rick Colyer of the Office of Air Quality Planning and Standards (OAQPS) at 919-541-5262.

This determination was developed in coordination with the Office of Air Quality Planning and Standards, the Office of General Counsel, EPA Region 5, and the Air Enforcement Division. If you have any questions, please contact Marcia Mia, of my staff, at 202-564-7042.

Very truly yours,

Michael S. Alushin, Director
Compliance Assessment and Media Programs Division Office of Compliance