

# **Air Permit Reviewer Reference Guide**

**APDG 6111**

# **Definition of Site Guidance Document**

**Provides guidance on defining a site for  
stationary sources**

**Air Permits Division  
Texas Commission on Environmental Quality  
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# Definition of Site Guidance Document

## Purpose

The objective of this document is to provide guidance on defining a site which may encompass one or more stationary sources. The TCEQ Air Permits Division (APD) utilizes the definition of “site” as described in Title 30 Texas Administrative Code (30 TAC) § 122.10 to apply to both major and non-major sources.

A site as defined in 30 TAC § 122.10(27) is, “The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control).”

To determine the appropriate stationary sources to be included in a site, based on its definition, the concepts of “contiguous or adjacent properties” and “common control” must be understood. Both criteria must be satisfied if a stationary source is to be included in the site. These two criteria are discussed in detail in this document and examples are provided to assist the regulated community in determining how stationary sources are aggregated. Title V is a federally approved program, and the TCEQ definition of site is consistent with the federal definition of major source found in 40 CFR 70.2, as well as the PSD rules in 51.165. This guidance reflects past EPA common control and single source determinations for Title V and PSD applicability.

## Contiguous or Adjacent Properties

The first consideration in determining the scope of a site is identifying all stationary sources that are located on contiguous or adjacent properties. In this case, “property” has the meaning as defined in 30 TAC Chapter 101. Contiguous or adjacent properties are adjoining except for an intervening road, railroad, right-of-way, waterway, or the like.

A case-by-case determination may be needed to determine if sources are considered contiguous or adjacent. The following items should be considered in the analysis:

- For oil and gas activities, the surface areas on which a stationary source has been located, including any immediate area graded or cleared for such stationary sources, is considered property.
- Properties located less than a 1/4 mile apart are considered contiguous.
- **Interdependent properties located more than a 1/4 mile apart may also be considered contiguous.** Interdependent properties are properties that are mutually dependent. In other words, a mutually dependent property either supports or is supported by another property (or properties) and cannot function independently. A compressor station that delivers field gas to a gas processing plant is an example of two interdependent properties since the compressor station cannot function normally without the gas plant.

- A research and development (R&D) operation and a collocated manufacturing facility shall be considered a single site if they each have the same two-digit Major Group Standard Industrial Classification (SIC) code (as described in the Standard Industrial Classification Manual, 1987) or the R&D operation is a support facility for the manufacturing facility.

When a case-by-case determination must be made in determining contiguous or adjacent properties, the TCEQ APD should be contacted in writing.

## **Common Control**

The second consideration in determining whether stationary sources should be considered part of a single site is that all sources must be under common control of the same person or persons under common control. In many instances, common control is easily identified and not complex. For example, a plywood mill and a lumber mill located on adjacent or contiguous properties and operated by the same company are under common control. However, in complicated business organizations or agreements, common control may only be decided based on the details of the agreements and all relevant facts as they relate to control of operations of facilities. It should be stressed that operational control should be evaluated at the highest point in a company's management structure.

In complex situations, a case-by-case determination may be made to determine whether common control exists between facilities. These determinations are guided by precedent (both TCEQ and EPA), and are not based on weight-of-evidence or preponderance-of-the-evidence tests. When a case-by-case determination must be made, the APD should be contacted in writing. The APD will then work with the TCEQ Environmental Law Division (ELD) to determine whether common control exists. A nonexclusive list of the typical information used to make these case-by-case determinations is shown below, and any relevant discussion of each should be included in the initial correspondence:

- individuals who control the operations for each facility or source (and their placement and function within the organization);
- partners for each facility or source and their percentage ownership;
- list of shareholders, percent ownership, total shares;
- shareholders agreements;
- voting trusts or pooling agreements;
- Board of Directors for each facility or source;
- officers for each facility or source;
- articles of incorporation, partnership agreements, and other documents establishing arrangement between facilities or sources;
- marketing agreements; and
- documentation of all other operations or managing contracts.

It is important to understand that in a case-by-case determination, no one factor, or group of factors has more weight in the analysis than the others. Many TCEQ legal opinions stress that it is critical to understand that though ownership could imply control, it does not necessitate control. For example, if in a contract between the owner of a site and a contractor, the

contractor has the authority to operate the site independently of the owner, then the contractor may have control of the site.

## **Correlation between the Site Definition and Regulated Entity**

The TCEQ account number as defined in 30 TAC § 101.1(1) is, “For those sources required to be permitted under Chapter 122 of this title (relating to Federal Operating Permits), all sources that are aggregated as a site. For all other sources, any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.” This definition creates a one-to-one relationship between account and site. Each will have one account number.

Currently, the TCEQ has replaced the account number with the regulated entity (RN) number as the primary identifier for a site. Regulated entity as defined in 30 TAC § 101.1(86) is, “All regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location. Owners or operators of pipelines, gathering lines, and flow-lines under common ownership or control in a particular county may be treated as a single regulated entity for purposes of assessment and regulation of emissions events.”

For purposes of the Air Permits Division, each site as defined under 30 TAC Chapter 122 must be associated to a single RN number. Sites that have multiple RN numbers assigned by Central Registry will have all air permits migrated to the RN number that has the most historical data (compliance history, registrations, and permits). This must occur to maintain the definition of site.

## **Impacts on Air Programs**

An established site must maintain the same site definition for all air programs that utilize it such as Title V, federal NSR, and 40 CFR Part 63 (MACT) applicability. A site cannot be arbitrarily split to avoid applicability to one or more of these programs.

Example: A petroleum refinery and an associated loading terminal are permitted together under a PSD permit. The refinery and terminal are located 8 miles apart and are considered interdependent. The refinery and terminal cannot be split into separate sites for determining federal operating permit (Title V) applicability.

## **Guidance on Aggregating**

The following subsections provide guidance on aggregating properties, stationary sources, and emission units.

## **Temporary Sources**

Temporary Sources that are located on site for less than 6 months should not be aggregated with other stationary sources for purposes of major source determination as stated in 30 TAC § 122.204(c).

## **Fugitive Sources**

Current TCEQ guidance indicates that fugitive emission sources should not be considered when aggregating properties unless the source is one of the 27 named categories listed in 30 TAC § 122.10(13)(C). For example, the emissions from a wellhead (only a fugitive source) would not be aggregated with the point and fugitive emissions from an interdependent natural gas processing plant (or a natural gas processing plant located less than 1/4 mile away). This is due to the fact that neither the gas processing plant nor the wellhead is one of the 27 listed source categories for which fugitives must be included in determining whether the site is major.

## **Nonroad Engines**

In the Federal Register final rule publication of 40 CFR Part 89, Control of Air Pollution: Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression-ignition Engines At or Above 37 Kilowatts, the EPA affirmatively determined which internal combustion engines are considered stationary sources and which are nonroad engines (mobile sources). As it related to drilling and workover rigs, the EPA defined nonroad engines as any internal combustion engine that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

The EPA went on to state that an internal combustion engine is no longer a nonroad engine if the engine remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. In other words, if a nonroad engine is at a location for more than 12 months, it is considered a stationary source. Otherwise, the nonroad engine would be considered a mobile source. The EPA goes on to state that any engine that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period.

## **Leased Properties and Co-located Operations**

Leased properties located on tracts of land shall be aggregated if the properties are located less than a 1/4 mile apart and are under common control. As previously stated, the surface area on which a stationary source has been placed, including any immediate area graded or cleared for such stationary sources is considered property. Common control is also presumed when one operator locates on another operator's property. This co-location is typically governed by a contract, lease or other agreements. Such a presumption is rebuttable if, for instance, the operations can be shown not to be dependent on one another. In addition, if a leased property and an owned property are both interdependent and under common control, these properties shall be considered contiguous and aggregated as a single site.

## **Oil and Gas Owned Properties**

In a September 22, 2009 memorandum, Withdrawal of Source Determinations for Oil and Gas Industries, EPA withdrew a previous guidance memo, Source Determinations for Oil and Gas Industries dated January 12, 2007, that provided guidance for making major source determinations for the oil and gas industries.

The current 2009 EPA memo emphasizes that permitting authorities should evaluate several factors on a case-by-case basis when determining if two or more sources should be aggregated for a major source determination. The TCEQ method of site determination supports EPA's guidance in that oil and gas properties would be aggregated based on a contiguous/adjacent and common control analysis using the procedures noted in the preceding sections. While proximity of sources to one another should be considered when determining whether contiguous and adjacent, a case-by-case analysis of all criteria must be conducted.

## **Military Installations**

In the August 2, 1996 memorandum, Major Source Determination for Military Installations Under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act, the EPA provided guidance for making major source determinations at military installations. The guidance states that the EPA "believes it is appropriate to consider pollutant-emitting activities that are under the control of different military services not to be under common control. In other words, all pollutant emitting activities at a military installation under the control of the Army could be considered under separate control from activities of the Navy, the Air Force, or the Marine Corps. In addition, the guidance also states "activities under the control of the National Guard may be considered under separate control from activities under the control of military services, as can activities under the control of the defense agencies; however, the defense agencies are considered under common control of each other.

Leased activities at military installations were also addressed in the guidance. In general, "leased activities at military installations may be considered under separate control from activities under the control of the military controlling entities at the installation. These leased activities would be considered tenants on military bases. In contrast, the guidance states, contract-for-service (or contractor operated) activities at military installations usually would be considered under the control of the military controlling entity that controls the contract. Thus, leased activities may be considered under common control when they also have a contract-for-service relationship to provide goods or service to the military controlling entity at the military installation. Therefore, it is expected that case-by-case determinations will often be necessary for such situations due to the variety and complexity of leased and contract-for-service activities at military installations.

The EPA guidance also made allowances for case-by-case determinations after the permitting authority has examined the operations and interactions of the activities at military installations. For example, there may be situations when it is appropriate to consider a military installation as a single site, although there are multiple controlling entities at that installation. It was noted by the EPA that nothing in the guidance precludes such a finding by the permitting authority.

The TCEQ APD is implementing the EPA guidance for the determination of a site(s) at a military installation. Once common control, as it relates to the activities at the installation, has been

established, sources should then be aggregated based on the definition of contiguous or adjacent properties contained in this document.

## Examples

The following examples are provided to assist the regulated community in determining whether stationary sources are considered a single site. As previously mentioned, stationary sources must be located on contiguous or adjacent properties and operated under common control to be considered one site. The examples are presented as situations involving both contiguous or adjacent property and common control. Other specific examples from industry are welcome, and will be considered by APD staff for inclusion in future versions of this document.

### **Examples of Contiguous or Adjacent Properties**

Two properties having emission units and separated by an intervening railroad is illustrated in Figure 1. If both properties are under common control, they would be considered contiguous or adjacent and, therefore, one site for 30 TAC Chapter 122 purposes, since they are separated only by an intervening railroad. However, if both properties are not under common control, they would be considered as separate sites for purposes of 30 TAC Chapter 122.

**Figure 1 - Properties Separated by a Railroad**

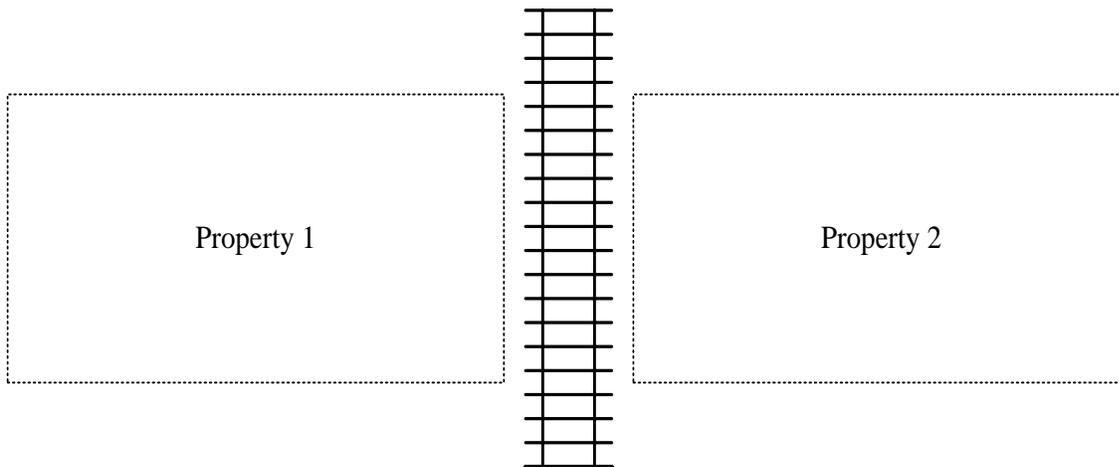
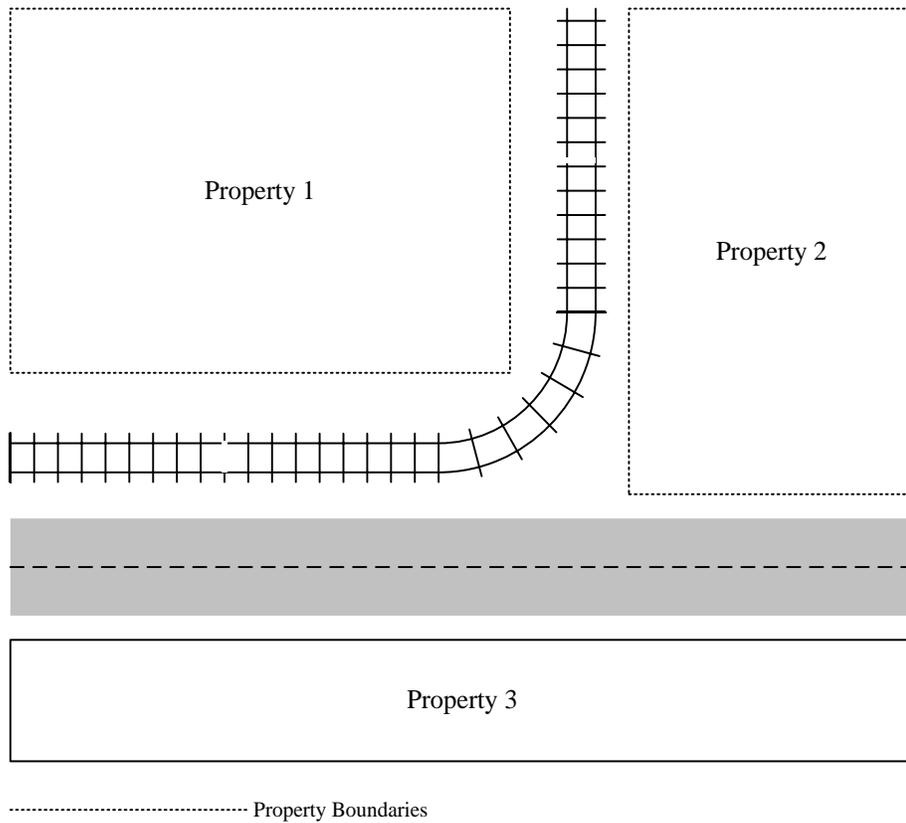


Figure 2 shows three properties separated by an intervening roadway or railroad. If any of the properties are under common control, they would be considered one site for 30 TAC Chapter 122 purposes since they are only separated by an intervening roadway or railroad. Any of the properties not under common control would be considered separate sites.

**Figure 2 - Properties Separated by a Roadway and Railroad**



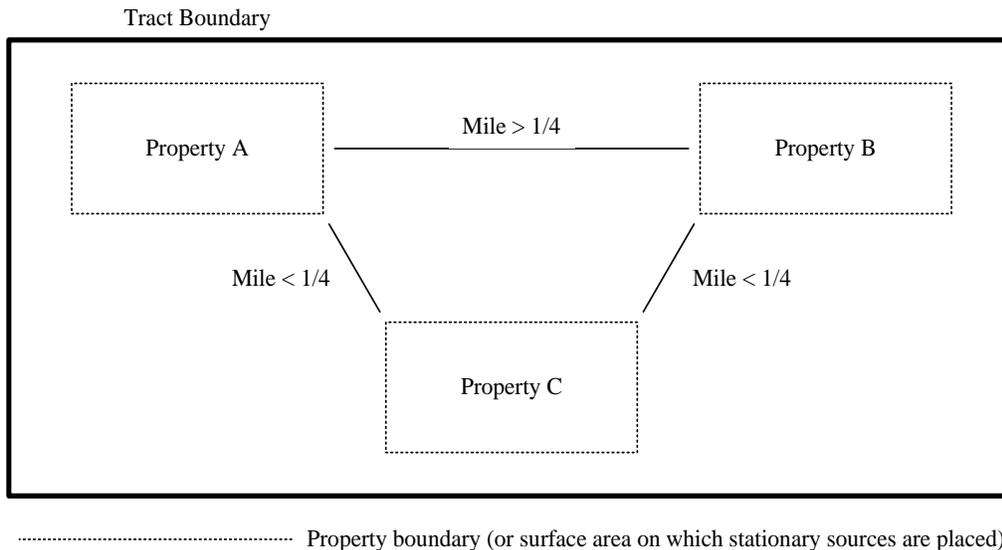
## **Fugitive Emissions from Properties Under Common Control**

Figure 3 illustrates three interdependent properties under common control. Properties A and B are located slightly more than 1/4 mile apart, as shown in this figure. Property C, which only has fugitive emissions, is located slightly less than 1/4 mile from both Properties A and B.

Property C is not considered one of the 27 named source categories specified in 30 TAC § 122.10 for which fugitives are included in determining whether the site is a major source. Current TCEQ guidance indicates that properties with only fugitive emission sources should not be considered when aggregating properties to determine major source applicability unless the source is one of the 27 named categories listed in 30 TAC § 122.10.

Properties A and B would be aggregated due to the interdependent relationship of the properties even though the distance between them exceeds 1/4 mile. Property C, which is within 1/4 mile of both Properties A and B, would not be aggregated with either property since it is not one of the 27 named source categories for fugitive emissions. In the event that Property C was one of the named source categories, all three properties would be aggregated as a site because of interdependence.

**Figure 3 - Fugitive Emissions from Properties Under Common Control**

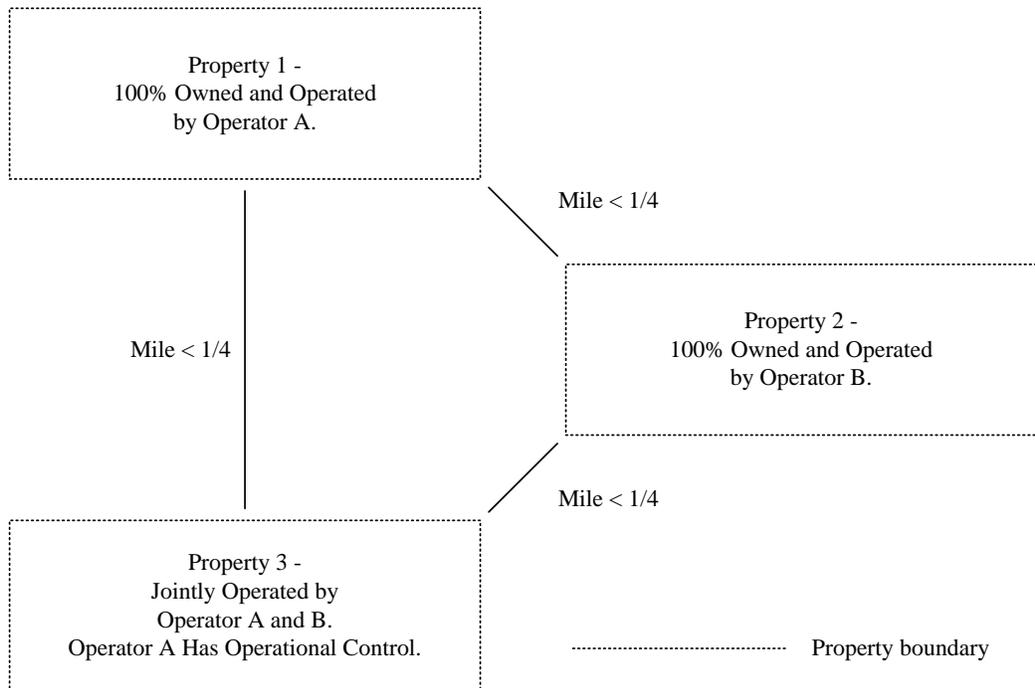


## **Example of Common Control**

Figure 4 illustrates three properties, all of which are within 1/4 mile of each other. Operator A and Operator B are two entirely separate persons. Property 1 is 100% owned and operated by Operator A. Likewise, Property 2 is 100% owned and operated by Operator B. Both Operator A and Operator B jointly operate Property 3, with Operator A having operational control of the property.

Control will be determined considering such factors as outlined in the Common Control section of this document. There is no common ownership or control relating Properties 1 and 2; therefore, these two properties are not aggregated for 30 TAC Chapter 122 purposes. While there is some degree of common ownership between Properties 2 and 3, there is no common control regarding daily operations; hence, these two properties are not aggregated for 30 TAC Chapter 122 purposes. However, Properties 1 and 3 are considered one site because they are less than 1/4 mile apart and under common control.

**Figure 4 - Common Control Example**



## **Common Control of Independently Managed Subsidiaries**

An illustration of three properties, all of which are within 1/4 mile of each other is presented in Figure 5. Operator A and Operator B are independently managed subsidiaries of the same parent company. Property 1 is 100% owned and operated by Operator A. Likewise, Property 2 is 100% owned and operated by Operator B. Property 3 is jointly owned by Operator A and Operator B, with Operator A having operational control of the property

Since Operator A and Operator B are independently managed subsidiaries of the same parent company, control of all the properties shall be determined case-by-case. Factors outlined in the Common Control section of this document shall be considered for this determination.

If it is determined that Properties 1 and 2 are under common control, the two properties would be aggregated as a site. Property 3 would also be brought into this aggregation since it is within 1/4 mile of Property 1 and Operator A has control of both properties.

However, if it is determined that Properties 1 and 2 are not under common control, although within 1/4 mile of each other, they would not be aggregated. Property 1 would, nevertheless, be aggregated with Property 3 since it is within 1/4 mile and Operator A has control of both properties. Property 2 and Property 3 would not be aggregated since common control does not exist between the two properties.

**Figure 5 - Common Control of Independently Managed Subsidiaries**

