

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

August 8, 2001

4APT-ARB

Mr. Errol Reksten
Chattanooga-Hamilton County
Air Pollution Control Bureau
3511 Rossville Boulevard
Chattanooga, Tennessee 37407

Dear Mr. Reksten:

You have requested the U.S. Environmental Protection Agency (EPA) Region 4's opinion regarding air emission source permitting for DuPont Sabanci (DUSA) International, the joint venture between E.I. du Pont de Nemours (DuPont) and Sabanci Holding. DUSA International constitutes a portion of the chemical manufacturing complex in Chattanooga, Tennessee, previously owned entirely by DuPont. You have asked for an opinion on whether the DuPont portion of the complex and the DUSA International portion should be considered a single source for title V operating permit purposes and prevention of significant deterioration (PSD) new source review permitting purposes. The specific question is whether DuPont and DUSA International should be considered "under the control of the same person (or persons under common control)" as required to establish that two entities should be treated as the same source under title I and title V of the Clean Air Act.

In this letter, we respond to your request based on how we believe such a request would be resolved under the federal PSD rules in Title 40 Code of Federal Regulations and under EPA policies. Our response does not represent how you must interpret the title V and PSD permitting requirements or Chattanooga-Hamilton County's approved regulations, nor does it represent final agency action. Instead, this letter provides guidance to assist you, the permitting authority, in making permitting decisions that are practical, consistent, and supportive of the provisions set forth in the Clean Air Act and implementing regulations.

Our opinion is that DuPont and DUSA International are under common control and should be considered a single source for title V and PSD permitting purposes. In arriving at this opinion, we have reviewed a letter from DuPont dated July 6, 2001, and we have also reviewed several of EPA's previous common control assessments. Two of these previous assessments are especially relevant because they involved other DuPont joint ventures, one in Kentucky (Region 4) and the other in New Jersey (Region 2). Letters providing the assessments in these two cases are enclosed. Although we

recognize that each common control opinion should be reached on a case-by-case basis, the circumstances surrounding the DUSA International joint venture are very similar to those of the Kentucky and New Jersey DuPont joint venture cases.

In both the Kentucky and New Jersey cases, EPA's conclusion was that the entity owned solely by DuPont and the joint venture entity should be considered a single source. Factors that were taken into account in reaching this conclusion included the amount of joint ownership (directly or indirectly), voting interest, contractual relationships, liability, managerial hierarchy, and dependency (i.e., process, products, support). Other factors included sharing of personnel, payroll activities, employee benefits, equipment or other property such as pollution control equipment. (See the enclosed letters for more details.)

According to DuPont's letter dated July 6, 2001, DuPont has 50 percent joint ownership in DUSA International, DuPont has voting interest, two of the six Directors on DUSA International's Board of Directors are DuPont employees and a third (the Chief Executive Office of DUSA International) is a former DuPont employee on loan to DUSA International, and DUSA International is contractually dependent on DuPont for site services, administrative services, and support services. Therefore, consistent with the conclusions reached by EPA in the Kentucky and New Jersey DuPont joint venture cases, it is our opinion that DuPont and DUSA International are under common control and should be considered one source for title V and PSD permitting purposes.

The permitting authority is responsible for using its discretion in determining the most practical method to permit a single major stationary source with multiple owners and/or multiple operations. Title V permitting options for the two DuPont cases mentioned above were also consistent with the options discussed during our conference call on May 17, 2001. These options are either to issue separate title V permits that cross reference each other, or to issue one title V permit with separate responsible parties.

If you have any questions concerning this letter, please contact Ms. Daphne Wilson of the EPA Region 4 staff at (404) 562-9098.

Sincerely,

/s/

R. Douglas Neeley
Chief
Air and Radiation Technology Branch
Air, Pesticides, and Toxics
Management Division

Enclosures

cc: Guy V. Johnson, DuPont