



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

May 1, 2002

Gary E. Graham
Environmental Engineer
Commonwealth of Virginia
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glenn Allen, Virginia 23060

Re: Common Control for Maplewood Landfill, also known as Amelia Landfill, and Industrial Power Generating Corporation

Dear Mr. Graham:

In your June 11, 2001, e-mail, you requested that the U.S. Environmental Protection Agency ("EPA") review the proposed project in which USA Waste of Virginia, Inc. (Maplewood's owner/operator) will sell its landfill gas to Industrial Power Generating Corporation ("INGENCO"), a power generating company. Your overarching question was whether Maplewood and INGENCO are under "common control" for purposes of determining whether Maplewood and INGENCO are a single stationary source under PSD and Title V. You also stated that landfill gas will comprise up to 70 percent of the INGENCO's fuel and want to know whether this is relevant to a common control determination.

Before addressing the question of common control, however, EPA would like to address compliance with the landfill gas regulations at 40 CFR Part 60, Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills because a common control or source determination under PSD or Title V does not limit Maplewood's and INGENCO's obligations under Subpart WWW. EPA has consistently concluded that landfills are ultimately responsible for controlling landfill gas. (*See, e.g.*, the attached June 21, 2000, letter to Robert Koster, Lane County Air Pollution Authority from Douglas E. Hardesty, EPA, Region 10). If the landfill gas is sold, responsibility for compliance is not sold as well. Moreover, compliance responsibility cannot be apportioned according to the percentage of gas burned at each facility. If EPA determines that landfill gas is not being controlled in compliance with Subpart WWW, EPA would consider taking enforcement action against Maplewood and INGENCO, no matter which company is burning the gas.

Your common control question goes to the larger question of whether the Maplewood Landfill and the INGENCO power generation facility should be considered a single stationary source under PSD and Title V. The PSD regulations define a stationary source as all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or



more adjacent or contiguous properties, and are under the control of the same person. 40 C.F.R. 51.166(b)(5) &(6). The Title V regulations adopt a similar definition. (*See* 40 C.F.R. 70.2) As the INGENCO facility will be located on Maplewood property, the two facilities are located on “adjacent or contiguous properties.” Thus, if the INGENCO facility and Maplewood also belong to the same industrial grouping and are under common control, then they would constitute a single source for purposes of PSD and Title V.

EPA has provided a great deal of guidance to States and sources regarding determinations of this nature since 1980. Issues of common control, in particular, have been discussed in EPA a September 18, 1995, letter to Peter Hamlin, Iowa Department of Natural Resources, from William Spratlin, U.S. EPA (“Hamlin letter,” copy enclosed). Other EPA guidance and correspondence can be found at:

<http://www.epa.gov/region07/programs/artd/air/policy/search.htm>

EPA’s assessment of the question of common control is based on its understanding of the arrangement between INGENCO and Maplewood. Under the terms of the landfill gas purchase agreement, Maplewood has agreed to sell to INGENCO all of its landfill gas. INGENCO is obligated to pay for all of the gas that Maplewood provides, even if INGENCO does not use the gas. Consistent with the landfill gas purchase agreement, it is our understanding that INGENCO has built an electricity generating plant on undeveloped property, leased from Maplewood, and located next to the landfill. This plant is owned and operated by INGENCO. The engines at the INGENCO facility are to run on various types of liquid fuel, including diesel, supplemented by Maplewood’s landfill gas. INGENCO has asserted that its engines can run solely on these liquid fuels, but cannot be operated using only landfill gas. Therefore, EPA understands that INGENCO must have fuel vendors other than Maplewood Landfill in order to operate the electricity generating plant.¹ Nonetheless, up to 70% of INGENCO’s fuel needs could be met by Maplewood’s landfill gas.

As explained in the Hamlin letter, the fact that INGENCO will be located on property owned by Maplewood creates a presumption of common control. Moreover, the fact that Maplewood’s entire output of landfill gas will be purchased by INGENCO further supports this presumption, as does the likelihood that a high percentage of INGENCO’s fuel needs will be met by Maplewood’s landfill gas. However, determinations of this nature are very source-specific, and in a situation such as this the permitting authority may find it necessary to look carefully at the contracts or lease agreements between the parties, and other relevant information before reaching a determination. (*See, e.g.* the August 2, 1996, memorandum from John S. Seitz, “Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act”). Thus, in answer to one

¹ For purposes of PSD and Title V, INGENCO’s potential to emit should be based on an air emissions “worst case scenario” and the type of fuel used at the facility. Similarly, the calculation of Maplewood’s potential to emit should reflect the fact that the landfill may flare all of the landfill gas it produces.

of your questions, the percentage of Maplewood's landfill gas that INGENCO burns relative to some other type of fuel may have some significance to a determination of common control, but is only one of many factors to be considered.

There are a number of factors supporting a determination that INGENCO and Maplewood are *not* under common control. Under the terms of the agreement between INGENCO and Maplewood, INGENCO is responsible for all capital improvements on the leased property to create the electricity generating plant. Maplewood, in turn, will continue to own and operate the landfill gas collection system and the flare that burns the landfill gas. If the landfill gas is not used or resold by INGENCO, the gas will be flared at the Maplewood facility. INGENCO will control the valve that shunts the landfill gas to the electricity generating engines or to Maplewood's flare.

In addition, based on statements in correspondence from Maplewood and INGENCO, conversations with a representative of USA Waste of Virginia, Inc., and a review of Dun and Bradstreet's reports, EPA has concluded that Maplewood and INGENCO have no financial interest in one another. EPA has found no indication that the companies have common employees, officers, or members of their respective governing boards, or that they share equipment (including pollution control equipment), payroll activities, employee benefits, health plans, or other administrative functions. Also, neither facility has control over the other's compliance responsibilities. The landfill and INGENCO do not share intermediates, products, byproducts, manufacturing equipment, or property other than as explained above. That is, INGENCO has leased property from Maplewood and will purchase some percentage of its fuel from Maplewood. Maplewood, however, currently receives its power through a local power utility and there is no indication that it will receive power directly from INGENCO. There are also no arrangements for Maplewood to accept INGENCO's municipal solid waste. Finally, neither facility is dependent on the other; if either Maplewood or INGENCO shuts down, the other facility can continue to operate at full capacity.

Your request for EPA's opinion also referred to EPA's February 11, 1998, letter to Terry Godar, VADEQ that addressed common control for another Virginia landfill. In its letter to EPA, VADEQ noted that "The gas collection and the control system ... [landfill gas energy recovery]... will be located on the landfill property *and will be used exclusively to collect emissions from the landfill and to control those emissions through energy recovery.*" (emphasis added). EPA cited this interdependence between the landfill and the gas collection and control system as an indication that the two facilities were under common control.

In contrast to the situation outlined in the original letter from VADEQ, INGENCO's facility does not need landfill gas to operate; the engines at use at the facility can run exclusively on liquid fuels such as diesel. In addition, Maplewood owns and controls its gas collection system and will continue to maintain its own flare. Maplewood accordingly does not need INGENCO to destroy the landfill gas as required by 40 CFR part 60, subpart WWW. Based on our understanding of the facts of this situation, it appears that the purpose of the USA Waste of Virginia, Inc./INGENCO purchase agreement is to allow INGENCO to purchase landfill gas to either run its engines or to sell to other purchasers; not to destroy nonmethane organic

compounds (“NMOC”). These are important differences from the situation described in the letter to Mr. Godar.

The Commonwealth of Virginia has been granted full approval of the PSD and Title V operating permits programs. As the permitting authority, you must ultimately determine whether Maplewood and INGENCO are under common control for purposes of implementing your PSD and Title V programs. However, if EPA were making the determination, we would find, based on the facts outlined above, that Maplewood and INGENCO are not under common control. Despite the presumption of common control discussed above, the “major” indicators of common control (*see* Hamlin letter at 2) do not point towards such a finding. Therefore, EPA would not consider these two facilities to be one source under PSD or Title V.

If you have additional questions about this, or other issues, call Bowen (Chip) Hosford at (215) 814-3158.

Sincerely,

Judith M. Katz, Director
Air Protection Division

- Enclosures:
- 1) Letter to Robert Koster, Lane County Air Pollution Authority from Douglas E. Hardesty, EPA, Region 10, June 1, 2000
 - 2) Letter to Peter Hamlin, Iowa Department of Natural Resources, from William Spratlin, U.S. EPA, September 18, 1995
 - 3) Memo from John S. Seitz, EPA, “Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act,” August 2, 1996
 - 4) Letter to Terry Godar, Virginia Department of Environmental Quality, from Makeeba A. Morris, EPA, February 11, 1998