



Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
(800) 451-6027
www.IN.gov/idem

TO: Interested Parties / Applicant

DATE: March 27, 2008

RE: Veolia ES Blackfoot Landfill, Inc./ 125-26125-00033

FROM: Matthew Stuckey, Deputy Branch Chief
Permits Branch
Office of Air Quality

Determination

Please be advised that on behalf of the Commissioner of the Department of Environmental Management, I have made a determination regarding the enclosed matter. Pursuant to IC 4-21.5-3-5(f) this order is effective fifteen (15) days after it is served. When served by U.S. mail, the order is effective eighteen (18) calendar days from the mailing of this notice pursuant to IC 4-21.5-3-2(e).

If you wish to challenge this decision, IC 4-21.5-3-7 requires that you file a petition for administrative review. This petition may include a request for a stay of effectiveness and must be submitted to the Office of Environmental Adjudication, 100 North Senate Avenue, Suite N 501E, Indianapolis, IN 46204, **within eighteen (18) calendar days of the mailing of this notice**. The filing of a petition for administrative review is complete on the earliest of the following dates that apply to the filing:

- (1) the date the document is delivered to the Office of Environmental Adjudication (OEA);
- (2) the date of the postmark on the envelope containing the document, if the document is mailed to OEA by U.S. mail; or
- (3) the date on which the document is deposited with a private carrier, as shown by receipt issued by the carrier, if the document is sent to the OEA by private carrier.

The petition must include facts demonstrating that you are either the applicant, a person aggrieved or adversely affected by the decision or otherwise entitled to review by law. Please identify the permit, decision, or other order for which you seek review by permit number, name of the applicant, location, date of this notice and all of the following:

- (1) the name and address of the person making the request;
- (2) the interest of the person making the request;
- (3) identification of any persons represented by the person making the request;
- (4) the reasons with particularity, for the request;
- (5) the issues, with particularity, proposed for consideration at any hearing; and
- (6) identification of the terms and conditions which, in the judgment of the person making the request, would be appropriate in the case in question to satisfy the requirements of the law governing documents of the type issued by the Commissioner.

If you have technical questions regarding the enclosed documents, please contact the Office of Air Quality, Permits Branch at (317) 233-0178. Callers from within Indiana may call toll-free at 1-800-451-6027, ext. 3-0178.

Enclosure
FN-determination. dot 12/03/07



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
Toll Free (800) 451-6027
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Leslie Wong
Spirit Environmental
17350 SH 249, Suite 249
Houston, Texas 77064

March 27, 2008

RE: Response to Review Request
No. 125-26125-00033
Collocated Source Determination
Veolia ES Blackfoot Landfill, Inc.
Plant ID: 125-00033

Dear Ms. Wong:

On February 21, 2008, a review request for a collocated source determination was received by the Indiana Department of Environmental Management (IDEM), Office of Air Quality (OAQ) from Spirit Environmental on behalf of ESG Blackfoot Landfill Gas Power Station. ESG Blackfoot Landfill Gas Power Station proposes to develop, construct and operate an internal combustion engine driven electrical generation facility using landfill gas from Veolia ES Blackfoot Landfill, Inc. as fuel. Spirit Environmental proposed three options for air pollution permitting of the proposed electrical generation facility. The options proposed are as follows:

- 1) ESG Blackfoot Landfill Gas Power Station is permitted as a fully independent facility;
- 2) ESG Blackfoot Landfill Gas Power Station is permitted for its own equipment and emissions while using the combined power station and landfill emissions for the purpose of determining program applicability (Administratively Separate Permits); or,
- 3) ESG Blackfoot Landfill Gas Power Station is permitted as an expansion of the landfill under its current air permit.

IDEM, OAQ has examined whether the power station and the landfill will be part of the same major source. The term "major source" is defined at 326 IAC 2-7-1(22). In order for these two sources to be considered one major source, they must meet all three of the following criteria:

- (1) the sources must be under common ownership or common control;
- (2) the sources must have the same two-digit Standard Industrial Classification (SIC) Code or one must serve as a support facility for the other; and,
- (3) the sources must be located on contiguous or adjacent properties.

IDEM, OAQ will first look at whether the two plants are under common ownership or common control. The plants are owned by separate corporations that have no common parent company. Therefore, no common ownership exists.

In 1996, IDEM adopted a nonrule policy document, Air-005-NPD, titled Guidance on Definition of "Source" for Collocated Activities. The guidance endorses the but/for test for determining whether common control exists when there is no common ownership. The test considers the total relationship between the two sources. Common control exists if the test is satisfied.

The but/for test examines whether an auxiliary plant would exist absent the existence of the primary plant. This is an examination of whether the auxiliary plant is so dependent on the primary plant that if the primary plant were to cease operations, then the auxiliary would also have to shut down. The ESG power plant purchases landfill gas from Veolia to fuel the power plant's internal combustion engines. The engines are the power source for generating electricity. The power plant has no other source of fuel. If the landfill were to cease providing landfill gas, the power plant would not continue to operate. Therefore, common control exists.

The second element of the major source definition is whether the sources have the same two-digit Standard Industrial Classification (SIC) Code, or if one serves as a support facility for the other. The SIC Codes can be found at <http://www.osha.gov/pls/imis/sicsearch.html> on the United States Department of Labor, Occupational Safety and Health Administration website. The proper two-digit code for the power plant, whose main product is electricity, is Major Group 49: Electric, Gas, And Sanitary Services. The landfill's two-digit code is also Major Group 49. The two sources have the same two-digit SIC Code.

A plant is considered a support facility if at least 50% of its output is dedicated to another plant. None of the electricity from the power plant would go to the landfill. The landfill's primary output is the work it does in accepting and processing sanitary waste. The landfill currently flares off the landfill gas as it is created. The landfill will continue to maintain its flare for those times when the power plant is not operating. A pipeline from the landfill will supply landfill gas to the power plant. The landfill gas sold to the power plant will be less than 50% of the total output of the landfill. Therefore, neither plant provides 50% or more of its output to the other. Since the power plant and the landfill have the same two-digit SIC Code and a direct landfill gas pipeline will connect the two plants, they meet the second element of the definition of a major source.

The plants are located on contiguous properties. Therefore, the third element of the definition is met. Since the plants are under common control, have the same two-digit SIC Code, have a direct pipeline connection, and are located on contiguous properties, IDEM, OAQ has determined that the plants met all the elements of the definition and are part of the same major source. IDEM, OAQ will issue administratively separate permits to the sources that reflect that the two sources are part of the same major source.

Pursuant to the provisions of 326 IAC 2-7-11(a)(7), no revisions to the permit was necessary to accommodate this source determination. All conditions of the permit shall remain unchanged and in effect. Please attach a copy of this letter to the front of the original permit.

This decision is subject to the Indiana Administrative Orders and Procedures Act - IC 4-21.5-3-5. If you have any questions on this matter, please contact Doug Wagner, 100 North Senate Avenue, MC61-53 IGCN 1003, Indianapolis, Indiana 46204-2251, at (317) 233-2629 or at (800) 451-6027 (ext 3-2629).

Sincerely,

Original signed by
Trip Sinha, Section Chief
Permit Review Section 2
Permits Branch
Office of Air Quality

CC: File - Pike County
U.S. EPA, Region V
Air Compliance Section
Compliance Data Section
Administrative and Development
Mr. Joe Sutton
Veolia ES Blackfoot Landfill, Inc.
3726 SR 64 E, Winslow, Indiana 47598