

Florida Department of Environmental Protection

Memorandum

To: Al Linero, P.E.
Administrator, New Source Review Section

From: Joseph Kahn, P.E.
New Source Review Section

Date: July 15, 1999

Re: Facility Determination for Sea Ray Boats, Inc.

Per your request, I have evaluated whether the proposed Sea Ray Cape Canaveral Plant and the existing Merritt Island plant, located approximately one mile apart, constitute one facility pursuant to Florida's rules. I reviewed the information and photographs you obtained and Sea Ray's July 14, 1999 letter to John Reynolds. I also reviewed available EPA letters and memos and Florida Department of State's corporation public records, and discussed this matter with Pat Comer. This determination was made pursuant to Florida's rules for its Title V and PSD programs.

Of particular importance are Rules 62-210.200(126), 62-210.200(178) and 62-212.400(2)(d)2., F.A.C., which set forth the considerations required to determine what constitutes a facility with respect to the Title V and PSD programs. Rule 62-210.200(126), F.A.C., defines "Facility" as all of the emissions units which are located on one or more contiguous or adjacent properties, and which are under the control of the same person (or persons under common control). Rule 62-210.200(178), F.A.C., defines "Major Source of Air Pollution" or "Title V Source" as a facility containing an emissions unit, or any group of emissions units, that: (a) emits 10 tons per year or more of any one hazardous air pollutant (HAP), 25 tons per year or more of any combination of HAPs, or any lesser quantity of a HAP as established through EPA rulemaking; (b) belongs to the same two-digit Standard Industrial Classification (SIC) Major Group, with a potential to emit 100 tons per year or more of any regulated air pollutant, considering fugitive emissions for HAPs; and (c) belongs to the same two-digit SIC Major Group, with a potential to emit 250 tons per year or more of any regulated air pollutant, not considering fugitive emissions. Rule 62-212.400(2)(d)2., F.A.C., establishes that "New Major Facilities" are those with emissions units in the same SIC Major Group that have potential emissions equal to or greater than 250 tons per year if not on the list of facility categories in Table 212.400-1.

These rules establish the criteria for determining what constitutes a facility for Title V and PSD purposes. For the two Sea Ray plants to be considered one facility, they would have to be located on contiguous or adjacent properties, be under the control of the same person, and be within the same two digit SIC Major Group, except for purposes of regulation for HAPs where the last criterion is not required. These criteria of Florida's rules are consistent with EPA's regulations and guidance. Addressing these criteria, one concludes:

1. The two plants are under common control (control of the same person). Although Sea Ray has stated that separate management will be installed at each facility, both facilities are owned by, and under the ultimate control of, Sea Ray Boats, Inc. A corporation is considered to be a person under Florida law. Interestingly, in a letter to the South Carolina Department of Health and Environmental Control dated July 31, 1998, EPA found that two corporations were under common control because they shared two common directors on their respective Board of Directors. In this case, there is only one corporate owner, more clearly establishing common control.

Memo to Al Linero, P.E.

July 15, 1999

2. The two plants are adjacent. EPA has established that adjacent should be defined as "close to or nearby" (see EPA's letter of March 23, 1995 to the Illinois Environmental Protection Agency) but has not established a distance requirement. In separate determinations, EPA has found that sources may be separated by other property and may be a mile or more away and still be adjacent. EPA has not been completely consistent in determining what distances are too far to constitute adjacent. For example, EPA has stated that a distance of 20 miles is too far (45 FR 52895, 8/7/80), but a later determination by EPA Region 8 in a letter of May 21, 1998 to the Utah Division of Air Quality references a previous recommendation that two plants located over 21 miles apart be considered adjacent.

The Region 8 letter suggests several questions that Utah use in considering whether two facilities are adjacent, and Sea Ray addressed these particular questions in its letter to the Department dated July 14th. It is clear from EPA's letter that these questions are not inclusive, but are intended to help determine whether two plants may operate as a single source. Other EPA correspondence does not suggest that adjacency must include an interaction between manufacturing facilities, and the Department does not believe that such an interaction is required for two plants to be adjacent. However, it may be illustrative to examine the potential for interaction in this case. Sea Ray states that the new facility is capable of manufacturing a product that is larger than the existing plant can produce. This is clearly a product line expansion. It is entirely conceivable that Sea Ray would have accommodated this expansion at the site of its existing plant if it had sufficient space to do so. Also, there is nothing to prevent Sea Ray in the future from manufacturing at its proposed plant, the same or similar smaller product that is produced at the current plant, if economic conditions warrant such a business decision. In any event, the two Sea Ray plants, located within approximately a mile of each other, connected by public roadway and accessible by water, are easily considered to be adjacent. No further evaluation of interaction is required for this determination.

3. The two plants belong to the same SIC Major Group, Group 37, Transportation Equipment. In fact, the plants belong to the same four-digit industry number: 3732, Boat Building and Repairing. This criterion is required for the Title V and PSD programs, but is not required for regulation of HAPs.

My conclusion is that the existing and proposed Sea Ray plants constitute one facility for purposes of Title V, PSD, and regulation of HAPs.