UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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MAY 24 2000

Mr. James Salvaggio
Director of Air Quality
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 8468
400 Market Street
Harrisburg, PA 17105-2063

Dear Mr. Salvaggio:

This is in response to your request for EPA to make a determination on whether the project between Northeast Hub Partners (NE HUB) and United Salt consisting of a proposed salt plant and solution mining and gas storage operations should be considered a single facility for applicability under Prevention of Significant Deterioration (PSD) and New Source Review (NSR) requirements.

On April 17, 2000, a meeting was held between NE HUB, the Pennsylvania Department of Environmental Protection (PADEP) and the Environmental Protection Agency (EPA) at the PADEP office in Harrisburg, Pennsylvania to discuss the proposed project. During the meeting, extensive information was provided on the merits of the project as well as the legal difficulties encountered with local competitors. It was indicated that the project would involve solution mining of a salt formation to create multiple gas storage caverns over a 10-20 year period. Rather than use subsurface re-injection/disposal of the brine, which is a by-product of the solution mining, NE HUB would contract with United Salt Company to recover salt from the brine. Furthermore, once the salt is recovered, the process water would be returned to NE HUB to be used again in the solution mining process in an effort to conserve fresh water. United Salt will be located three miles from NE Hub on land currently owned by NE Hub's parent company. This land will eventually be turned over to United Salt once its obligations under the Project Agreement have been fulfilled. There will be three dedicated pipelines between NE Hub and United Salt to allow brine to be pumped to United Salt, pump process water back to NE Hub and to return mineral deposits to the bottom of the caverns. NE Hub has committed to furnishing at least 1350 gal/min of the 1600 gal/min (84%) of the brine capacity that United Salt's operation can process through a Brine agreement.

EPA recognizes that the proposed salt recovery and water conservation efforts proposed by NE HUB and United Salt have significant environmental benefits and that such practices need to be encouraged. However, in making a single source applicability determination for purposes of major new source air permitting, EPA relies on specific federal regulations and guidance that evaluates the relationship between these two facilities and whether they are operating together as one source, based on a "common sense" notion of source. Upon review of the information presented at the April 17 meeting, and the Project Agreement subsequently forwarded to EPA by NE Hub, EPA does believe that NE Hub and United Salt meet the "common sense" notion of source and should be considered together as one major source for purposes of air permitting applicability. EPA's rationale for this determination is discussed below.

Pennsylvania's definition of source under its federally approved Prevention of Significant Deterioration (PSD) Program is the same as EPA's definition, which is:

> "All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual...".

Furthermore, in the August 7, 1980 preamble to the PSD regulations (45 FR 52695), EPA clarified the definition of "support facility", which states:

> "Each source is to be classified according to its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Thus, one source classification encompasses both primary and support facilities, even when the latter includes units with a different two-digit SIC code. Support facilities are typically those which convey, store, or otherwise assist in the production of the principal product. Where a single unit is used to support two otherwise district sets of activities, the unit is to be included within the source which relies most heavily on its support.".

Therefore, in defining the source where a potential support relationship exists between two or more facilities in a PSD or attainment area, the difference in SIC codes becomes irrelevant and the only factors remaining to be considered are whether the facilities are contiguous or adjacent and under common control as considered according to the "common sense" notion of what constitutes a single source. Under nonattainment new source review, Pennsylvania's federally approved definition of "facilities" found at 25 Pa. Code Chapter 127, Subpart E does not include a requirement for sources to have the same SIC code to be part of the same facility. So, here too the only factors to be considered are whether the facilities are contiguous or adjacent and under common control.

EPA determines whether two sources are considered to be contiguous or adjacent on a case-by-case basis. This has been stated in the preamble to the August 7, 1980 PSD regulations and reiterated in a number of EPA guidance documents. The determination of whether two sources are adjacent is based on the "common sense" notion of source, and whether the distance between two facilities is sufficiently small that it enables them to operate as a single source. In EPA's letter dated January 15, 1999, to the Pennsylvania Department of Environmental Protection (PADEP) regarding a PSD applicability determination for United Salt, EPA listed several questions that could be used to evaluate the relationship between United Salt and NE Hub. During our April 17 meeting, NE Hub indicated that United Salt would be located three miles from NE Hub on land currently owned by an NE Hub parent company. It was further indicated that there would be dedicated pipelines between the facilities, one of which will be providing all of the brine that United Salt would use to extract its salt for sale. It was stated that United Salt is locating where it is to enable NE Hub to provide them with the brine needed for its salt production

plant. This operation will last for about 10-20 years and, during this time, NE Hub would be the primary provider of feed for United Salt's operation. Given the proximity of these two sources, the dedicated pipelines between them and the fact that United Salt would not have a viable operation at this location but for the existence of NE Hub, it is clear that these two facilities meet EPA's criteria for being considered to be contiguous or adjacent.

The remaining factor to be considered in defining the source is whether a common control relationship exists between NE Hub and United Salt. As indicated in EPA's January 15, 1999 letter to PADEP, a determination of common control may be made on the basis of direct control or indirect control. Facilities are considered to be under direct control when they are owned or operated by the same controlling entity. Facilities may be considered to be under indirect control when goods or services, provided by one facility which is collocated and under a contract-for-service agreement with the other facility, is integral to or contributes to the output provided by the separately owned or operated activity with which it operates or supports. In this case, while there is no direct ownership of both NE Hub and United Salt, an indirect control relationship exists which will be established through Project and Brine Agreements between these two companies. As indicated previously, United Salt will be located in close proximity to NE Hub, on land owned by NE Hub's parent company, with dedicated pipelines connecting the two facilities. NE Hub, as stated in the Project Agreement, will incur all costs associated with the permitting and construction of United Salt. Upon closing the Project Agreement and commencement of the Brine Supply Agreement, the land which United Salt is constructing on will be turned over to them for an agreed upon price equivalent to a portion of the investment NE Hub made in constructing the salt plant. The Brine Supply Agreement, required pursuant to the Project Agreement, will establish a relationship between NE Hub and United Salt that lasts for 10-20 years. The provisions contained in the Project Agreement (including the commitment to complete a Brine Supply Agreement) establish an indirect control relationship between these two facilities.

Therefore, based on the "common sense" notion of source, EPA believes that NE Hub and United Salt should be considered to be both contiguous or adjacent and under common control and will be operating together as though they were one source. If you have any questions regarding this determination, please contact Kathleen Henry, Chief, Permits and Technical Assessment Branch at (215) 814-2175, or Donna Weiss of her staff at (215) 814-2198.

Sincerely,

Judith M. Katz, Director
Air Protection Division