



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

Mr. John Slade, Chief
Division of Permits
Pennsylvania DEP
Rachel Carson State Office Building
P.O. Box 8468
Harrisburg, Pa 17105

Dear Mr. Slade:

I am writing in response to your letter dated December 9, 1998, regarding a New Source Review (NSR)/Prevention of Significant Deterioration (PSD) applicability determination for United Salt Northeast, LLC (USN), plan approval application #59-309-009. In your letter you indicate that USN will receive salt brine from a facility operated by Northeast Hub Partners, L.P. (NE Hub) and that you have made a preliminary determination that these two facilities are separate sources, for purposes of applicability of both the PSD and NSR programs. The basis for your determination is that you do not consider these facilities to be "contiguous or adjacent" based on the definitions found in Webster's 9th New Collegiate Dictionary. EPA has indicated in previous guidance that determining whether facilities are contiguous or adjacent depends not only on the physical distance between them but on the type of nexus (relationship) between the facilities. The fact that the facilities are three miles apart is not, in and of itself, adequate justification for not considering them to be contiguous or adjacent.

Based on the information you provided, EPA does not have sufficient information to determine whether USN and NE Hub should be considered separate sources for PSD/NSR purposes. In defining a source, EPA looks at whether the facilities should be considered contiguous or adjacent as well as whether they should be considered to be under common control and if so, then they would be considered part of the same source. Both of these factors are evaluated on the basis of the relationship between the facilities and whether they are operating as one source based on the "common sense notion" of source. (The phrase common sense notion appears on page 52695 of the August 7, 1980 PSD preamble, with regard to how to define source.) EPA has issued guidance in the past on both the issue of contiguous/adjacent and common control. Listed below are some of the factors outlined in previous guidance. We recommend that you reconsider your preliminary evaluation that USN and NE Hub should be considered separate sources in light of these factors.

A memorandum dated May 21, 1998, from EPA, Region VIII to the State of Utah, indicates that the distance associated with adjacent must be considered on a case-by-case basis, and that this is explained in the preamble to the August 7, 1980 PSD rules. It further indicates that the evaluation of adjacent depends on the common sense notion of source. Hence, you need to evaluate whether the distance between the two facilities is sufficiently small that it enables them to operate as a single source. Below are some types of questions that Pennsylvania could pose in this evaluation. Not all the answers to these questions need be positive for two facilities to be considered adjacent.

- ! Was the location of the new facility chosen primarily because of its proximity to the existing facility to enable the operation of the two facilities to be integrated? In other words, if the two facilities were sited much further apart, would that significantly affect the degree to which they may be dependent on each other?
- ! Which company, NE Hub or USN, established the facility which USN is going to operate?
- ! Will materials be routinely transferred between the facilities? (In your letter you indicate that the brine will be conveyed by at least 3 miles of dedicated pipeline from NE Hub to USN where the salt will be removed and the water/glycol returned to NE Hub via the pipeline. So the answer to this question appears to be yes.) How often will this transfer take place and how much will be transferred? Will USN receive brine from anyone else? If so, how much? What percent of USN's brine extraction activities are, and will in the future be, dedicated to NE Hub?
- ! Will the production process itself be split in any way between the facilities, i.e., will one facility produce an intermediate product that requires further processing at the other facility, with associated air pollutant emissions? (In your letter you indicate that the salt will be separated and the water/glycol returned to NE Hub via the pipeline. How will it be separated and will there be VOC emissions associated with this process?)
- ! Will managers or other workers frequently shuttle back and forth to be involved actively in both facilities? Besides production line staff, this might include maintenance and repair crews, or security or administrative personnel.

Based on the responses to these types of questions, EPA has made single source determinations where facilities did not have a common border but were nevertheless considered to be contiguous or adjacent. The above referenced letter to Utah contains examples of some of these determinations.

In determining whether two sources should be considered under common control, a variety of factors must be considered including the nature of any contractual, lease, or other agreements that establish how the facilities interact with each other. A determination of common control may be made on the basis of direct control, such as when the facilities are owned or operated by the same controlling entity, or on the basis of indirect control, such as when the goods or services provided by a collocated, contract-for-service entity are integral to or contribute to the output provided by a separately owned or operated activity with which it operates or supports. Hence, it is important to ascertain the nature of the relationship between USN and NE Hub. These facilities are located within close proximity of each other with a dedicated pipeline to transport the intermediate product. USN will be providing an important service to NE Hub and vice versa. It appears possible that a control relationship exists. Additional information is needed to evaluate what relationship exists between these two facilities. The type of questions we recommend asking in performing this analysis are:

- ! What is the dependency of one facility on the other? If one shuts down, what are the limitations on the other to pursue outside business interests?
- ! Does one operation support the operation of the other? What are the financial arrangements between the two entities?
- ! Do the facilities share intermediates, products, byproducts, or other manufacturing equipment? Can the new source purchase raw materials from and sell products or byproducts to other customers? What are the contractual arrangements for providing goods and services?
- ! Do the facilities share equipment, other property, or pollution control equipment? What does the contract specify with regard to the pollution control responsibilities of the contractee? Can the managing entity of one facility make decisions that affect pollution control at the other facility?

- ! Who accepts the responsibility for compliance with air quality control requirements? What about for violations of the requirements?
- ! Do the facilities share common workforces, plant managers, security forces, corporate executive officers or board executives?
- ! Do the facilities share common payroll activities, employee benefits, health plans, retirement funds, insurance coverage, or other administrative functions?

This list of questions is not exhaustive; it serves only as a screening tool. If facilities can provide information showing that a new facility has no ties to an existing facility, or vice versa, then the new facility is most likely a separate source under its own control. However, if the facilities respond in the positive to one or more of the major indicators of control then the new facility may be considered under the control of the existing source, or under common control of both companies, and it would not be considered a separate entity for permitting purposes. Absent any major relationships, the new facility may still be considered to be under the control of the existing source if a significant number of the indicators point to common control.

I have enclosed a letter dated September 18, 1995, from EPA Region VII to the State of Iowa, which provides more detailed guidance on the issue of common control. It recommends additional avenues to pursue in investigating this matter; it provides a list of EPA references on common control, as well as noting important cautions of any short term or interim contracts that establish separate operating companies or separate operations on noncontracting parcels of land. I have also enclosed a copy of a memorandum dated August 2, 1996, from John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards, which provides guidance entitled Major Source Determinations for Military Installations under the Air Toxics, New source Review, and Title V operating Permit Programs of the Clean Air Act which discusses in detail the concept of common control as it pertains to military bases. Portions of this guidance on common control and Title V permitting can also be applied to sources which are non-military.

We strongly recommend that you consider the responses to the above type of questions in making your final determination as to whether or not to consider these facilities one source. I would like to note that if you do determine that these facilities should be considered one source for PSD/NSR permitting, they could net between them and, if Pennsylvania allows, they could obtain separate Title V permits. If you have any questions or require further assistance on this matter, please contact me at (215) 814-2175, or Donna Weiss of my staff at (215) 814-2198.

Sincerely,

Kathleen Henry, Chief
Permits and Technical Assessment Branch

Enclosures