



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

October 11, 2000

Mr. John T. Higgins, P.E., Director
Bureau of Application Review and Permitting
Division of Air Resources
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233

Re: St. Lawrence Cement's (SLC's) Proposed Greenport Project and its Relationship with its Existing Catskill Facility Located 6 Miles Apart for the Purpose of New Source Review (NSR)/Prevention of Significant Deterioration of Air Quality (PSD) Applicability

Dear Mr. Higgins:

This is in response to the New York State Department of Environmental Conservation's (NYSDEC's) request for guidance regarding St. Lawrence Cement's (SLC's) pending permit application for its Hudson Valley Operation. SLC has expressed to NYSDEC and the Region 2 Office of the U.S. Environmental Protection Agency (EPA) its position as to why SLC's Catskill and Greenport facilities should be treated as one single source.

EPA's definition of a source is based on the "common sense" notion of a plant. See 45 Fed. Reg. 52676, 52695 (August 7, 1980). EPA has reviewed the information and arguments presented by SLC and Young, Sommer, Ward, Ritzenberg, Wooley, Baker & Moore, LLC (representing Friends of Hudson), to assess whether SLC's Catskill and Greenport facilities meet the "common sense" notion of a plant. As you are aware, such determinations are made on a case-by-case basis, and in some situations can require a careful weighing of the specific facts at hand to reach a conclusion. We recognize that with respect to the Catskill and Greenport facilities, the question of whether these two facilities comprise one or two sources is a difficult one. However, based upon this review, EPA Region 2, in coordination with our HQ's Office of Air Quality Planning and Standards and Office of General Counsel, has concluded that the best decision, in this particular case, is that the Catskill and Greenport facilities should be treated as two separate sources. Our reasoning is explained below.

Background

St. Lawrence Cement (SLC) has manufactured cement in the Hudson Valley of New York for over 25 years. SLC's current operations in the Hudson Valley consists of two facilities located on separate sides of the Hudson River approximately 6 miles apart: the Greenport facility located in the towns of Greenport and Hudson, NY and the Catskill facility located in Catskill, NY. SLC has proposed to modify its current cement manufacturing operations by shutting down its existing clinker manufacturing activities at the Catskill facility which utilizes the wet process and constructing a new, "technologically-advanced" facility at the Greenport facility which utilizes the dry process. The proposed project at the Greenport facility would include the following: the construction of a new cement plant in Greenport; the rehabilitation and expansion of SLC's existing Hudson River dock in the City of Hudson; the construction of a conveyor system connecting the Greenport plant to the dock; and the construction of a number of storage and other structures at the Greenport facility. The proposed new plant would manufacture up to 2.6 million tons of clinker per year.

SLC plans to shut down its existing plant for manufacturing clinker at the Catskill facility. However, SLC intends to continue limited operations at the Catskill facility consisting of: cement grinding; packaging; storage and shipping. In addition, SLC will continue to operate its existing landfill at Catskill to dispose of cement kiln dust.

Discussion

Since the NYSDEC has a PSD-delegated program, the federal definitions under 40 CFR 52.21 apply. 40 CFR Part 52.21(b)(5) defines "stationary source" as:

...any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

Furthermore, 40 CFR Part 52.21(b)(6) defines "building, structure, facility or installation," in pertinent part, as:

...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 "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement....

Common Control

Because both the Greenport and Catskill facilities are wholly-owned and managed by SLC, these two facilities are under common control.

Industrial Grouping

In its permit application, SLC states that the Greenport and Catskill facilities currently have the same standard industrial classification (SIC) code of 3241 (Hydraulic Cement) which means “establishments primarily engaged in manufacturing hydraulic cement, including portland, natural, masonry, and pozzolana cements.” Although it appears that the Greenport and Catskill facilities belong to the same industrial grouping at this time, there is some question whether the Catskill facility will continue to be classified as SIC code of 3241 once SLC shuts down the clinker manufacturing operations at the site. However, even assuming that the two facilities fall within different SIC codes, the Catskill facility could well be viewed as a support facility for the Greenport facility. Regardless, the SIC code is not a determining factor in this case because of the adjacency discussion that follows below.

Contiguous/Adjacent Location

Over the years, EPA has issued guidance in a number of cases regarding the question of whether two facilities should be considered contiguous or adjacent. As SLC has noted, there is no bright line, numerical standard for determining how far apart activities may be and still be considered “contiguous” or “adjacent.” As explained in the preamble to the August 7, 1980 PSD rules, such a decision must be made on a case-by-case basis. Moreover, in further explaining this factor, EPA has noted that whether or not two facilities are adjacent depends on the “common sense” notion of a source and the functional inter-relationship of the facilities and is not simply a matter of the physical distance between the two facilities. However, the physical distance between two facilities is obviously a factor to be considered in deciding whether the two are close enough to be considered one source in a given situation.

The vast majority of the past EPA single-source decisions have involved operations that are situated less than 6 miles apart. Thus, the distance separating SLC’s operations is distinctly farther than the majority of the past EPA single-source decisions. Where EPA has made single-source decisions in situations involving facilities separated by 6 or more miles, these cases have tended to involve a clear physical connection via a pipeline or dedicated conveyance. For example:

1. American Soda Commercial Mine and processing plant - Distance: approximately 35-40 miles, connected by a 44-mile long pipeline. (See April 20, 1999 letter from Richard R. Long, EPA Region 8, to Mr. Dennis Myers, Colorado Department of Public Health and Environment.)

2. Great Salt Lake Minerals plant and a pump station - Distance: 21.5 miles, connected by a dedicated channel or “pipeline.” (See August 8, 1997 letter from Richard R. Long, EPA Region 8, to Lynn R. Menlove, Utah Department of Environmental Quality.)
3. Anheuser-Busch brewery and the Nutri-Turf, Inc. landfarm - Distance: approximately 6 miles apart, connected by a pipeline. (See August 27, 1996 letter from Robert Kellam, EPA OAQPS, to Richard R. Long, EPA Region 8.)

In each of these cases, although the facilities were separated by a number of miles, the two operations were physically connected by a pipeline or dedicated conveyance. We believe that this physical connection in these cases was a salient factor, demonstrating an integral connectedness between the facilities that led EPA to conclude that the facilities operated as one source. In the case of SLC, the two facilities are located approximately 6 miles apart, there is no pipeline or dedicated conveyance between the two operations, and the two facilities are separated by the Hudson River.

In this particular case, EPA has weighed the information before it and concluded that the two facilities are not close enough to be considered one source under the circumstances for purposes of NSR/PSD. No one factor was determinative in reaching this conclusion. Rather, we took into account a number of factors specific to the case at hand. As noted above, the two SLC facilities are located a greater distance from one another than many of the facilities which EPA has considered to be adjacent or contiguous. Although EPA has found facilities located 6 or more miles apart to be one source in a limited number of cases based on the specific circumstances of those cases, the actual physical connection between the facilities in those cases tends to suggest a high degree of functional interrelationship. Although a physical connection such as a dedicated pipeline is absent here, EPA did consider whether there were additional factors showing a functional relationship between the two facilities such that the two could be considered close enough to operate as one source. Specifically, it appears that cement kiln dust from the Greenport facility will be disposed of at the waste disposal operation at the Catskill facility, and that SLC expects to operate the two facilities in such a way as to create some functional interrelationship between them. However, given the six miles and the Hudson River separating the two facilities, it is EPA’s opinion that SLC’s somewhat generalized explanation of a limited functional interrelationship between the two facilities does not outweigh the evidence that the two facilities do not meet the “common sense” notion of a single plant.

Conclusion

Based on the totality of the above factors, we have concluded that SLC’s Catskill and Greenport facilities do not meet the “common sense” notion of a single source and that they

should be treated as two separate facilities when NYSDEC conducts its NSR and PSD applicability determination, and Title V permitting. This letter is not a final agency action on the part of EPA. Rather, we hope that it will assist the state to properly carry out its applicability review of SLC's PSD permit application.

If you have any questions, please call me at (212) 637-4074 or Frank Jon, of my staff, at (212) 637-4085.

Sincerely yours,

/s/

Steven C. Riva, Chief
Permitting Section
Air Programs Branch

cc: Thomas S. West, Attorney
LeBoeuf, Lamb, Greene & MacRae, L.L.P.

Leon Sedefian, NYSDEC - Albany