Dear Mr Carpen,

Planning Act 2008
The Infrastructure Planning (Examination Procedure) Rules 2010
Proposed Underground Gas Storage Facility at Preesall, Lancashire
Halite Energy Group Limited

Halite Examination Document Reference – H23

We write further to your letter of 28th September 2012 regarding the possible expansion of Requirement 6 of the DCO to require Halite to submit further geological surveys and studies to Lancashire County Council (LCC) for approval prior to submission of safety reports to the Health and Safety Executive (HSE) under the Control of Major Accidents Hazards (COMAH) process.

Halite have considered the proposed requirement and are firmly of the view that it is unnecessary and inappropriate. Halite have discussed the position with HSE who we understand are of the same view, and with LCC who we understand are not in favour of being required to approve further geological data, albeit we have not seen their formal written responses. We consider it is unnecessary for the following reasons:

1 Duplication of the COMAH regime -  As stated in our response to Question 1/7 of the Examining Authority’s First Questions, the policy position on the interface between COMAH and Planning Act 2008 regime is clear. DECC’s Overarching National Policy Statement (NPS) for Energy (EN-1 paras 4.10.3 and 4.11.3) emphasises that the IPC (now the Secretary of State) should assume that other regulatory regimes such as COMAH will be enforced by the relevant regulator. Paragraph 4.11.3 of EN-1 states:

“Some energy infrastructure will be subject to the Control of Major Accident Hazards (COMAH) Regulations 1999. These Regulations aim to prevent major accidents involving dangerous substances and limit the consequences to people and the environment of any that do occur. COMAH regulations apply throughout the life cycle of the facility, i.e. from the design and build stage through to decommissioning. They are enforced by the Competent Authority comprising HSE and the EA acting jointly in England and Wales (and by the HSE and Scottish Environment Protection Agency acting jointly in Scotland). The same principles apply here as for those set out in the previous section on pollution control and other environmental permitting regimes.” [emphasis added]

(a) The preceding principles referred to are contained in paragraph 4.3.10:
"In considering an application for development consent, the IPC should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The IPC should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity, will be properly applied and enforced by the relevant regulator. It should act to complement but not seek to duplicate them."

[emphasis added]

The proposed requirement is essentially concerned with safety of cavern design and therefore in our view would be a straight duplication of a matter that would be regulated through COMAH if the DCO is granted. Halite understand from discussions with HSE that they are of the same view and would see the proposed requirement as an unnecessary duplication of their area of regulation. HSE have already confirmed to the Panel (in their letter of 17th September 2012) that they have a team of specialist operational inspectors in the Gas and Pipelines Unit of the Hazardous Installations Directorate (part of HSE) who are highly experienced in regulating underground gas storage facilities under the COMAH process. In that letter, HSE explain how they anticipate the COMAH process would be applied to Halite if the DCO is approved.

2 Purpose of requirement – It is not clear what purpose is served by LCC having to approve data from a discrete aspect of geological site investigations such as that specified by the requirement. There does not appear to be any land use planning reason for such a requirement in circumstances where LCC has accepted in the Statement of Common Ground on geology SoCG 1 (para3.1) that "The GSR (DCO Application document 9.2.2) presents an adequate representation of the geology which is sufficiently well defined to establish areas in which caverns can be constructed by solution mining." In this context, the proposed requirement does not appear to relate to LCC’s mineral planning or other functions. Insofar as geological data will be required in order to satisfy the HSE under the COMAH regime then, as stated above, the NPS is quite clear that the planning system should not duplicate other regimes. Such duplication is particularly inappropriate in circumstances where the mineral planning authority has no statutory or other function in relation to the design and safety of the proposed gas storage caverns. Nor is it clear why a threshold of + or − 5 metres, as opposed to any other distance, is considered material in relation to any function to be performed by the mineral planning authority. Providing data on the top and bottom of the halite would essentially be meaningless in the absence of the wider proposed detailed cavern design (which would be considered as a central part of COMAH process).

By contrast, as the lead competent authority, HSE will require further geological data as part of its comprehensive safety assessment to approve the detailed design of the caverns and the UGS facility as a whole under the COMAH regime. Precisely what geological data will be required by HSE will be a matter for HSE’s determination, dependant in part on which parts of the polygons (Work 1A) Halite seeks to bring forward for cavern development first. The sub surface scheme design and the necessary geological detail required to support it will therefore be advanced with significant interaction with the HSE prior to submission of the COMAH safety reports.
In short, we consider that no purpose is served in imposing a requirement that requires the mineral planning authority to duplicate a part of the function of the HSE.

Halite is of course aware of the concern in the past with respect to the interpretation of geology and the impact it has on the safe design and operation of gas storage caverns. In the context of the current application, addressing this concern was a key focus of Halite’s activities prior to submission of the DCO application and as a result of additional work a significantly revised and more detailed scheme has now been proposed which takes into account the geological hazards. This was developed in consultation with LCC/Atkins over the 2 years prior to submission of the DCO application (see Consultation Report – Document 3.1 at paragraphs 3.8 to 3.11 and 4.9 to 4.23) against the background of the previous Canbox Gas Storage Limited (CGSL) applications, where LCC and Atkins were not satisfied that planning permission could be granted due to concerns over geology. The current DCO application has addressed all previous concerns of LCC/Atkins on geology/safety matters. It follows from the SoCG on geology (SoCG 1) that LCC have reached a point where they are satisfied that if the DCO is granted, detailed cavern design is properly a matter for the CA under COMAH.

**LCC is not a specialist safety regulator** - As stated above, LCC is not a safety regulator and, it is respectfully suggested, it does not have the necessary in-house expertise to administer such a requirement. This is in contrast to HSE which is a specialist safety regulator and as such has considerable experience of regulating underground gas storage facilities. In our view, there is no policy basis to justify a role for LCC in matters that go beyond its statutory functions and competence. Indeed, there has been nothing raised during the Examination to suggest that LCC would want to take on the responsibilities of a regulator in this regard.

**Risk of delay and uncertainty** - Requiring LCC approval of one strand of further geological data in isolation (as set out in the proposed requirement) causes overlap and potential confusion with the COMAH process. This cannot serve anyone’s interests. Furthermore, interposing a role for LCC in approving such data carries a significant risk of disagreement between the HSE, as specialist safety regulator, and LCC. Such disagreement could result in delay in the delivery of this nationally significant infrastructure. Promoters of any NSIP seek a clear and coherent post-DCO approvals process in order to ensure delivery of such infrastructure.

**Appeal mechanism** - If there was a dispute with LCC over the interpretation of the data, Halite’s remedy would be to make an appeal under the DCO. However, this would be an appeal to the Planning Inspectorate which could then be called upon to determine whether, for example, the geological data established the top and bottom of the halite within $+5$ metres (satisfying the requirement) or $+7$ metres (failing to satisfy the requirement). This is far from satisfactory as a mechanism for the delivery of nationally significant infrastructure.

**Proposed Requirement wording is imprecise** - The difficulties described above manifest themselves in the suggested wording of the proposed Requirement which is considered to be imprecise (refer to Planning Circular 11/95). In particular, “... such geological investigations as may be necessary ...”; “... top and bottom levels of the Halite bed ...”; and “... no faults of such size as may affect the integrity of the proposed caverns penetrate the Halite bed ...” all lack sufficient precision and it would be difficult (for Halite
and LCC) to understand precisely what is required to discharge the requirement. These drafting concerns serve to demonstrate that trying to compress just one element of the detailed cavern design work that will be undertaken as part of the COMAH process in to a requirement for LCC’s administration is in practice unworkable. An imprecise and, in our view, unworkable requirement should not, we suggest, be imposed.

This is confirmed in EN-1 at paragraph 4.1.7 which applies the usual guidance for planning conditions contained in Circular 11/95:

"The IPC should only impose requirements in relation to a development consent that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. The IPC should take into account the guidance in Circular 11/95, as revised, on "The Use of Conditions in Planning Permissions" or any successor to it."

7 Other UGS schemes approved by the Secretary of State - There is no precedent for such a requirement/planning condition ever having been imposed at the planning stage on any other underground gas storage project. An analysis of decisions on previous planning appeals for UGS facilities contained at Halite Examination Document H14 confirms the consistent position taken by the Secretary of State on the need to avoid duplication of the COMAH process through the planning regime (as policy now requires under EN-1 and previously PPS 23). To impose such a requirement here might be considered both discriminatory and anti-competitive.

Whilst Halite’s position on the need to avoid duplication of the COMAH process is clear as set out above, Halite would not have a concern with a requirement which required Halite to provide data to LCC for their information relating to the top and bottom of the halite. A suggested requirement is set out below:

"The safety reports submitted to the competent authority (pursuant to Regulations 7(1), 7(5) and 8 of the 1999 Regulations) shall include the details of geological site investigations that have been undertaken across the "area for cavern development" shown on the approved development plan with reference A-1000-030 Rev B, to identify the top and base of the halite and faults of such size as may affect the integrity of the proposed caverns, to support the justification of the proposed storage of gas. A copy of these details shall be made available to Lancashire County Council for their information."

We consider that this Requirement would not fall foul of EN-1 as it would not result in any duplication of the COMAH regime.
We trust this provides sufficient clarity on Halite’s position regarding the proposed requirement. Please contact us should you require any further information.

Yours sincerely

Paul Grace