MEMORANDUM

Date: August 15, 2011

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

Re: **Rosemont Copper Air Quality Permit**

The Pima County Department of Environmental Quality (PDEQ) has developed a proposed Class II Air Quality Permit for the Rosemont Copper Company for their planned mine in southeastern Pima County. The proposed permit contains federal, state and county air quality requirements and is being processed pursuant to Pima County Code Title 17 and Arizona Revised Statutes, Title 49, Article 3. As part of PDEQ's permitting process, the proposed permit is being sent today to the Rosemont Copper Company for review. In accordance with Pima County Code 17.12.165, PDEQ shall make a proposed permit decision within nine months from the date of submittal of a complete air quality permit application. PDEQ determined the Rosemont application to be complete on November 30, 2010 and has until August 30, 2011 to formally propose the permit for public comment. PDEQ will evaluate any comments received from the company and formally propose the permit on August 30, 2011 by noticing the public comment period in the *Arizona Daily Star* and *Territorial* newspapers.

The 90-day public comment period will begin on August 30, 2011 and end on November 28, 2011. During those 90 days, PDEQ will hold an open house to provide information regarding the proposed permit, the permitting process and PDEQ authority to regulate the planned mine. PDEQ will hold a formal public hearing to take public comment regarding the proposed air quality permit after the open house. PDEQ staff is currently planning the date, time and location of the open house and public hearing. A public notice will be published on the open house and hearing when the logistics are finalized.

In order to appeal a permitting decision by PDEQ, a person must have submitted written comments during the comment period or provide oral comments at the hearing. Once the comment period has closed, PDEQ will review and respond to all comments and develop a final air quality permit by May 30, 2012.

This action is only related to the air quality permit. All other issues related to the proposed Rosemont mine are unaffected by this action. Pursuant to state law, PDEQ may only consider comments during the public comment period and public hearing related to the air quality permit and not to any other issues regarding Rosemont.

PDEQ also sent a letter to the US Environmental Protection Agency (EPA) on August 12 to request their guidance regarding Rosemont Copper Company's Notice of Intent to Sue received by PDEQ on June 23, 2011 (attached). That Notice stated that PDEQ, in accordance with the federally approved State Implementation Plan (SIP), had only 30 days from receipt of the complete application to issue an air quality permit. Since there are other requirements in the approved SIP, PDEQ is seeking EPA's guidance and direction regarding potential permit implications. Copies of the Notice and letter to EPA are attached.

All information regarding this process will be available on PDEQ's website at http://www.deq.pima.gov/permits/RosemontCopper.htm.

As has been indicated in the past, no Board review or action regarding the air quality permit is necessary, required or allowed pursuant to County Code and State law.

CHH/mjk

Attachments

c: John Bernal, Deputy County Administrator for Public Works
Ursula Kramer, Director, Environmental Quality

DEPARTMENT OF ENVIRONMENTAL QUALITY
33 N. Stone, Suite 700
Tucson, Arizona 85701-1429

Ursula Kramer
Director

(520) 243-7400
FAX (520) 243-7370

August 12, 2011

Ms. Deborah Jordan
Air Division Director
U.S. Environmental Protection Agency
Region IX, AIR-1
75 Hawthorne Street
San Francisco, CA 94105

RE: Pima County State Implementation Plan

Dear Ms. Jordan:

On June 23, 2011, the Pima County Air Quality Control District (AQCD) received a Notice of Intent to Sue (NIS) from the Rosemont Copper Company. The notice alleges that the Control Officer has violated an emission standard or limitation under the Clean Air Act. Specifically, Rosemont alleges that failure to either grant or deny a permit within 30 days of receipt of a complete application violates Pima County State Implementation Plan (SIP) Rule 213.C Public Notification/Public Comments. Since the SIP is a federally enforceable document, Pima County AQCD requests EPA's input and direction regarding several issues raised as a result of the NIS.

The SIP contains several provisions that are not consistent with the current Pima County Code. Pima County AQCD is well aware of this gap and has been working with EPA to address this issue. However, due to constraints in Arizona law, Pima County AQCD cannot address several SIP issues until the Arizona Department of Environmental Quality completes changes to its New Source Review (NSR) Program. Until the State has completed its work revising NSR in Arizona, the Pima County AQCD cannot proceed with changes to previously submitted SIP revisions which will remain pending.

In 1991, EPA issued "Revised Guidance on Enforcement during Pending SIP Revisions" to address nation wide issue regarding SIP. With respect to all of the provisions of the approved Pima County SIP as well as issues raised by the NIS, Pima County AQCD requests EPA's position regarding enforcement of the Pima County SIP.

The source specific issues related to the Rosemont permit application are as follows:

1. The Rosemont Copper Company's Class II Air Quality Permit Application and additional submittals classifies the source as a synthetic minor with respect to particulate matter. The total point source PM_{10} emissions are calculated at 66 tons per year. Consistent with Title V rules, this calculation does not include fugitive emissions, such as those from the proposed dry stack tailings pile.

   Pima County SIP Rule 171 defines a major source as a source that has the potential to emit more than 100 tons per year of a "common air pollutant". The definition states that:

   "For purposes of applying this definition, fugitive emissions as well as stack emissions shall be included in the calculating or estimating potential emissions."

   SIP Rule 601 defines "common air pollutants" to include Total Suspended Particulate Matter (TSP). While the Rosemont Copper Company did not provide TSP emissions, the total emissions of PM_{10}, including PM_{10} fugitive emissions, is 908 tons per year. Since PM_{10} is a component of TSP, the Rosemont Copper Company's application demonstrates that the source would be a major source pursuant to SIP Rule 171. If Pima County's approved SIP is applicable to this permit application for the Rule 213.C requirements as stated by Rosemont, would Rosemont also need to be treated as a major source in accordance with SIP Rule 601?

2. Pima County SIP Rule 504 Pre-Installation Testing and Modeling requires that any major source model compliance with all ambient air quality standards. If Rosemont is classified as major source, must the application contain modeling to demonstrate such compliance prior to the issuance of any air quality permit? Can EPA determine that there is other more suitable modeling guidance than what is identified in the SIP Rule 504 that should be used in the analysis?

3. Pima County SIP Rule 231 Non-compliance states:

   "The control officer shall deny an application for a permit if the applicant cannot prove to the satisfaction of the control officer, on the basis of information presented by the applicant and other available data, that the planned source is designed, controlled, equipped, or capable of being operated or conducted such that compliance with all applicable provisions of these rules and regulations would be possible throughout the term of the permit"

In order to determine if the proposed Rosemont Copper Company's Class II Air Quality Permit Application should be issued or denied pursuant to SIP Rule 213.C.1 and SIP Rule 231.A, must the applicant demonstrate compliance with SIP Rule 504 Pre-Installation Testing and Modeling Requirements to demonstrate compliance with SIP Regulation 341 Ambient Air Quality Standards which include mass concentration ceilings and the visibility limiting standards to fugitive air polluting activities and stack emissions?

4. If the Pima County AQCD failed to deny a permit application that does not prove to demonstrate compliance with applicable regulations of the Pima County SIP, including Regulation 34 Ambient Air Standards, would such failure to deny a permit be subject to provisions of Clean Air Act Section 304 Citizen Suits?

Pima County AQCD looks to your response on these issues. If you have any questions or would like to discuss this matter, please contact me at 520-243-73331.

Sincerely,

Ursula Kramer

Ursula Kramer, P.E., Director
Pima County DEQ

UK/RG/vlb

cc: C. H. Huckelberry, County Administrator
John Bernal, Deputy County Administrator

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PIMA COUNTY
JUN 24 2011
ENVIRONMENTAL QUALITY
AIR PROGRAM

LAW OFFICES
JORDEN BISCHOFF
& HISER, P.L.C.

7272 E. INDIAN SCHOOL ROAD, SUITE 360
SCOTTSDALE, ARIZONA 85251
TELEPHONE: 480-505-3900
FACSIMILE: 480-505-3901

June 23, 2011

Via Certified First Class Mail (via Courier to PCAQCD)

Lisa P. Jackson, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Henry Darwin, Director
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007

Ursula Kramer, Control Officer
Pima County Air Quality Control District
33 N. Stone Avenue, Suite 700
Tucson, AZ 85701

RE: Rosemont Copper Company's Notice of Intent to Sue Ursula Kramer, in her official capacity as Control Officer of the Pima County Air Quality Control District, for Violations of the Clean Air Act.

Dear Administrator Jackson, Director Darwin, and Control Officer Kramer:

Pursuant to § 304 of the Clean Air Act, as amended, 42 U.S.C. § 7604, Rosemont Copper Company ("Rosemont") gives notice that it will commence a civil action against Ursula Kramer, in her official capacity as Director and Control Officer of the Pima County Air Quality Control District ("PCAQCD"), for violation of an emission standard or limitation under the Act. Such action will be commenced no less than 60 days after this notice unless PCAQCD has complied with the emission standard or limitation being violated.

This Notice is hereby given because the Control Officer is in violation of the requirements in § 21-213.C. of the Pima County State Implementation Plan ("SIP"), as published in the Federal Register, which provides: **"The Control Officer shall either grant or deny a permit within 30 days from the date or receipt of the complete application."** SIP § 21-213.C., approved at 47 Fed. Reg. 16328.

As of the date of this Notice, the Control Officer has yet to approve or deny Rosemont's Permit Application #6112 ("permit application"). On or about July 29, 2010, the PCAQCD received the initial permit application from Rosemont. On or about September 23, 2010, PCAQCD notified Rosemont that the permit application was incomplete and required additional information. After receiving the appropriate information from Rosemont on or about October 8, 2010, PCAQCD deemed the permit application complete on or about November 30, 2010.

Pursuant to the schedule established under SIP § 21-213.C., once a permit application is deemed complete, the Control Officer is required to either grant or deny the permit application within 30 days. The Control Officer had until December 30, 2010 to either grant or deny the permit, yet has still failed to do so. To date, Rosemont has provided the Control Officer with six times the necessary time required by the SIP schedule.

Rosemont requests that the Control Officer and PCAQCD comply with the SIP and approve or deny Rosemont's permit, or Rosemont will commence an action no less than 60 days after this notice. Rosemont notes that, pursuant to federal law, the permit application may only be denied for failure to comply with the SIP and not for any other reason. SIP Rule 21-213.C.1. and 23-231.A.

Due to the pending action, Pima County, the Control Officer and PCAQCD have a duty to preserve and maintain all information relevant to this action.

The full name and address of the person giving this notice is: Rosemont Copper Company, P.O. Box 35130, Tucson, AZ 85740-5130.

Respectfully submitted,

Eric L. Hiser
Trevor J.L. Burggraff
Attorneys for Rosemont Copper Company

Cc: The Honorable Jan Brewer
Governor of Arizona
1700 West Washington
Phoenix, Arizona 85007

Cc: Jared Blumenfeld, Regional Administrator
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA, 94105