



DEPARTMENT OF ENVIRONMENTAL QUALITY
33 N. Stone Avenue, Suite 700
Tucson, Arizona 85701-1429
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Ursula Kramer, P.E.
Director

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September 28, 2011

HAND DELIVERED and CERTIFIED MAIL

Mr. Jamie Sturgess
Vice President, Sustainable Development
Rosemont Copper Company
P.O. Box 35130
Tucson, AZ 85740-5130

Dear Mr. Sturgess:

The Pima County Air Quality Control District ("AQCD") has determined that Rosemont Copper Company's Class II Permit Application and additional information submittals failed to disclose federal applicable requirements which the applicant had or should have had knowledge of at the time the application was submitted pursuant to Pima County Code 17.12.165. Rosemont Copper Company's Class II Permit Application and additional information submittals do not prove to the satisfaction of the Control Officer that the planned source is designed, controlled, equipped or capable of being operated such that compliance with all applicable requirements would be possible throughout the term of the permit pursuant to Pima County State Implementation Plan Rule 231. As the Control Officer, I hereby deny the application.

The legal and factual basis for the denial is provided in Attachment A, AQCD's Statement of Basis for Denial.

Pursuant to Arizona Revised Statutes § 49-480.02, Pima County Code 17.12.165, and Pima County State Implementation Plan Table 714, you may appeal this decision to the Pima County Air Quality Hearing Board by filing a written petition within 30 days with:

Vicki Bennie
Air Quality Hearing Board Secretary
Pima County Department of Environmental Quality
33 N. Stone Avenue, Suite 700
Tucson, Arizona 85701-1317

Rosemont Copper Company may submit a new application that addresses all applicable requirements as required by Pima County Code and the federally approved State Implementation Plan.

Sincerely,

A handwritten signature in cursive script that reads "Ursula Kramer".

Ursula Kramer, P.E.
Control Officer, Pima County Air Quality Control District

Attachment A
Pima County Air Quality Control District
Statement of Basis for Denial

September 28, 2011

1. Pima County Code (PCC) 17.12.140 states that no person shall commence construction of, operate, or make a modification to any source subject to regulation under this article without first obtaining a permit or permit revision from the control officer.
2. Pima County State Implementation Plan (SIP) Rule 202 states that a person who plans to erect, install, or replace an emission source which may cause, emit, contribute to, or control air pollution; or who plans to expand or modify any source in such a manner that the potential or actual emission rate would increase or decrease by virtue of the expansion or modification; or who plans to engage in an activity which may cause or contribute to air pollution except as specifically exempted within the SIP rules shall obtain an Installation Permit from the Control Officer. The permit shall be obtained prior to beginning construction or modification of the source, commencement of the activity, or before entering into a binding agreement related to construction of the planned emission operation or activity which cannot be cancelled or modified without substantial loss to the person, whichever occurs first in time.
3. The Rosemont Copper Company submitted a Class II Minor Source Permit Application to the Pima County Department of Environmental Quality (PDEQ) on June 20, 2010 as required by PCC17.12.140 and Pima County SIP Rule 202. The application is for the construction and operation of an open-pit mining, milling, leaching, and solvent extraction/electrowinning facility, known as the Rosemont Copper Project. The project is located approximately 30 miles southeast of Tucson, west of State Highway 83, within Pima County in southeastern Arizona.
4. An application must include the applicable requirements to which the source may be subject as required by PCC 17.12.165
5. An application shall contain all information necessary to enable the Control Officer to make a determination to grant or deny a permit pursuant to Pima County SIP Rule 211.
6. Applicable requirement is defined in PCC 17.04.340 (A) (26) to include any federal applicable requirement.
7. Federal applicable requirement is defined in PCC 17.04.340 (A) (85) to include any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the Act (Air Pollution Prevention and Control) that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR 52 and any standard or other requirement under section 111 of the Act (Standards of Performance for New Stationary Sources).

8. Rosemont Copper Company identified applicable requirements to which the proposed source would be subject to as required by PCC 17.12.165 in Section 4 of the June 20, 2010 Class II Permit Application. Rosemont Copper Company stated the following in Section 4:

“Regulatory requirements applicable to the RCP and affected emissions units are presented in Table 4.1. This table identifies those requirements of Chapter 17.16 Articles III, IV, V, VI, VII and IX of the P.C.C., 40 CFR Part 60, and 40 CFR Part 63, which apply to the RCP. All requirements of Chapter 17 Articles III, IV, V, VI, VII and IX of the P.C.C., 40 CFR Part 60, and 40 CFR Part 63 which are not identified in Table 4.1 do not apply.”

9. Rosemont Copper Company provided a certification of compliance with all applicable requirements signed by a responsible official of Rosemont Copper Company as required by PCC 17.12.165 in Appendix A of the June 20, 2010 Class II Permit Application. The certification states:

I certify that I have knowledge of the facts herein set forth, that the same are true, accurate and complete to the best of my knowledge and belief, and that all information not identified by me as confidential in nature shall be treated by the Pima County Department of Environmental Quality (PDEQ) as public record. I also attest that I am in compliance with the applicable requirements and will continue to comply with such requirements and any future requirements that become effective during the life of my permit. I further state that I will assume responsibility for the construction, modification, or operation of the source in accordance with the requirements of Title 17 of the Pima County Code and any permit issued thereof.

Name (Print/Type): Jamie Sturgess Title: Vice President, Sustainable Development

(Signature):  Date: July 27, 2010

10. Pima County SIP Rule 171 Definitions and SIP Rule 601 Classification of Common and Hazardous Air Pollutants, identifies several pollutants including Total Suspended Particulate Matter (TSP) and Carbon Monoxide (CO).
11. Rosemont Copper Company Class II Permit Application and information submittals provides the following potential to emit:
- Particulate Matter (PM₁₀) less than 10 microns in aerodynamic diameter; total emissions including fugitives - 909.62 tons per year
 - Carbon Monoxide (CO); total emissions including fugitives - 615.22 tons per year.

12. Pursuant to Pima County SIP Rule 171 (C) (1), a new source is a source that commences construction, installation, modification, operation after the effective date of the rules.
13. Pursuant to Pima County SIP Rule 171 (C)(2), a major source is defined as one or more sources owned or operated by the same owner, operator, or lessee at a contiguous geographical area which collectively, i.e., with total emissions aggregated, either emits or has the potential for emitting 100 tons per year or more of a single air contaminant. For purposes of applying this definition, fugitive emissions as well as stack emissions shall be included in calculating or estimating potential emissions. However, emissions from mobile sources, as well as emissions which result solely from construction and/or any other closely related, temporary emissions operation or activity, shall not be use in calculating or estimating potential emissions.
14. Pursuant to Pima County SIP Rule 171 (C)(2), a new major source is major source that commences construction, installation, modification, operation after the effective date of the rules date of the rules.
15. The potential to emit for Particulate Matter (PM₁₀) with a diameter less than 10 microns in size, submitted by Rosemont Copper Company, is 909.62 tons per year. PM₁₀ is a component of TSP. Because the potential to emit for PM₁₀ submitted by Rosemont Copper Company is greater than 100 tons per year, the Control Officer concludes the TSP emissions will also be greater than 100 tons per year and Rosemont Copper Company's proposed mine is considered a new major source for TSP pursuant to Pima County SIP Rule 171.
16. The potential to emit for Carbon Monoxide (CO), submitted by Rosemont Copper Company, is 615.22 tons per year. Because the potential to emit CO is greater the 100 tons per year, the Control Officer concludes the proposed Rosemont mine is a new major source for Carbon Monoxide (CO) pursuant to Pima County SIP Rule 171.
17. Pima County SIP Rule 341 states that Regulation 34 applies to all areas, classes, sizes, and ages of sources, including major sources and minor sources, existing as well as new sources, and to fugitive air polluting activities as well as stack emissions.
18. Regulation 34, Pima County SIP Rule 342, states the maximum allowable concentration of air pollutants in the ambient air in all areas of the County shall be those listed table of Maximum Allowable Pollutant Concentration Ceilings in the Ambient Air.
19. Pima County SIP Rule 504 (B) requires that an application for a permit for a new major source must include an estimate of the effects of the source's planned emissions on the ambient air near the source.

20. Pima County SIP Rule 504 (C) requires that “an estimate of the concentration of a pollutant in the ambient air near a proposed new major source shall be made in accordance with the reference Guideline on Air Quality Models (EXPOS 1.2-080) contained in Chapter IX, provided such document includes a method applicable to the proposed source. If this document does not contain an applicable model, the Control Officer shall refer to Workbook for the Comparison of Air Quality Models contained in Chapter IX herein, and other pertinent guidance furnished to the Control Officer in writing by the Administrator of the Environmental Protection Agency, in specifying to the permit applicant a suitable method for meeting these requirements.”
21. Pima County SIP Rule 504 (E) requires that an ambient-air study shall be conducted as specified in writing by the Control Officer.
22. Pima County SIP Rule 231 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 the SIP rules throughout the term of the permit.
23. Pima County SIP Rule 213 requires for a new major source that the Control Officer make available for public inspection all non-confidential information submitted by the applicant, comments and conclusions by the Control Officer regarding the impact of the planned source on the air quality, and the Control Officer’s tentative decision to approve or deny the permit and provide a 30-day period for the public to submit written comments on the planned source.
24. The Pima County Air Quality Control District provided a draft of the proposed Class II synthetic minor air quality permit and Technical Support Document for the Rosemont Copper Project to the Rosemont Copper Company for review and comment on August 12, 2011.
25. Rosemont Copper Company provided comments on both the proposed permit and Technical Support Document on August 26, 2011.
26. On August 30, 2011, the Control Officer began a 90 day public comment period for a proposed Class II synthetic minor air quality permit for Rosemont Copper Company’s open-pit mining, milling, leaching, and solvent extraction/electrowinning facility located approximately 30 miles southeast of Tucson, west of State Highway 83, within Pima County in southeastern Arizona.

27. After the public comment period began, the Control Officer became aware that the Rosemont Copper Company did not identify, include in their application, additional submittals, or during the review of the draft proposed permit and Technical Support Document that they were subject to federal applicable requirements contained in the Pima County SIP. Rosemont Copper Company identified New Source Performance Standards (adopted pursuant to section 111 of the act) for Metallic Mineral Processing Plants and Stationary Internal Combustion Engines as the only federal applicable requirements.
28. Rosemont Copper Company did not identify that it was a new major source pursuant to Pima County SIP Rule 171, provide the requisite estimate of the concentration of a pollutant in the ambient air near a proposed new major source under Pima County SIP Rule 504, or demonstrate the source will not exceed the maximum allowable concentration of air pollutants in the ambient air pursuant to Pima County SIP Rule 342.
29. Rosemont Copper Company did not include the applicable requirements to which the source may be subject as required by PCC 17.12.165 or submit an application that contained all information necessary to enable the Control Officer to make a determination to grant or deny a permit pursuant to Pima County SIP Rule 211.
30. Pursuant to PCC 17.12.165, the Control Officer may take action on the application including termination or denial if the person applying for the permit failed to disclose a material fact required by the permit application form or the regulation applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.
31. The Control Officer has determined Rosemont Copper Company failed to disclose it is a new major source pursuant to Pima County SIP Rule 171, did not provide the requisite estimate of the concentration of a pollutant in the ambient air near a proposed new major source under Pima County SIP Rule 504, and did not demonstrate the source will not exceed the maximum allowable concentration of air pollutants in the ambient air pursuant to Pima County SIP Rule 342 which are determined to be material facts.
32. The Control Officer has determined the applicant Rosemont Copper Company cannot prove 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 the SIP rules would be possible throughout the term of the permit and; therefore, the Control Officer must deny the application pursuant to Pima County SIP Rule 231.