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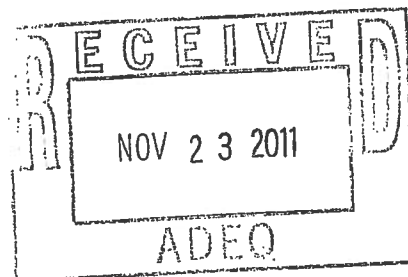
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November 23, 2011

HAND DELIVERED

Mr. Eric Massey
Air Quality Division Director
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007

Re: Application for an Air Quality Permit
Rosemont Copper Company, Rosemont Copper Project



Dear Director Massey:

Consistent with our letter to you dated November 1, 2011, Rosemont Copper Company (Rosemont) requests that the Arizona Department of Environmental Quality (ADEQ) permit the Rosemont Copper Project (RCP) in accordance with the Arizona State Implementation Plan (AZ SIP) and Pima County State Implementation Plan (PC SIP) and, to avoid multiple permits for the same facility, assert jurisdiction over any remaining state permit requirements pursuant to A.R.S. § 49-402(B). A Standard Application Form for the permit is attached.

Basis for Submitting Application to ADEQ

The RCP is a typical open pit copper mine that is planned for construction in the area generally south southeast of Tucson within Pima County. Controlled non-fugitive emissions from the mine are estimated at less than 100 tons/year for any regulated air pollutant and less than 10 tons/year of any single hazardous air pollutant (HAP) and less than 25 tons/year of any combination of HAPs. However, uncontrolled emissions from the RCP for particulate matter are greater than 75 tons/day.

The PC SIP's jurisdictional provisions are quite clear on this matter. The PC SIP states:

These RULES AND REGULATIONS shall not apply to emission sources under the original jurisdiction of the Arizona Department of Health Services unless regulatory authority has been delegated to Pima County pursuant to ARS 36-1705 or 36-1706.

1. Emission sources under original jurisdiction of the Arizona Department of Health Services, and subject to delegation from time to time, include:

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- a. Major sources of air pollution, including any source capable of generating more than 75 tons per day of air contaminants, uncontrolled....

PC SIP, Rule 112.B.1.a.

Rosemont's consultants have determined that the uncontrolled potential to emit of the RCP, considering just haul truck and related traffic, is in excess of 75 tons/day under the current design plan for the RCP. Therefore, under the express terms of the PC SIP, it does not apply.¹ Instead, Rosemont is to apply to ADEQ. The AZ SIP is similar. *See, e.g.*, AZ SIP § 36-1706(A)(1). This bifurcated approach was specifically noted and approved by EPA when it approved the PC SIP. *See* 44 Fed. Reg. 39480 (July 6, 1979) (proposal); 45 Fed. Reg. 49112 (July 23, 1980) (proposal); and 47 Fed. Reg. 29532 (July 17, 1982) (final).

Rosemont recognizes that the AZ and PC SIPs differ from currently effective Arizona state law in A.R.S. § 49-402, which no longer provides for state jurisdiction over "major sources" defined as sources that emit 75 tons/day. *Compare* AZ SIP § 36-1706(A)(1) with A.R.S. § 49-402(A)(1). Nevertheless, A.R.S. § 49-404(C) makes it clear that ADEQ's jurisdiction under the SIP remains fully in effect. ADEQ is thus the appropriate SIP permitting authority for the Rosemont project pursuant to both AZ SIP § 13-1706(A)(1) and PC SIP Rule 112.B.1.a. It is also indisputable that under the AZ SIP, the RCP requires a SIP permit. *See, e.g.*, AZ SIP § 36-1707.01(A).

As you are aware, Rosemont has filed a Class II permit application with the Pima County Department of Environmental Quality (PDEQ). This application was denied on September 28, 2011, based on Rosemont's alleged failure to comply with the provisions of the PC SIP. As noted above, the PC SIP is not applicable and Rosemont has appealed this permit denial to the Pima County Air Pollution Hearing Board (PCAPHB). The PCAPHB heard the matter on November 7, 2011 and has requested additional briefing, due November 22, 2011. The earliest a decision could be reached is December 2, 2011. Regardless of the decision of the PCAPHB, Pima County does not have jurisdiction to issue the required SIP permit, so ADEQ action is needed. We therefore request that ADEQ begin immediate processing of this application.

Multiple Permit Proceedings and Request for Assertion of Jurisdiction

There remains a question whether Rosemont may still require a permit from the Pima County Department of Environmental Quality/Pima County Air Pollution Control District (PDEQ) pursuant to the provisions of PCC Title 17 independent of the PCSIP and ASIP provisions discussed above. After the Comprehensive Air Quality Act of 1992, S.B. 1430, 40th Leg., 2nd Sess (1992), it is clear that the policy of the State is that only a single permit be required for each source. *See, e.g.*, S.B. 1430, §§ 14, 17-19 (eliminating "installation" and

¹ The individual permit provisions of the Pima County Code (PCC), Title 17, are not yet SIP-approved. *See generally* 40 C.F.R. § 52.120. Therefore, Rosemont cannot fall back on the PCC for a federally-recognized air construction permit, even if this were appropriate given the specific language of PCSIP 112.B.1.a.

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“operation” permits at state level); §§ 39, 40-43 (eliminating “installation” and “operation” permits at county level). This policy was adopted based upon complaints that a source would obtain an installation permit to construct a source, but then might be denied an operating permit to operate it despite considerable expenditure. This policy applies with equal force to the possibility that a source might be required to obtain an installation/operating permit from ADEQ pursuant to the AZ SIP and then obtain a separate A.R.S. Title 49/PCC Title 17 air quality permit from PDEQ. If the goal of the legislature was to have only a single air permit per facility, then it seems likely that where the county is prohibited from issuing the SIP permit, the appropriate course is to consolidate permitting with ADEQ consistent with the legislative policy direction established in the Comprehensive Air Quality Act of 1992 (S.B. 1430).

Under the unique circumstances presented by the Rosemont permit application for the RCP, we believe the best course is for ADEQ to assert jurisdiction pursuant to A.R.S. § 49-402(B) over the RCP permit application and thus consolidate all of the possible competing permit authorities and processes into a single proceeding. This would avoid the possibility of multiple permit proceedings.

Request to Retain Jurisdiction at ADEQ

We do not believe that delegation of the RCP to PDEQ is an appropriate resolution at this time. ADEQ is familiar with the requirements of the ADEQ regulations and the AZ SIP and has some familiarity with the PC SIP as both the SIP submittal authority and as the former permit writer for the Freeport-McMoRan Sierrita mine. While PDEQ recently received delegation for Sierrita, it is not as familiar with the ADEQ regulations and AZ SIP as ADEQ and is unlikely to have gained such familiarity in the limited time since it received delegation of the Sierrita property.

Rosemont is also concerned redelegation of the permit application to PDEQ may effectively preclude timely issuance of this permit. First, the County Administrator, Mr. Huckelberry, initially took the position that the permit proceeding should be delayed pending the EIS process. PDEQ subsequently raised this issue. Although Rosemont succeeded in convincing PDEQ that waiting on the EIS was not appropriate, it does not want to have to revisit those issues. Second, sources in Pima County administration are reported in the press to have stated that the County would take the full period of time allotted, which they stated was 18 months, to process Rosemont’s application. Due to delays already encountered, Rosemont must have its permit well before 18 months, and preferably by end of first quarter 2012, to stay on schedule. Third, in its filings in federal court, the County indicated that it does not believe it is bound to determine that a SIP permit application is ever complete (for purposes of PC SIP Rule 213.C, which requires action within 30 days) until it issues the final permit decision. The County’s position effectively eviscerates any timely redress should it not act on Rosemont’s SIP permit application promptly. Given this past history, documented in official letters, press reports, and court filings, Rosemont does not believe that it can expect timely permit processing from Pima County. Rosemont thus requests that ADEQ retain jurisdiction of this significant

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project, which will bring 406 direct and 1700 indirect jobs and over \$700 million in local stimulus and \$15 billion over the project's life to Arizona.

Discussion of Application Issues

Rosemont is mindful that state regulated sources remain subject to appropriate county ordinances that have been recommended for SIP adoption. *See* A.R.S. § 49-402(D). Rosemont is, therefore, retaining its demonstration of compliance with all applicable portions of the PCC in the application it will submit to ADEQ. Because Rosemont can demonstrate compliance with all PCC requirements currently in effect, Rosemont will not question whether the PCC requirements meet the requirements of A.R.S. § 49-479 for purposes of this application. We trust that this should make ADEQ's task in reviewing the permit application considerably simpler, as ADEQ will have a demonstration of compliance with the AZ SIP, ADEQ regulation, and PCC requirements all contained in the same application.

For reasons outlined in our prior letter and memorandum to you dated October 20, 2011 and October 24, 2011, we request that ADEQ determine that PC SIP Rules 171.C.2.a and 504 do not apply to the RCP because: (1) they are part of the Pima County Nonattainment Area Plan, and the RCP is not located in the nonattainment area; and (2) PC SIP Rule 171.C.2.a violates both Section 302(j) of the federal Clean Air Act and the stated terms of the 1988 Pima County SIP committal letter. Clearing up the proper scope of Rules 171 and 504 is important for the long term economic development of the State and Pima County.

Rosemont understands from Mr. Trevor Baggiore that ADEQ will request NAAQS modeling pursuant to ADEQ's discretionary authorities for current NAAQS pollutants for this project because of the RCP's size and significance. As you may be aware, Rosemont has conducted NAAQS modeling as part of the EIS effort. Rosemont will submit its modeling protocol and modeling results to ADEQ next week under separate cover. Because this modeling was initially done for the EIS, it includes crankcase emissions from the mobile equipment and motor vehicles. There is thus a divergence between the emissions inventory presented (which excludes these crankcase emissions) and the modeling results (which include crankcase emissions). Because including the crankcase emissions is more conservative than required and Rosemont passes the NAAQS even with them included, Rosemont has elected to include.

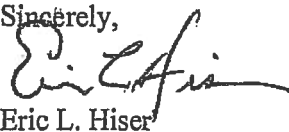
As Rosemont noted during our November 3, 2011 meeting, Rosemont is willing to process this permit application through the Accelerated Permit Processing program if that works better with ADEQ's current workflow needs. Please contact Kathy Arnold at the phone number below if ADEQ believes Accelerated Permit Processing would be appropriate.

We appreciate the consideration the Department has shown to Rosemont in this matter and hope that you concur with our determination that consolidating the various possible permitting procedures in ADEQ's permitting jurisdiction pursuant to A.R.S. § 49-402(B) is the best way to resolve the many unprecedented permitting issues raised by this matter. Please feel free to contact me at (480) 505-3927 with any questions or concerns on the jurisdictional issues,

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Kathy Arnold, Rosemont's Vice President for Environmental and Regulatory Affairs, at (520) 495-3502 if you have questions concerning Rosemont's plan of operations, or Louis Thanukos, JBR Environmental Consultants, at (480) 829-0457, if you have questions concerning the emissions estimates, modeling, or application materials. We look forward to working with ADEQ to complete the permitting process expeditiously.

Sincerely,



Eric L. Hiser
Counsel for Rosemont Copper Company

Attachments

Application Packet

Standard Application Forms in Attachment A

Excluding modeling, which will be submitted under separate cover

Cc: Kathy Arnold, Rosemont Copper Company (w/attachments)