

FMC Alkali Chemicals

FMC Corporation
PO Box 872
Green River, WY 82935

307.875.2580 phone
www.fmc.com



July 5, 2006

FILED

JUL 12 2006

David A. Finley, Administrator
Air Quality Division
Wyoming Department of Environmental Quality
122 West 25th Street
Herschler Building
Cheyenne, Wyoming 82002

Terri A. Lorenzon, Director
Environmental Quality Council

Re: Comments on Proposed Wyoming Rules to Adopt NSR Reform

Dear Mr. Finley:

FMC Corporation (FMC) appreciates the opportunity to comment on the proposal to modify Chapter 6, Section 4 of the Wyoming Air Quality Standards and Regulations. Generally, FMC supports the work of Wyoming Department of Environmental Quality (WDEQ) to adopt New Source Review (NSR) Reform and to provide new permitting options and more consistency with the federal rules. The comments presented below are consistent with WDEQ's rulemaking objectives.

1) Definition of "Emissions Unit."

FMC suggests that WDEQ revise the proposed definition of "emissions unit" to clarify that a replacement unit, as further defined in the rules, is an existing emissions unit, as defined at 40 CFR 52.21(b)(7)(ii). In addition, WDEQ's proposal omits a definition of "replacement unit" which is needed to define the characteristics of a unit that would be considered an existing unit for applicability determinations. Although the Equipment Replacement Provision (ERP) was vacated by judicial action, the definition of "replacement unit" included in the federal rules at 40 CFR 52.21(b)(33) was not removed from the NSR Reform rules. FMC suggests that this term of art be included in the proposed rules. Specifically, FMC suggests that WDEQ incorporate the federal definitions as set forth at 40 CFR 52.21(b)(7)(ii) and 40 CFR 52.21(b)(33) to ensure that projects involving replacement units are authorized to consider projected actual emissions to determine NSR applicability.

FMC

These changes will clarify that for purposes of performing NSR applicability determinations a “replacement unit” is an existing unit and therefore applicability may be determined by comparing baseline actual emissions to projected actual emissions. Without these revisions to the proposed WDEQ rules, the applicability determination methodology for replacement units is unclear creating confusion and inconsistency between the Division and the federal rules. Together these two changes will provide Wyoming sources the same permitting options provided by the federal rules and many other states.

2) Definition of “Net Emissions Increase.”

FMC suggests that this proposed definition be revised to more closely track the federal rules as set forth at 40 CFR 52.21(b)(3)(ii). Specifically, WDEQ’s proposed subsections (iii) and (iv) define contemporaneous and creditable as “a reasonable period (as specified by the Division).” This approach deviates from the definition of contemporaneous set forth in the federal rules and will likely create inconsistency and uncertainty for the regulated community. Keeping with the objectives of the WDEQ rulemaking, FMC recommends that subsection (iii) be revised to reflect the language in the federal rules. With respect to proposed subsection (iv), FMC requests that the language in (iv)(A) be deleted because it is inconsistent with the federal rule version.

3) Chapter 6, Section 4, proposed Subsection (H).

FMC suggests that WDEQ adopt an approach to record-keeping and reporting that is consistent with the federal rules. The federal rules require certain record-keeping where there is a “reasonable possibility” that a project may exceed a significant emissions rate. The types of records and the trigger for requiring those records is set forth in the federal rules. Although EPA is under a judicial order to review and further explain this portion of the federal rules, these provisions remain in effect at 40 CFR 51.165 and 51.166.

The inclusion of proposed subsections (H)(I) and (II) by the Division is inconsistent with the federal rules set forth at 40 CFR 52.21(r)(6). WDEQ’s proposal to require record-keeping, pre-construction notice, permit review, and emissions reporting for *all* projects that apply the projected actual emissions analysis goes beyond the federal requirements and may create unnecessary burden for Wyoming’s regulated community. WDEQ’s proposal would require a minor NSR permit application be submitted before commencing construction on a project, plus annual emissions reporting thereafter. This approach results in less flexibility for Wyoming’s regulated community than the federal rules and other states’ rules. The proposal creates an administrative burden for sources and the Division. While the federal rules impose some record-keeping, the text underscores the intent to streamline the permitting process:

Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any determination from the Administrator before beginning actual construction. 40 CFR 52.21(r)(6)(ii).

FMC suggests that WDEQ revise subsection (H) to track the requirements of 40 CFR 52.21(r)(6) and set forth the appropriate record-keeping for electric utility units and other sources.

Incorporation of these suggestions into the WDEQ proposal for NSR Reform will align the Air Quality Standards and Regulations more closely with the federal rules. Accordingly, Wyoming's regulated community will be afforded the permitting options and consistency reflected in the NSR Reform. Thank you for your consideration. If you have any questions, please contact me at 307-872-2257.

Sincerely,



Otto C. Schnauber
Environmental Team Leader

cc: Bernard Dailey, NSR Program Manager
Air Quality Division
Wyoming Department of Environmental Quality
122 West 25th Street
Herschler Building
Cheyenne, Wyoming 82002