

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)
)
)
Florence Copper, Inc.) UIC Appeal No. 17-02
)
)
UIC Permit No. R9UIC-AZ3-FY11-1)
)
)

**PERMITTEE FLORENCE COPPER, INC.'s RESPONSE TO PETITION FOR REVIEW
FILED BY THE GILA RIVER INDIAN COMMUNITY**

ATTACHMENT 6

Region 9's Notice of Stay of Contested Permit Conditions



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

VIA ELECTRONIC FILING AND U.S. MAIL

January 30, 2017

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Ave, N.W.
Mail Code 1103M
Washington, DC 20460-0001

Russell Hallbauer
President and Chief Executive Officer
Florence Copper, Inc.
1575 W. Hunt Highway
Florence, AZ 85132

**RE: Florence Copper, Inc.,
Class III In-Situ Production of Copper Permit No. R9UIC-AZ3-FY11-1
For the Florence Copper Production Test Facility (PTF)
EAB Appeal Nos. 17-01 through 17-03**

In accordance with 40 C.F.R. § 124.16, the United States Environmental Protection Agency, Region 9 (EPA) is providing notice of a stay of contested Permit conditions in connection with the Class III In-Situ Production of Copper Permit No. R9UIC-AZ3-FY11-1. The EPA issued the final permit on December 20, 2016 and transmitted the Notice of Final Permit Decision to Florence Copper, Inc. and other interested parties on December 20, 2016.

Three entities timely petitioned the EPA's Environmental Appeals Board (EAB) for review of the Permit: the Gila River Indian Community (GRIC), John L. Anderson, and the Town of Florence and South West Value Partners-GITS MR, LLC (SWVP) (joint petition filed). Each entity did not clearly identify contested permit conditions as described in 40 C.F.R. § 124.19(a). However, based on a review of the petitions, the EPA concludes that the entities contest the permit conditions listed below:

John L. Anderson, Appeal No. 17-01

- II.B.2. No Migration into or between Underground Sources of Drinking Water (USDWs)
- II.B.3. Adequate Protection of USDWs

Gila River Indian Community, Appeal No. 17-02

II.B.2. No Migration into or between Underground Sources of Drinking Water (USDWs)

II.B.3. Adequate Protection of USDWs

II.E. Well Operation

II.E.6.d. Injectate Fluid Limitations

II.F. Monitoring Program

II.H. Contingency Plans

SWVP-GITS MR, LLC and Town of Florence, Appeal No. 17-03

II.B.1. Exempted Zone

II.B.2. No Migration into or between Underground Sources of Drinking Water (USDWs)

The EPA's review of the SWVP and Town of Florence petitions indicates that petitioners are not contesting the permit conditions directly, rather requesting to remand the Permit back to EPA to require a new aquifer exemption application and revocation of the 1997 Aquifer Exemption.

When the EPA is notified that a Petition for Review has been filed, the EPA is to issue a notification to the Environmental Appeals Board, the applicant, and all other interested parties of the uncontested and severable conditions of the final permit. While a permit appeal is pending, the contested permit conditions are stayed. *See* 40 C.F.R. § 124.16(a)(2)(i). The remaining uncontested permit conditions that are not severable from contested conditions are also stayed. *See* 40 C.F.R § 124.16(a)(2)(i). Based on our review of the petitions, EPA has determined that the contested conditions are such an integral part of the whole permit that the uncontested conditions are not severable from the contested conditions. Therefore, the uncontested permit conditions are also stayed.

The EPA is notifying you that the effect of the Petitions for Review, per 40 C.F.R. § 124.16(a)(1), given that the permit involves a new facility or injection/recovery wells, is that the applicant does not have authorization to construct or operate the proposed facility and the existing permit remains in effect until resolution of the EAB appeals result in final agency action, per 40 C.F.R. § 124.16(c) and § 124.19(l).

If you have any questions regarding this notice, please contact David Albright at (415) 972-3971 or our attorney, Alexa Engelman, of the Office of Regional Council at (415) 972-3884.

Sincerely,



Tomás Torres *January 30, 2017*
Director, Water Division

CERTIFICATE OF SERVICE

I, Nancy Rumrill, hereby certify that on January 30 and/or 31, 2017, true and correct copies of EPA's Notice of Stay of Contested Permit Conditions were served:

Via the EPA's E-Filing System, E-mail and U.S. Mail to:

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Via E-Mail and/or U.S. Mail to:

All other Parties expressing interest in the FCI permit



Nancy J. Rumrill