

Freeport-McMoRan Sierrita Inc.
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Green Valley, Arizona 85622-0527

April 9, 2009

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Mr. Trevor Baggione
Air Quality Permits Section Manager
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007-2935

RE: Air Quality Control Renewal Permit No. 42862

Dear Mr. Baggione:

Freeport-McMoRan Sierrita, Inc. (Sierrita) appreciates the opportunity to comment on the public notice draft Air Quality Control Permit No. 42862 prepared by the Arizona Department of Environmental Quality (ADEQ). The first part of this letter provides standard comments on specific permit provisions, for which Sierrita requests ADEQ's response. The second part of the letter provides a statement by Sierrita for the historical record on this permit, for which Sierrita does not request ADEQ's response.

SPECIFIC PERMIT COMMENTS FOR WHICH SIERRITA REQUESTS ADEQ'S RESPONSE

One purpose of the draft permit, as explained in ADEQ's "Summary" on page 1, is to set emission limits for PM, PM₁₀ and SO₂ that will establish that the facility's potential to emit as being below the major source threshold for the Prevention of Significant Deterioration (PSD) program. The monitoring, recordkeeping, and reporting conditions for Sierrita's facility-wide SO₂ and PM/PM₁₀ limits in ADEQ's proposed draft permit include citations to R18-2-306.02(C), which is found within the rule entitled "Establishment of an Emission Cap." Sierrita agrees that this citation is appropriate. For consistency and accuracy, Sierrita requests that citations to R18-2-306.02 also be added to Attachment "B" Condition II.J ("Facility-wide Sulfur Dioxide (SO₂)") and to Attachment "B" Condition II.K ("Facility-wide Particulate Matter (PM) and Particulate Matter Less than 10 Microns (PM₁₀) Limitation").

STATEMENT FOR THE RECORD FOR WHICH SIERRITA DOES NOT REQUEST ADEQ'S RESPONSE

Sierrita recognizes the considerable time and collaborative effort put into the draft permit and supports issuance of the permit. Nevertheless, the approach that ADEQ has used in the permit to set emission limits below the PSD major source thresholds is not Sierrita's preferred approach for becoming a PSD non-major source. Sierrita believes that ADEQ's

approach is overly restrictive because it requires **separate** emission limits on **individual** emissions units at the facility. In contrast, Sierrita believes that the applicable air quality statutes and rules allow a more flexible permitting approach for source-wide emission limits. Specifically, Sierrita believes that the applicable laws allow ADEQ to establish a source-wide limit for each air pollutant of concern along with appropriate methods of monitoring and documenting compliance with said limits, without the need for separate, underlying emissions limits on individual emission units.

Because the pending permit will serve various important purposes, Sierrita does not want to delay its issuance by continuing to discuss these differing viewpoints with ADEQ at this time. However, the issue remains an important one for Sierrita, and no doubt for other sources under ADEQ's air quality jurisdiction. Sierrita reserves the right to resume the discussion with ADEQ in the future and to apply for permit revisions based on the results of such future discussions. To facilitate these future discussions, and for the record, Sierrita makes the following statement of its position. Because this statement is made for the record, rather than as a request for revisions to the pending draft permit, Sierrita is not requesting ADEQ's response in the agency's response to public comments on the pending permit.

Background

Sierrita proposed to establish source-wide emissions caps in accordance with A.A.C. R18-2-306.02. As originally proposed, these source-wide emissions caps would require that Sierrita's total non-fugitive actual emissions remain below 240 tpy for SO₂ and 225 tpy for PM and PM₁₀ as determined on a 12-month rolling average. During the processing of Sierrita's application, ADEQ permitting staff initially supported this approach, but eventually expressed concerns about the enforceability of a source-wide emissions cap and suggested that a more appropriate way to limit source-wide emissions would be to establish emission limits for individual emission units—basically a second “layer” of individual emission limits in addition to the source-wide emission limits. After many discussions of this issue, Sierrita understood that ADEQ categorically would not allow the establishment of *any* source-wide emissions cap on a stand-alone basis under R18-2-306.02, and that an additional layer of unit-specific limits under R18-2-306.01 would be required to “support” the source-wide emissions.

Sierrita continues to maintain that A.A.C. R18-2-306.02 allows the establishment of source-wide emissions limits without requiring the additional layer of unit-specific limits. Moreover, Sierrita believes that the second layer of source-specific emission wrongly undermines the operational flexibility intended by a source-wide emissions limit.

Sierrita's Original Proposal for Establishment of Source-wide Emissions Caps under A.A.C. R18-2-306.02

A.A.C. R18-2-306.02.A provides:

An applicant may, in its application for a new permit, renewal of an existing permit, or as a significant permit revision, request an emissions cap for a particular pollutant expressed in tons per year as determined on a 12-month rolling average, or any shorter averaging time necessary to

enforce any applicable requirement, for any emissions unit, combination of emissions units, or an entire source to allow operating flexibility including emissions trading for the purpose of complying with the cap.

To incorporate an emissions cap in a permit, A.A.C. R18-2-306.02.C requires that an applicant demonstrate that the terms and conditions in the permit will:

1. Ensure compliance with all applicable requirements for the pollutant;
2. Contain replicable procedures to ensure that the emissions cap is enforceable as a practical matter and emissions trading conducted under it is quantifiable and enforceable as a practical matter. For the purposes of this Section, “enforceable as a practical matter” shall include the following criteria:
 - a. The permit conditions are permanent and quantifiable;
 - b. The permit includes a legally enforceable obligation to comply;
 - c. The limits impose an objective and quantifiable operational or production limit or require the use of in-place air pollution control equipment;
 - d. The permit limits have short-term averaging times consistent with the averaging times of the applicable requirement;
 - e. The permit conditions are enforceable and are independent of any other applicable limitations; and
 - f. The permit conditions for monitoring, recordkeeping, and reporting requirements are sufficient to comply with R18-2-306(A)(3),(4), and (5).
3. For a Class I permit, include all terms required under R18-2-306(A) and R18-2-309.

Sierrita’s original proposal to establish source-wide emissions caps included conditions in addition to (i.e., more stringent than) the terms and conditions in Sierrita’s existing Class I permit. Everyone agrees that the terms and conditions in Sierrita’s existing Class I permit ensure compliance with all applicable requirements for SO₂, PM, and PM₁₀. Therefore, since the proposed conditions were more stringent than the permit existing conditions, everyone should have agreed that they, too, would ensure compliance with all applicable requirements. Accordingly, the demonstration required by R18-2-306.02.C.1 should have been accepted by ADEQ as satisfied by Sierrita’s proposal.

Sierrita’s proposal included replicable procedures to ensure that the source-wide emissions caps were enforceable as a practical matter in accordance with R18-2-306.02.C. To verify that actual emissions remain below the enforceable emissions caps, the actual emissions must be “quantifiable.” As defined at R18-2-301(14):

“Quantifiable” means, with respect to emissions, including the emissions involved in equivalent emission limits and emissions trades, capable of being measured or otherwise determined in quantity and assessed in terms of character. Quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times,

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materials used in a process or production, modeling, or other reasonable measurement practices.

Sierrita's proposal contained procedures to quantify actual source-wide SO₂, PM, and PM₁₀ emissions on a 12-month rolling average basis using the best data reasonably available (consistent with the methodologies specified under A.A.C. R18-2-327.C for the annual emissions inventory), including source-specific test data. These procedures would have ensured that the proposed emissions caps were "permanent and quantifiable" as required by R18-2-306.02.C.2.a. Once the proposed emissions caps and associated procedures were incorporated into Sierrita's Class I permit, Sierrita would have had a legally enforceable obligation to comply as required by R18-2-306.02.C.2.b.

R18-2-306.02.C.2.c requires that the limits impose an objective and quantifiable operational or production limit or require the use of in-place air pollution control equipment. Sierrita's proposal exceeded this requirement by requiring *both* production limits and the use of in-place air pollution control equipment as permit requirements.

To satisfy A.A.C. R18-2-306.02.C.2.d, the proposed annual emissions caps and throughput limitations would have been determined based on a 12-month rolling average, which is consistent with the averaging time specified by A.A.C. R18-2-306.02 and EPA's longstanding guidance on limiting potential to emit expressed in the June 13, 1989 memorandum entitled "Guidance on Limiting Potential to Emit in New Source Permitting." As required by A.A.C. R18-2-306.02.C.2.e, the proposed annual emissions caps, throughput limitations, air pollution control equipment requirements, and associated compliance demonstration procedures would have been expressed in permit conditions that were enforceable and independent of any other applicable limitations.

Finally, the existing Class I permit conditions and the additional compliance demonstration procedures proposed in Sierrita's previous permit application provided more than reasonable assurance of compliance. Therefore, Sierrita's proposed permit conditions for monitoring, recordkeeping, and reporting complied with R18-2-306(A)(3),(4), and (5) as required by A.A.C. R18-2-306.02.C.2.f and R18-2-306(A) and R18-2-309 as required by R18-2-306-02.C.3.

If you have any questions regarding these comments, please contact Sherry Burt-Kested at 520-648-8866.

Sincerely,



John Broderick
Vice President and General Manager

cc: Nancy Wrona, Director ADEQ Air Quality Division

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