(VAMP), Mariposa, Merced, San Joaquin and Stanislaus Counties, CA.

Summary: EPA supports the objective of the Vernalis Adaptive Management Plan (VAMP), and recognizes the potential benefits of providing additional water as proposed in the Draft SEIS. EPA recommends that Reclamation provide more detail in the Final SEIS on the cumulative effects and energy impacts of acquiring this additional water for the VAMP.

Final EISs

ERP No. F–COE–F39036–IL Hunter Lake New Supplemental Water Supply Reservoir, Construction, City of Springfield Application for Permit, Sangamon County, IL.

Summary: EPA's concerns regarding purpose and need, alternatives analysis, and social-economics were satisfied by the Final EIS. However, EPA continued to have objections due to concerns with wetland delineation and mitigation.

ERP No. F–IBR–K28019–CA East Bay Municipal Utility District, Supplemental Water Supply Project, American River Division of the Central Valley Project (CVP), Sacramento County, CA.

Summary: EPA continues to have concerns regarding the proposed alternatives, source water quality, and consistency with proposed Central Valley Project Improvement Act (CVPIA) and CALFED actions.

ERP No. F–IBR–K39062–00 Colorado River Interim Surplus Criteria, To Determine Water Surplus for use within the States of Arizona, California and Nevada (from 2001 through 2015), Colorado River Basin, AZ, CA and NV.

Summary: EPA remains concerned with the potential impacts of interim surplus criteria on perchlorate and the probability of more frequent and higher magnitude water shortages to other users of Lower Colorado River water. EPA requested that Reclamation continue to work with EPA and the Nevada Division of Environmental Protection on addressing prechlorate and to provide additional information in the Record of Decision on potential reparation/forbearance agreements among the Lower Basin states.

ERP No. F–NPS–G65075–LA Cane River Creole National Historical Park, General Management Plan, Natchitoches Parish, LA.

Summary: EPA had no further comments on the FEIS.

ERP No. F–TVA–A09830–00 Adoption—Disposition of Surplus Highly Enriched Uranium, TVA proposes to obtain 33 Metric Tons of Highly Enriched Uranium (HEU) to blend down to Low Enriched Uranium (LEU) and Fabricated to Fuel for use in Nuclear Reactors at Brown Ferry Nuclear Plant.

Summary: EPA expressed lack of objections with TVA's adoption of DOE's EIS. EPA had no concerns with DOE's final EIS, and TVA proposes to follow the same actions described in the DOE EIS.

Dated: March 13, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–6603 Filed 3–15–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[SW–FRL–6953–1]

Proposed Decision Regarding the Request by Astaris Idaho LLC for Renewal of the Current Extension of the Land Disposal Restrictions (LDR) Effective Date for Hazardous Wastes Generated at the Pocatello, Idaho Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed decision.

SUMMARY: The EPA is proposing to approve the request submitted by Astaris Idaho LLC for renewal of the current Case-by-Case (CBC) extension which established May 26, 2001, as the effective date of the Resource Conservation and Recovery Act (RCRA) land disposal restrictions (LDR) applicable to hazardous wastes generated at the Astaris Idaho LLC facility located in Pocatello, Idaho. This action responds to the request submitted by Astaris Idaho LLC to renew the original CBC extension, for up to one additional year, if the seven demonstrations required still can be made. If approved, this action would extend the effective date of the LDR for these waste streams to May 26, 2002. By statute, the EPA cannot grant further extensions of the effective date.

DATES: To make sure we consider your comments in developing a final decision on the Astaris request for renewal of the current CBC extension of the LDR effective date for the subject waste streams, you must submit your comments on or before April 6, 2001.

ADDRESSES: The official record for this action is identified as Docket Number F–2001–FM2P–FFFFF. Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the ''Supplementary Information'' section for information on accessing them.

You must send an original and two copies of your comments, referencing docket number F–2001–FM2P–FFFFF, to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov.* Comments in electronic format should also be identified by the docket number F–2001–FM2P–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

You may claim information that you submit in response to this notice as confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR part 2. Commenters should not submit any CBI electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, c/o Regina Magbie, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. If you submit CBI by courier/overnight express, an original and two copies of the CBI must be sent to: RCRA CBI Document Control Officer, Regina Magbie, Office of Solid Waste (5305W), U.S. EPA, 2800 Crystal Drive, 7th Floor, Arlington, VA 22202. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: For general information about this notice,

contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this CBC extension renewal, contact Mr. William Kline, Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 308–8440, (e-mail address: kline.bill@epa.gov).

SUPPLEMENTARY INFORMATION: The index of supporting materials evaluated by the EPA in reaching our determination to propose approval of the requested CBC extension renewal is available on the Internet. You will find this index at <*http://www.epa.gov/epaoswer/hazwaste/ldr/fmc.htm*>. The official record for this action will be kept in paper form. Accordingly, the EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the location noted in **ADDRESSES** at the beginning of this document.

The EPA's responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. The EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

The information in this section is organized as follows:

I. Background and Purpose of This Notice of Proposed Decision

A. Summary

Effective April 17, 2000, Astaris Idaho LLC became the owner and operator of the former FMC Pocatello facility (previously owned by FMC Corporation). Astaris Idaho LLC is a joint venture, comprising the combined phosphorous chemical businesses of FMC Corporation and Solutia, Inc. As such, Astaris Idaho LLC has responsibility for the construction, operation, and maintenance aspects of the planned LDR Treatment Plant at the Pocatello, Idaho facility. However, FMC Corporation retains responsibility for funding the capital costs and for implementing all RCRA Consent Decree projects, including the proposed LDR Treatment Plant. Likewise, we refer solely to FMC Corporation (FMC) when noting any actions that occurred at the Pocatello facility prior to the April 17, 2000, effective date of the joint venture. Previous notices regarding this facility identified it as FMC Pocatello. For the purposes of this notice of proposed decision, we simply will refer to FMC/Astaris as the applicant for the CBC extension renewal.

FMC/Astaris requests a one-year renewal of the current (case-by-case) extension of the RCRA land disposal restrictions (LDR) effective date that expires on May 26, 2001. This CBC extension is applicable to five hazardous waste streams generated at the Pocatello facility (EPA Identification Number: IDD070929518), located on as well as adjacent to Shoshone-Bannock Tribes' lands, referred to as the Fort Hall Indian Reservation. These five waste streams, which are generated in the production of elemental phosphorous, are: (1) Non-Hazardous Slurry Assurance Project (NOSAP) Slurry, (2) Medusa Scrubber Blowdown, (3) Furnace Building Washdown, (4) Precipitator Slurry, and (5) Phossy Water. These five waste streams exhibit two characteristics of hazardous waste: reactivity due to the presence of cyanide and phosphine, and ignitability. The wastes are generated in large quantities and pose unique handling, treatment, and disposal considerations, given the presence of elemental phosphorous and cyanide. Each of these waste streams also contains varying levels of Naturally Occurring Radioactive Material (NORM) which most off-site commercial TSDs are not permitted to manage.

The initial CBC extension was approved by EPA due to the demonstrated lack of available treatment capacity for these five waste streams and the stated need for additional time to complete design work, construct, and begin operation of an on-site treatment plant to treat these wastes. FMC/Astaris states, as described in more detail in section III of this notice, that there is a continued lack of available treatment capacity for these wastes. Also, more time is needed to finish the design of the treatment plant, construct it, and commence operation. If this proposed action is finalized, FMC/Astaris will be allowed to continue to treat, store, or dispose of these five waste streams, as currently managed in on-site surface impoundments, until May 26, 2002, without being subject to the LDR applicable to these wastes.

A RCRA Consent Decree (U.S. v. FMC Corporation) was entered in July 1999, to address past mishandling of these wastes and to avoid future environmental contamination. The Consent Decree requires closure of certain on-site ponds, tank system upgrades to comply with RCRA standards, implementation of SEPs [1] to address air quality, and for FMC to design, construct, and commence operation of an LDR—Compliant Treatment System by May 2002. The Shoshone-Bannock Tribe raised an unsuccessful legal challenge to the Consent Decree, citing, among other reasons, their opposition to the continued generation and on-site disposal of these hazardous wastes.

The EPA is proposing to approve the request made by FMC/Astaris for a one-year renewal of the current CBC extension of the RCRA land disposal restrictions (LDR) which expires on May 26, 2001. For this CBC extension

[1] Supplemental Environmental Projects—environmentally beneficial projects undertaken by a defendant in an enforcement case in order to reach a settlement, but which the defendant is not otherwise legally required to perform.

renewal to be approved, FMC/Astaris must make each of the seven demonstrations required under section 268.5(a), including that there is insufficient capacity to treat these wastes to meet current LDR requirements, that a binding contractual commitment has been made to construct the necessary treatment capacity, and that such treatment capacity cannot reasonably be made available by the effective date. If this proposed action is finalized, FMC/Astaris will be allowed to continue to manage these five waste streams in on-site surface impoundments, until May 26, 2002, without being subject to the land disposal restrictions (i.e. treatment standards preceding land disposal) applicable to these wastes. No further extension of the LDR effective date for these five wastes is allowed by law.

B. What is the Congressional Mandate Behind the Land Disposal Restrictions (LDR) and Extensions of the LDR Effective Date?

The Resource Conservation and Recovery Act (RCRA) establishes a program for controlling hazardous waste from the time it is generated, through its treatment and storage, until its ultimate disposal. The RCRA Hazardous and Solid Waste Amendments (HSWA) of 1984 imposed additional responsibilities on persons managing hazardous wastes. Among other things, HSWA required the EPA to develop regulations that prohibit the land disposal of certain hazardous wastes by specified dates in order to minimize threats to human health and to the environment posed by land disposal of these wastes. The EPA also was required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' Characteristic hazardous wastes must be treated not only to remove the characteristic property that identifies them as hazardous, but also to treat any hazardous constituents that may be present in the wastes in significant concentrations (so-called ''underlying hazardous constituents''). See *Chemical Waste Management* v. *EPA,* 976 F. 2d 2, 14–17 (D.C. Cir. 1992).

Congress recognized that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment may not always be available by the applicable statutory effective dates. As such, the EPA is authorized to grant a national capacity variance from the effective date which would otherwise apply to specific hazardous wastes, based on the earliest dates that such capacity will be available but not to exceed two years. In addition, the EPA is authorized to grant an additional extension of the applicable LDR deadline, on a case-by-case basis, for up to one year. Such an extension is renewable once for up to one additional year. The requirements for obtaining a CBC extension of a LDR effective date are found in Part 268–Land Disposal Restrictions, section 268.5(a). The specific requirements for obtaining the renewal of a CBC extension of a Land Disposal Restriction (LDR) effective date, the subject of this notice of proposed decision, are found in Part 268–Land Disposal Restrictions, section 268.59(e).

C. What Regulatory and Other Actions Have Led Up to This CBC Extension Renewal?

On January 25, 1996 (61 FR 2338), the EPA published a supplemental proposed rule that addressed land disposal restrictions applicable, among others, to characteristic mineral processing wastes. On behalf of its elemental phosphorous plant located in Pocatello, Idaho (Pocatello facility), FMC submitted a petition to request a two-year national capacity variance from the Phase IV LDR requirements, citing the lack of available treatment capacity in the U.S. for certain wastes generated by its Pocatello facility. FMC later submitted supplemental comments to its petition for a national capacity variance, informing the EPA that it could not design a treatment unit for its wastes until the applicable treatment standards and the wastes subject to treatment were defined.

On June 27, 1996, the EPA agreed to a motion for amendment of a 1994 consent agreement (*Environmental Defense Fund, Inc.* v. *Browner, No. 89–0598 (D.D.C.))* that allowed the EPA to establish a later date for promulgating the final Phase IV Supplemental Rule. FMC submitted supplemental comments to its petition for a national capacity variance, informing the EPA that it could not design a treatment unit for its wastes until the applicable treatment standards and the wastes subject to treatment were defined.

In February 1997, attorneys for the United States met with and informed the Tribal governing body of duly elected tribal officials, the Fort Hall Business Council, representing the federally recognized Shoshone-Bannock Tribes, on whose lands the Pocatello facility is located, that the United States intended to file an action against FMC for certain violations of the RCRA statute, i.e., FMC's past mishandling of hazardous wastes. This action and subsequent negotiations led to the eventual entry of a proposed Consent Decree in October 1998, as described below.

On May 12, 1997 (62 FR 26041), the EPA proposed to grant a two-year national capacity variance for three of the facility's waste streams, i.e., Medusa Scrubber Blowdown, Anderson Filter Media Rinsate, and Furnace Building Washdown. FMC submitted comments, noting that the Anderson Filter Media Rinsate had been eliminated by applying pollution prevention techniques. However, FMC identified three additional waste streams (Precipitator Slurry, NOSAP Slurry, and Phossy Water) generated in the same elemental phosphorous production process for which treatment capacity that satisfied the LDR requirements was not available. As such, FMC likewise stated the need for these three additional wastes to be granted the proposed two-year national capacity variance.

On May 26, 1998 (63 FR 28556), the EPA promulgated the Final LDR Phase IV rule and granted a two-year national capacity variance for newly identified characteristic wastes from elemental phosphorous processing, including the five waste streams generated at the Pocatello facility. This national capacity variance extended the LDR effective date for these wastes to May 26, 2000.

In September 1998, the United States agreed to delay the lodging of the Consent Decree to explore options for penalty sharing with the Tribes. The Tribes subsequently were offered the opportunity to become a formal party to the Consent Decree but on October 9, 1998, the Fort Hall Business Council declined to sign the Consent Decree and passed a Resolution opposing it.

On October 16, 1998, the United States lodged the proposed Consent Decree in U.S. District Court for the District of Idaho and held a public comment period on the proposed Consent Decree until December 18, 1998.

On March 29, 1999, the United States filed a Motion for Entry of the Proposed Consent Decree (*United States* v. *FMC, Civ. No. 98–0406–E–BLW*), requiring that FMC design and construct a treatment system, referred to as the LDR Treatment System, that will treat the Pocatello facility's production wastes to the LDR treatment standards. Under this RCRA Consent Decree, FMC must begin operating the LDR Treatment System by May 2002. The Tribes filed a Motion to

Intervene on April 23, 1999 and the District Court granted this motion on May 18, 1999. A Memorandum of Opposition for Entry of the Proposed Consent Decree subsequently was filed by the Tribes. The United States submitted a Memorandum in Support of Motion of the United States for Entry of Proposed Consent Decree, dated May 27, 1999. This reply Memorandum addressed the Tribes' concerns and expressed regret that the Tribes apparently believe their interests are not being fully protected in this matter. It is noted in the ''Reply Memorandum in Further Support of Motion of the United States for Entry of Proposed RCRA Consent Decree,'' dated May 27, 1999, that FMC would need to obtain Case-by-Case extensions of the LDR effective date, per the requirements of 40 CFR 268.5, in order to allow the continued discharge of wastes to the facility's on-site surface impoundments, beyond the May 26, 2000 expiration date of the national capacity variance.

On July 12, 1999, FMC Corporation submitted to the EPA a request, along with documentation to support the required seven demonstrations in section 268.5, for a one-year CBC extension of the LDR effective date for the five waste streams generated at its facility located in Pocatello, Idaho.

On July 13, 1999, after reviewing a Memorandum of Opposition for Entry of the Proposed Consent Decree, filed by the Tribes, and memoranda filed by the United States and FMC in response to the Tribes' Memorandum, the District Court granted the United States' motion for leave to enter as final the Consent Decree.

The Shoshone-Bannock Tribes filed Notice of Appeal on August 11, 1999 and on November 29, 1999, filed an appeal of the final RCRA Consent Decree (Appeal No. 99–35821) in the United States Court of Appeals for the Ninth Circuit. This appeal was ultimately denied.

On March 8, 2000 (65 FR 12233), the EPA proposed to approve FMC's request for a one-year CBC extension of the LDR effective date, based upon a determination that FMC had fulfilled the criteria of 40 CFR 268.5(a) which sets forth the required demonstrations to be made in requesting a CBC extension of a LDR effective date.

On April 17, 2000, Astaris Idaho LLC, a joint venture comprising the combined phosphorous chemical businesses of FMC Corporation and Solutia, Inc, became the owner and operator of the former FMC Pocatello facility (previously owned by FMC Corporation).

On May 2, 2000, Elizabeth Cotsworth (Director of the EPA Office of Solid Waste) met with the Fort Hall Business Council (duly elected tribal members representing the Shoshone-Bannock Tribes, which are federally recognized), in Pocatello, Idaho, to consult with the Tribes regarding FMC's initial request for a CBC extension of the LDR effective date.

On May 31, 2000 (65 FR 34694), the EPA issued final approval of the requested initial CBC extension, extending the LDR effective date to May 26, 2001.

On June 9, 2000, representatives of the Shoshone-Bannock Tribes met with Tim Fields (then-Assistant Administrator of the EPA Office of Solid Waste and Emergency Response) to discuss issues regarding the Fort Hall Indian Reservation. Mr. Fields and the Tribal representatives discussed the Agency's consultation process, in general, and, more specifically, as applied to both the then-recently approved initial CBC extension and the anticipated request by FMC/Astaris for renewal of the CBC extension of the RCRA Land Disposal Restrictions (LDR) for the five subject waste streams.

On November 1, 2000, FMC/Astaris submitted a request to the EPA for a one-year renewal of the current CBC extension, until May 26, 2002.

D. What Other Actions Are Underway at the Pocatello facility?

The Consent Decree is only one of several actions underway to address the environmental impact of operations at the Pocatello facility. Groundwater and soil contamination from old ponds are being addressed under a CERCLA Record of Decision (ROD), issued on June 8, 1998. The United States is negotiating a separate Consent Decree with FMC and the owner of another nearby facility to perform the Remedial Action selected in the ROD. Particulate air emissions at this facility are being addressed in the proposed Federal Implementation Plan, issued pursuant to the Clean Air Act on February 12, 1999. Once finalized, there will be federally enforceable limits/control requirements applicable to the particulate emissions.

E. What Demonstrations Must be Evaluated by the EPA in Reviewing a Request for a CBC Extension (or Renewal of CBC Extension) of the LDR Effective Date?

In order to receive approval for a CBC extension (or renewal of a CBC extension), the EPA must evaluate the extent to which the FMC/Astaris has addressed the following seven demonstrations, as specified in 40 CFR 268.5:

1. Made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage the waste streams (40 CFR 268.5(a)(1)).

2. Entered into a binding contractual commitment to construct or otherwise provide alternative capacity (40 CFR 268.5(a)(2)).

3. Showed that due to circumstances beyond the applicant's (FMC/Astaris) control, alternative capacity cannot reasonably be made available by the applicable effective date (40 CFR 268.5 (a)(3)).

4. Showed that the treatment capacity to be provided will be sufficient to manage the entire quantity of the five waste streams for which the CBC extension is requested (40 CFR 268.5(a)(4)).

5. Submitted a detailed schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity will be available (40 CFR 268.5(a)(5)).

6. Showed that sufficient capacity has been arranged to manage the entire quantity of waste which is the subject of the application during the requested extension period, and document the location of all facilities at which the waste will be managed during the extension period (40 CFR 268.5(a)(6)).

7. Showed that any surface impoundment used to manage these five wastes during the extension period meets minimum technological requirements (40 CFR 268.5 (a)(7)).

II. Overview of the FMC/Astaris Request for Renewal of the Case-by-Case Extension

A. What is the Basis for FMC/Astaris Requesting Renewal of the Current CBC Extension?

On November 1, 2000, FMC/Astaris submitted a request to the EPA to renew the current CBC extension, that expires on May 26, 2001, for one additional year, until May 26, 2002. FMC/Astaris provided documentation demonstrating, as was the case when the EPA approved the initial CBC extension for these wastes in May 2000 (see 65 FR 34694, May 31, 2000), that there still is no available off-site commercial treatment capacity for these five waste streams. A more detailed discussion of this situation is provided in Section III.A of this notice. FMC/Astaris also provided documentation to show that, since approval of the initial CBC extension, steady and significant progress has been made toward completing the design, procuring equipment, and commencing

construction of the proposed LDR Treatment Plant (see sections III.B through III.E of this notice for further discussion of this matter). However, as was anticipated at the time of approval of the initial CBC extension, additional time still is needed to complete the design work, finish construction, and begin operation of the LDR Treatment Plant. The target date for bringing the LDR Treatment Plant on-line remains to be May 2002. This CBC extension renewal, if approved, is the final extension of the LDR effective date available to these five waste streams. The RCRA Consent Decree, entered as final on July 13, 1999, likewise requires that the LDR Treatment System be constructed and in operation by May 2002. It also prohibits the discharge of untreated hazardous wastes to the facility's on-site surface impoundments (Pond 17 and Pond 18) after May 26, 2002.

B. How Does RCRA Consent Decree Impact and Correlate With the Requested Renewal of the CBC Extension?

The Pocatello facility is located on, as well as adjacent to, Shoshone-Bannock Tribes' lands, referred to as the Fort Hall Indian Reservation. Elemental phosphorous has been produced at this location for the past 50 years. The Tribes are concerned about the cleanup of past environmental contamination resulting from these operations and the risks posed by the continued discharge of untreated hazardous wastes into on-site surface impoundments. The RCRA Consent Decree, initially filed in October 1998, was negotiated to promptly address FMC's past mishandling of hazardous wastes and to avoid future environmental contamination. On July 13, 1999, the U.S. District Court for the District of Idaho entered as final the RCRA Consent Decree (*United States* v. *FMC Corp., Civ. 98–0406–E–BLW*). This RCRA Consent Decree mandates certain requirements regarding the management of the Pocatello waste streams, including site-specific treatment requirements to deactivate ignitable and reactive waste streams, and the requirement to design, construct, and commence operation of a Land Disposal Restrictions Treatment System (LDR Treatment System) for these waste streams by no later than May 2002. It also specifically requires closure of specified on-site surface impoundments (ponds) used to manage the generated wastes, establishes a Pond Management Plan, and mandates certain plant upgrades. These upgrades include, for example, the installation of secondary containment for sumps, tanks, and piping inside the Furnace Building and at the Phos Dock area.

The terms of this RCRA Consent Decree address many of the demonstrations required under 40 CFR part 268 to obtain a CBC extension (or renewal of a CBC extension) of the LDR effective date. However, the RCRA Consent Decree does not negate the need for CBC extensions to allow the continued discharge of the LDR subject wastes to on-site surface impoundments while the planned LDR Treatment Plant is being designed and constructed. A detailed discussion of this overlap was provided in the March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices to address the initial CBC extension.

Compliance with the terms of the RCRA Consent Decree, in essence, satisfies what needs to be documented for certain of the required demonstrations for a CBC extension, thus ensuring consistency of both the CBC extension and RCRA Consent Decree processes. As with the initial CBC extension, the requirements mandated under the RCRA Consent Decree will support the CBC extension renewal that the EPA is proposing to approve today and, used in conjunction, to further compel that operation of the LDR Treatment Plant begins by May 2002. Approval of a CBC extension renewal of the LDR effective date does not alter any terms of the RCRA Consent Decree and, in actuality, would only remain effective contingent upon compliance with the terms of the RCRA Consent Decree.

C. Summary of the FMC/Astaris Request for Renewal of the Current CBC Extension

The Pocatello facility (EPA Identification Number: IDD070929518), located on as well as adjacent to Shoshone-Bannock Tribes' lands, referred to as the Fort Hall Indian Reservation, manufactures elemental phosphorous. Elemental phosphorous is produced by feeding a combination of phosphate ore, coke, and silica rock into electric arc furnaces. The elemental phosphorous is shipped to other facilities to produce phosphates and other phosphorous-based products, for use in numerous products, including processed foods, beverages, detergents, cleaners, agricultural chemicals, and water treatment chemicals.

This elemental production process generates large quantities of five waste streams that pose unique handling, treatment, and disposal considerations, given the presence of elemental phosphorous and cyanide, causing the wastes to exhibit the characteristic of reactivity for phosphine and hydrogen cyanide gas, and also to exhibit the characteristic of ignitability. A more detailed discussion of the characteristics and management of these wastes can be found in the March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices to address the initial CBC extension. Each of these waste streams also contains varying levels of Naturally Occurring Radioactive Material (NORM) which most off-site commercial TSDs are not permitted to manage. These wastes are:

1. *Precipitator Slurry:* a mixture of water and dust, consisting of the suspended particulates removed from the electric arc furnace off gases by electrostatic precipitators and collected in slurry pots.

2. *Non-Hazardous Slurry Assurance Project (NOSAP Slurry):* precipitator slurry that, when mixed with lime, meets minimum quality criteria.

3. *Phossy Water:* water that had been used in contact with the phosphorous from the point the elemental phosphorous leaves the primary condensers and is handled in various intermediate operations leading to transfer to railroad tank cars for off-site shipment.

4. *Medusa Scrubber Blowdown:* wastewater from Medusa venturi scrubbers that are used to treat smoke and fumes from furnace tapping, slag and metal runners, and the ferrophos cooling area.

5. *Furnace Building Washdown:* water collected in four sumps from numerous sources within the furnace building.

The initial CBC extension was requested due to the lack of available treatment capacity for these five waste streams and the need for additional time to design, construct, and begin operation of an on-site LDR Treatment Plant that would treat these five wastes to meet applicable treatment standards. FMC/Astaris requests a one-year renewal of the current CBC extension (expires on May 26, 2001) of the effective date of the RCRA land disposal restrictions (LDR) applicable to these five waste streams. The five waste streams are and would continue to be managed in two on-site surface impoundments (Ponds 17 and 18) until the LDR Treatment Plant is operational, no later than, May 26, 2002. These two surface impoundments into which these wastes would be placed during the CBC extension renewal, if approved, were constructed to meet the RCRA minimum technological requirements of 40 CFR 268.5(h)(2) (which implements section 3005(j)(11) of the statute), including liners and groundwater monitoring, and

must be operated in compliance with the Pond Management Plan, as incorporated into the Consent Decree.

FMC/Astaris has provided documentation that updates and supplements the data that initially had been submitted to support the demonstrations required to obtain an initial CBC extension. FMC/Astaris has submitted an updated survey of available commercial treatment capacity. Significant additional design details of the planned LDR Treatment Plant and many purchase orders also have been provided—to further show their commitment to this project. These additional data are discussed in section III of this notice. As required under the current CBC extension, FMC/Astaris has submitted monthly progress reports to the EPA. In essence, these reports show that FMC/Astaris has made continued progress toward completing the design of the treatment plant, procuring equipment, and initiating construction of the infrastructure for the planned facility.

FMC/Astaris is in the process of designing and constructing a treatment unit, referred to as the LDR Treatment Plant, that will treat these five waste streams, using a modified Zimpro treatment process, to meet the applicable treatment standards. This treatment system will reduce the levels of elemental phosphorous and cyanide in the wastes such that the treated wastes do not exhibit the characteristic of reactivity for phosphine and hydrogen cyanide gas or the characteristic of ignitability. Underlying hazardous constituents, contained in the wastes, also must be maintained or fixed in a nonleachable form for stabilization treatment prior to disposal. The LDR Treatment Plant, employing this treatment technology, will process three primary waste streams:

1. Discharge from Tank V3800 (Phossy Water),

2. Discharge from Tank V3600 in the Furnace Building (Medusa Scrubber Blowdown, Furnace Building Washdown, and Precipitator Slurry), and

3. Solids reclaimed from Pond 18 (the RCRA Consent Decree requires that solids accumulated in Pond 18 be removed and treated within five years after the LDR Treatment System commences operation).

Once the LDR Treatment Plant is operational, the NOSAP system will no longer be necessary, thereby eliminating the NOSAP Slurry waste stream. Operating the LDR Treatment Plant also ultimately will eliminate the need for the continued use of the on-site surface impoundments.

The Shoshone-Bannock Tribes oppose the continued generation and disposal of these untreated wastes in the Pocatello on-site surface impoundments.

D. Potential Use of a Different Technology by FMC/Astaris to Address Generated Wastes

FMC/Astaris recently has informed the EPA that it now is considering a technology, referred to as a High Temperature Dust Filtration (HTDF) System, that would be incorporated into the elemental phosphorus production process. This system would be located directly after the electric arc furnaces and replace the existing phosphorus recovery system, which comprise a series of two electrostatic precipitators (ESP) and two condensers. Eliminating the existing phosphorus recovery system also would eliminate three of the five hazardous waste streams that are the subject of the CBC extension renewal. If employed, the HTDF system would eliminate the Precipitator Slurry, NOSAP Slurry, and Phossy Water waste streams. As such, the HTDF technology, by eliminating these three hazardous waste streams (it is claimed), would eliminate the need for a system to treat these wastes to meet the LDR standards. FMC/Astaris claims that the HTDF system would impact, but not necessarily eliminate the remaining two waste streams, i.e., Medusa Scrubber Blowdown, and Furnace Building Washdown, that likewise are the subject of the CBC extension renewal request. FMC/Astaris is continuing to evaluate their options for addressing these wastes and have stated their intent to submit information to EPA in late March 2001 regarding the planned management of these waste streams.

According to FMC/Astaris, advantages of the HTDF technology, a version of a baghouse, include:

- Captures a greater quantity of phosphorus than the current recovery system.
- Improves the quality of the phosphorus.
- Minimizes cyanide formation.
- Eliminates most water-borne waste streams and the ponds needed to manage these waste streams.
- Potentially reduces air emissions from the furnace off-gas.

As of today's publication of this notice of proposed decision, FMC/Astaris has not yet made a final decision whether to choose the HTDF technology and thus abandon the planned LDR Treatment Plant that already is being constructed. One issue, in particular, that FMC/Astaris is trying to resolve, with Tribal input, is how to address the Pond 18 accumulated solids that are currently mandated by a RCRA Consent Decree to be treated within five years of startup of the planned LDR Treatment Plant. The HTDF system described above would not treat already-generated wastes; it would prevent generation of new ones.

A decision by FMC/Astaris to pursue the HTDF technology, a process retrofit, rather than the LDR Treatment Plant technology, as originally proposed to address the five wastes subject to the LDRs and on which the current CBC extension is based, would not automatically cause the EPA to revoke the current CBC extension. However, FMC/Astaris is required to immediately notify EPA of any change in the demonstrations made in the application for the CBC extension (see 40 CFR 268.5(f)). As noted in the FR notice of final approval of the current CBC extension (May 31, 2000 (65 FR 34694)), this extension remains in effect unless the facility fails to make a good-faith effort to meet the schedule for completion, the Agency denies or revokes any required permit, conditions certified in the application change, or the facility violates any law or regulations implemented by EPA. The monthly progress report also must identify any delay or possible delay in developing this treatment capacity and describe the mitigating actions being taken in response to the event (40 CFR 268.5(g)). FMC/Astaris has alerted the EPA Region 10 that it is giving serious consideration to the HTDF technology as the means to eliminate three of the five hazardous waste streams now generated and thus serve as a replacement for the planned LDR Treatment Plant. Meanwhile, until FMC/Astaris reaches a final decision regarding implementation of the HTDF technology, construction of the LDR Treatment Plant is proceeding on schedule.

If FMC/Astaris decides to substitute the HTDF technology in place of the LDR Treatment Plant, and this fact is reflected in the RCRA Consent Decree, FMC/Astaris would need to submit an amended CBC extension renewal application to the EPA. However, EPA anticipates that certain of the demonstrations made in support of the November 1, 2000 application for renewal of the CBC extension, as discussed in section III of this notice, will remain unchanged. For any alternative technology, FMC/Astaris would need to place emphasis, in particular, on (1) their binding contractual commitment to design, install, and operate the technology, (2) the reason that this technology could

not have been implemented earlier, and (3) a schedule that shows the milestones, including obtaining the necessary permits, for bringing the HTDF system on-line by no later than May 26, 2002. After reviewing the new and additional information provided by FMC/Astaris, the EPA would determine the most appropriate means by which to provide public notice of the change in technology. Options include: (1) Prior to the May 26, 2001 expiration date of the current CBC extension, publish a supplemental notice of proposal regarding our decision on whether FMC/Astaris has met each of the seven demonstrations in 40 CFR 268.5, (2) provide informal notice to interested parties, and (3) proceed through the process to reach a final decision regarding the action being proposed today followed-up by subsequent action, if needed, to provide opportunity for public comment on the supplemental notice of change in technology. The EPA is discussing this issue now, even though FMC/Astaris has not made a definitive decision to proceed with the HTDF technology and even though details about using this prospective technology rather than the planned LDR Treatment Plant are not fully fleshed out, in order to give the public as much notice as possible regarding this situation. Also, in light of the pending end of the current CBC extension, and the absolute limit of any extension of the LDR effective date to no later than May 26, 2002, we think it prudent to give as much advance notice as possible, even if the information is incomplete at this time.

In any case, the current CBC extension of the LDR effective date for the five subject wastes will expire on May 26, 2001. And, regardless of whether FMC/Astaris decides to employ the HTDF technology or continue with the planned LDR Treatment Plant, only one additional extension of the LDR effective date, until May 26, 2002, remains available for these five waste streams. This is because, by the express terms of RCRA section 3004(h)(3), case-by-case extensions date from the waste prohibition date, and can extend that date no more than four years.

III. The EPA's Evaluation of Demonstrations Provided by FMC/Astaris Under 40 CFR 268.5(a)

For the sake of clarity, the only mention of FMC is made when referring to actions and events regarding the Pocatello facility and the initial CBC extension that are solely attributable to FMC. For all other actions/events, for example, matters involving the renewal of the current CBC extension, the term FMC/Astaris is used to indicate joint involvement and responsibility. The following is a summary of each of the seven demonstrations required under 40 CFR 268.5(a) to obtain a CBC extension (and renewal of a CBC extension) and the EPA's evaluation of the adequacy of the demonstrations made by FMC/Astaris.

1. Section 268.5 (a)(1)—The Applicant (FMC/Astaris) Has Made a Good-Faith Effort To Locate and Contract With Treatment, Recovery, or Disposal Facilities Nationwide To Manage its Waste in Accordance With the LDR Effective Date of the Applicable Restriction (i.e., May 26, 2001)

As discussed in the March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices to address the initial CBC extension, several surveys of treatment, storage, and disposal facilities (TSDs) throughout the nation were conducted previously, in an effort to locate commercial treatment or disposal capacity. In September–October 2000, a follow-up survey of 33 TSD facilities was conducted by FMC/Astaris to determine what, if any, commercial treatment capacity was available for these waste streams. Results of this supplemental survey likewise can be found in the Docket. Consistent with the previous surveys, none of these TSD facilities was able or willing to provide treatment or disposal capacity for the Pocatello waste streams. Various reasons were noted by the TSDs in declining to manage these waste streams, including the presence of elemental phosphorous, the potential for generation of phosphine gas, levels of naturally occurring radioactive materials (NORM), and the volume of wastes to be managed. Likewise, the EPA is not aware of any available capacity for these waste streams. Given these findings, and that no commercial (or other) entity providing waste treatment has disputed these conclusions, we believe that FMC/Astaris has made a reasonable effort to try to locate adequate, alternative treatment capacity for the off-site management of the waste streams for which it is requesting a renewal of the current CBC extension of the LDR effective date. As such, the EPA concludes that FMC/Astaris has adequately fulfilled the requirements of this demonstration.

2. Section 268.5 (a)(2)—The Applicant (FMC/Astaris) Has Entered Into A Binding Contractual Commitment To Construct or Otherwise Provide Alternative Treatment, Recovery, or Disposal Capacity That Meets the Treatment Standards Specified in 40 CFR Part 268, Subpart D or, Where Treatment Standards Have Not Been Specified, Such Treatment, Recovery, or Disposal Capacity is Protective of Human Health and the Environment

For the initial CBC extension request, documentation was provided showing that a contract had been entered into with Raytheon Engineers and Constructors to design and construct the planned LDR Treatment Plant. In addition to this contract, other documentation, including corporate approval of funds and numerous purchase orders for equipment, supplies, and services, was provided to further support the demonstration of a binding contractual commitment to construct the LDR Treatment Plant. Please see the March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices, addressing the initial CBC extension, for further details on this information.

Since the EPA approved the initial CBC extension in May 2000, FMC/Astaris has provided additional documentation to further support their binding contractual commitment to providing the necessary treatment capacity. As noted earlier, Astaris has responsibility for the construction, operation, and maintenance aspects of the planned LDR Treatment Plant at the Pocatello facility. However, FMC Corporation retains responsibility for funding the capital costs and for implementing all RCRA Consent Decree projects, including the proposed LDR Treatment Plant. Under the RCRA Consent Decree, FMC is compelled to design and construct the proposed LDR Treatment System by May 2002. If FMC fails to meet the stipulations of this RCRA Consent Decree, it will be subject to significant monetary penalties. As such, FMC/Astaris has provided documentation of an Authorization for Expenditures, approved by FMC in June 2000, in the amount of $122.5 million. Copies of approximately 70 Purchase Orders to obtain equipment, supplies, services also have been provided.

The EPA concludes that FMC/Astaris has provided the necessary documentation to meet this demonstration of its binding contractual commitment to provide the on-site treatment capacity needed to treat the subject waste streams, generated at the

Pocatello facility, to the applicable treatment standards.

3. Section 268.5 (a)(3)—Due to Circumstances Beyond the Applicant's (FMC/Astaris) Control, Such Alternative Capacity Cannot Reasonably be Made Available by the Applicable Effective Date. This Demonstration May Include a Showing That the Technical and Practical Difficulties Associated With Providing the Alternative Capacity Will Result in the Capacity Not Being Available by the Applicable Effective Date

As previously discussed in the March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices, FMC has committed considerable resources and intensive effort toward determining and developing the most appropriate treatment technology for these five waste streams. Aside from the continuing lack of commercial treatment capacity and in addition to solving the numerous and essentially unique technical problems posed by these waste streams, FMC has needed to know the final Phase IV LDR treatment standards and engage in RCRA Consent Decree negotiations with the United States government.

In approving the current CBC extension, the EPA was convinced that FMC had acted in good faith to provide the necessary treatment capacity but that such capacity could not reasonably be made available by the LDR effective date. The EPA concluded that the lack of treatment capacity for these waste streams was due to circumstances beyond the control of FMC. These waste streams pose unique handling, safety, and treatment considerations, including the presence of elemental phosphorous and cyanide, and the potential for generation of phosphine and hydrogen cyanide gas. FMC demonstrated to the EPA's satisfaction that it had aggressively pursued the development of a technology capable of treating these waste streams to applicable treatment standards and was actively engaged in the design and construction of the treatment system to employ this technology to provide the necessary treatment capacity. However, it was not possible for FMC to construct the LDR Treatment Plant needed to provide the treatment capacity and to be operating by the May 26, 2000 expiration date of the national capacity variance.

The one-year initial CBC extension that was approved for these waste streams will expire on May 26, 2001. The monthly progress reports submitted by FMC/Astaris, since June 2000, continue to show that FMC/Astaris is proceeding ahead of and on schedule. The EPA concludes that FMC/Astaris is continuing to make a good-faith and reasonable effort in their attempt to provide treatment capacity but that such capacity cannot reasonably be made available by May 26, 2001, the current effective date of the land disposal restriction for these waste streams. The EPA further concludes the lack of treatment capacity for these waste streams is due to circumstances beyond the control of FMC/Astaris. As such, FMC/Astaris has adequately met the demonstration of section 268.5(a)(3).

4. Section 268.5 (a)(4)—The Capacity Being Constructed or Otherwise Provided by the Applicant (FMC/Astaris) Will be Sufficient To Manage the Entire Quantity of Waste That is the Subject of the Application

The initial application for a CBC extension stated that the planned LDR Treatment Plant would have sufficient capacity to adequately treat the waste streams generated by the Pocatello facility. The documentation demonstrated that the treatment system would meet the LDR treatment standards, destroying elemental phosphorous and cyanide in the subject waste streams and removing the hazardous characteristics from these waste streams. Information regarding the process design flow and operating conditions of the proposed LDR Treatment Plant was also provided. This information showed that sufficient capacity would be provided to treat the full annual production of the five waste streams that are the subject of the requested CBC extension. Also, FMC/Astaris stated that the treatment capacity would likewise be sufficient to treat the accumulated solids in Pond 18, within five years of commencing operation of the LDR Treatment Plant, as is required by the RCRA Consent Decree. In response to questions raised by the EPA and the Shoshone-Bannock Tribes regarding the design capacity of the LDR Treatment Plant, FMC/Astaris has reaffirmed their commitment to ensure that the Pocatello facility definitely will have sufficient capacity to manage the five waste streams that are the subject of this CBC extension renewal as well as the Pond 18 accumulated solids required to be treated under the RCRA Consent Decree (see the March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices.). FMC/Astaris also has noted that waste reduction initiatives being implemented at the Pocatello facility, along with upgrades to existing operations, will further ensure that the LDR Treatment Plant has sufficient capacity. Since approval of the current CBC extension in May 2000, FMC/Astaris has reduced its estimate of the quantity of Pond 18 solids that will need to be removed and treated in the LDR Treatment Plant. This reduction in solids is attributed to improved efficiency and increased use of the NOSAP System. In their November 1, 2000 CBC extension renewal application, FMC/Astaris stated that the combined total of process waste and Pond 18 excavated material to be treated in the LDR Treatment Plant amounts to 3757 pounds/hour, significantly less than the 4900 pounds/hour design size of the Plant. If necessary, to further ensure sufficient treatment capacity, FMC/Astaris has committed to cut back plant production to reduce the quantity of wastes generated. The EPA is convinced that FMC/Astaris is committed to providing the necessary treatment capacity to ensure that the entire quantity of these five waste streams, for which FMC/Astaris is requesting a CBC extension renewal, will meet applicable treatment standards.

5. Section 268.5 (a)(5)—the Applicant (FMC/Astaris) Provides a Detailed Schedule for Obtaining Operating and Construction Permits or an Outline of How and When Alternative Capacity Will be Available

As previously discussed in the March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices, addressing the initial CBC extension request by FMC/Astaris, FMC/Astaris has provided the EPA with a proposed schedule for the design, construction, and permitting of the LDR Treatment Plant to be constructed at its Pocatello, Idaho facility. This schedule, in effect, coincides with the schedule outlined under the Consent Decree for bringing the LDR Treatment System on-line by May 2002. The EPA, via the monthly progress reports submitted by FMC/Astaris, has monitored the progress made by FMC/Astaris toward its stated schedule for the design, construction, and operation of the LDR Treatment Plant. FMC/Astaris has shown that the plant design is essentially completed, considerable equipment has been procured, and site preparation is underway. The EPA concludes that FMC/Astaris has made a good faith effort in designing and beginning construction of the LDR Treatment Plant.

FMC/Astaris has provided a detailed schedule of milestones and dates for designing, constructing, and bringing the LDR Treatment on-line by May 2002. The Table below shows some of the recent and remaining key milestones

and dates in the schedule provided by FMC/Astaris. A more detailed schedule is in the Docket for this notice.

KEY MILESTONES AND DATES FOR LDR TREATMENT PLANT

Milestone	Date
Start site preparation major work	09/25/00
Complete Process Bldg. concrete design	01/08/01
Part B Submittal	03/01/01
Complete Process Bldg. piping design	03/02/01
Complete Process Bldg. steel erection	06/12/01
Complete Large Bore Pipe Installation	08/15/01
Commence off gas system startup	01/09/02
Final Mechanical Completion	01/08/02
Plant Operational	05/01/02

We conclude, subject to evaluation of public comments, that FMC/Astaris has provided the necessary design, construction and permitting milestones for bringing the LDR Treatment Plant on-line. Given that FMC/Astaris has successfully met its milestones to this point, the EPA is further convinced of the likelihood that the proposed LDR Treatment Plant will be successfully constructed and brought on-line by May 2002.

The EPA notes that the one-year CBC extension renewal being proposed today is the final extension of the LDR effective date available for these five wastes. As such, after the May 26, 2002 expiration date of the proposed CBC extension renewal, these five wastes are prohibited from land disposal unless they are treated to applicable treatment standards.

6. Section 268.5 (a)(6)—The Applicant (FMC/Astaris) Has Arranged for Adequate Capacity To Manage its Waste During an Extension, and Has Documented the Location of All Sites at Which the Waste Will Be Managed

FMC/Astaris will continue to manage the five waste streams in two on-site surface impoundments, referred to as Ponds 17 and 18. As previously discussed in the March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices, FMC/Astaris has provided data showing that each of these surface impoundments will have the necessary capacity available to manage these wastes until the planned LDR Treatment Plant becomes operational, no later than May 2002. In their November 1, 2000 CBC extension renewal application, FMC/Astaris provided updated information confirming that adequate capacity exists in Ponds 17 and 18 to manage these waste streams during the proposed CBC extension renewal period, i.e., until May 26, 2002.

The EPA tentatively concludes that FMC/Astaris has provided the documentation necessary to satisfy the demonstration under section 268.5(a)(6).

7. Section 268.5 (a)(7)—Any Waste Managed in a Surface Impoundment or Landfill During the Extension Period Will Meet the Requirements of 40 CFR 268.5(h)(2)

As previously described, the subject waste streams will continue to be managed in the on-site surface impoundments, i.e., Ponds 17 and 18, during the proposed CBC extension renewal until May 26, 2002. As previously discussed in the March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices, addressing the initial CBC extension request by FMC/Astaris, FMC/Astaris had provided information demonstrating that both of these surface impoundments were constructed to meet the RCRA minimum technological requirements (MTRs) of 40 CFR 268.5(h)(2), including such protective measures as double liners, leak detection, and groundwater monitoring wells. The EPA concludes that FMC/Astaris has provided the documentation necessary to satisfy the demonstration under section 268.5(a)(7).

IV. Consultation With the State of Idaho and the Shoshone-Bannock Tribes

In accordance with 40 CFR 268.5(e), the EPA consulted with the State of Idaho—Idaho Division of Environmental Quality (IDEQ) to determine if the State had any permitting, enforcement, or other concerns regarding the Pocatello facility that the EPA should take into consideration in deciding to approve or deny the request for renewal of the current CBC extension of the LDR effective date. The State of Idaho has indicated its support for the approval of the CBC extension renewal requested by FMC/Astaris.

The majority of the Pocatello site, including most of the processing areas, is located on as well as adjacent to Shoshone-Bannock Tribes' lands, referred to as the Fort Hall Indian Reservation, on which is located the community of the Shoshone-Bannock Tribes. The Shoshone-Bannock Tribes oppose the continued generation and disposal of these untreated wastes in the Pocatello on-site surface impoundments.

Consistent with the Presidential Memorandum of April 29, 1994, the EPA has engaged in advance consultation with representatives of the Tribes on both the initial CBC extension and this proposed CBC extension renewal. The EPA has taken numerous steps to engage the Tribes on this matter, including the meeting on May 2, 2000 to formally consult with the Tribes, consisting of:

- Requested FMC/Astaris to make sure that the Tribes are provided the same information as is provided to the EPA in evaluating both the initial CBC extension request and the extension renewal request.
- Held staff level discussions to obtain feedback on both the initial CBC extension and CBC extension renewal.
- For both the initial CBC extension and CBC extension renewal, provided the Tribes with an advance copy of the draft **Federal Register** notice of Proposed Decision and provided the Tribes three weeks for review and comment prior to publishing the FR notices. In conveying the draft **Federal Register** notices, the EPA asked for information and comments on whether FMC/Astaris adequately met the seven demonstrations required to qualify for a CBC extension. See section II of the May 31, 2000 (65 FR 34694) **Federal Register** notice for a discussion of the Tribes' comments on the initial CBC extension.
- Sent a letter offering to meet with Staff and/or the Fort Hall Business Council to discuss their comments on the draft **Federal Register** notices.
- Evaluated information submitted by the Tribes and, when appropriate, requested and reviewed additional information from FMC/Astaris.
- Subsequent to a meeting held on May 2, 2000, provided the Fort Hall Business Council with an additional opportunity to provide comments.
- Requested FMC/Astaris to make sure the Tribes were provided the monthly progress reports required as part of the approved CBC extension and that these reports be provided at the same time as when submitted to the EPA.
- Held a meeting on June 9, 2000, with representatives of the Shoshone-Bannock Tribes to discuss issues regarding the Fort Hall Indian Reservation, including the Agency's consultation process in general and specifically for the CBC Extension of the LDR for treating FMC/Astaris waste.
- Invited the Tribes to participate in a meeting, requested by FMC/Astaris held on August 1, 2000, to discuss the planned November 2000 submission by FMC/Astaris of a request to renew the current CBC extension.
- On September 1, 2000, the Tribes participated in a meeting with the EPA HQ and Region 10 staff to jointly develop a draft schedule by which the

EPA, in consultation with the Tribes, will address the FMC/Astaris CBC extension renewal.

• On October 31, 2000, the Tribes, along with the EPA HQ and Region 10 staff, participated in a meeting, requested by FMC/Astaris, to discuss the imminent submission and content of a request by FMC/Astaris that the EPA renew the current CBC extension.

• On December 12, 2000, a representative each for the Tribes, the EPA HQ, and the EPA Region 10, held a meeting to discuss concerns/issues regarding the information submitted by FMC/Astaris in their CBC extension renewal application of November 1, 2000. In followup to this meeting, a letter was sent to FMC/Astaris, requesting additional information and clarification of certain issues in their submittal.

The Tribes opposed granting the current CBC extension of the land disposal prohibition and pretreatment requirement, and remain opposed to any renewal of the current CBC extension, continuing to believe that these hazardous wastes must be treated prior to being land disposed. The United States continues to recognize and concurs that it does owe an important trust responsibility to the Tribes, on whose lands the Pocatello facility is located. Included in this responsibility is the duty of the United States to perform its obligations under RCRA and other statutes intended to protect the environment. We certainly recognize the Tribes's concerns regarding the continued placement of untreated hazardous wastes in on-site surface impoundments at the Pocatello facility. However, the EPA has closely evaluated FMC/Astaris efforts under section 3004 (h)(3) of the statute and the rules in 40 CFR 268.5 which implement that provision. The EPA is bound by the controlling law, and the ultimate and controlling issue in evaluating the FMC/Astaris application for renewal of the current CBC extension is whether FMC/Astaris has satisfied these statutory and regulatory conditions. The EPA finds that FMC/Astaris has met the rigorous requirements of those rules, and therefore, the mandatory renewal is triggered upon that finding.

V. What is the EPA's Proposed Determination on the FMC/Astaris Request for a Renewal of the Current CBC Extension?

As previously discussed in the March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices, the United States continues to recognize and concur that it owes an important trust responsibility to the Tribes, on whose lands the Pocatello facility is located. Of course, this includes the United States' responsibility to perform its obligations under RCRA and other statutes intended to protect the environment. We also acknowledge the Tribes's concerns regarding the continued placement of untreated hazardous wastes in the Pocatello on-site surface impoundments. However, as well as considering tribal concerns and recommendations, the United States must also consider other relevant facts when choosing a course of action. The EPA notes that the controlling law here is section 3004(h)(3) of the statute and the rules in 40 CFR 268.5 which implement that provision. These provisions establish that an applicant who satisfies the rigorous conditions for a CBC extension (or renewal of a CBC extension) will be granted one. Consequently, the ultimate and controlling issue in evaluating the initial CBC extension application, as well as this request for renewal of the extension, is whether FMC/Astaris has satisfied these statutory and regulatory conditions.

As previously noted, the EPA initially concludes that it is not yet feasible for FMC/Astaris to treat these wastes prior to placement in the on-site surface impoundments, constructed to meet the RCRA minimum technological requirements of 40 CFR 268.5(h)(2), and that there still is no available off-site commercial treatment capacity for these five waste streams. We continue to be convinced that the necessary treatment capacity and capability only will be available once the proposed LDR Treatment Plant is constructed and commences operation by May 2002. The EPA remains convinced that the Tribes's concerns about continued on-site disposal can most practically and judiciously be addressed by compelling FMC/Astaris to expeditiously proceed with the construction of the proposed treatment plant so as to have it operational at the earliest possible date. Based on progress made subsequent to the EPA's approval of the initial CBC extension for these five wastes, the EPA is satisfied that FMC/Astaris has made and is continuing to make a good-faith effort toward providing sufficient and appropriate treatment capacity for the five waste streams that are the subject of its request for a CBC extension renewal of the LDR effective date. The EPA also concludes that FMC/Astaris has made the necessary demonstrations to be granted a one-year renewal of the current CBC extension. Therefore, the EPA proposes to approve an extension of the applicable LDR effective date for these five waste streams: (1) NOSAP Slurry, (2) Medusa Scrubber Blowdown, (3) Furnace Building Washdown, (4) Precipitator Slurry, and (5) Phossy Water, generated at the Pocatello, Idaho facility, until May 26, 2002. If this proposed action is finalized, FMC/Astaris will be allowed to manage these five waste streams in on-site surface impoundments (Ponds 17 and 18), until May 26, 2002, without being subject to the land disposal restrictions applicable to these wastes. At that time, the proposed LDR Treatment Plant will have been constructed and will be in operation. No further extension of the LDR effective date is allowed. This extension renewal, if approved, would remain in effect unless the facility fails to make a good-faith effort to meet the schedule for completion, the Agency denies or revokes any required permit, conditions certified in the application change, or the facility violates any law or regulations implemented by the EPA. The EPA will maintain close oversight of the scheduled progress being made by FMC/Astaris towards bringing the LDR Treatment Plant into operation. Consistent with the current CBC extension, the EPA proposes that FMC/Astaris continue to submit a monthly progress report by the 26th day of each month, until June 26, 2002. FMC/Astaris continue to be bound by the terms of the RCRA Consent Decree to have this treatment plant operational by May 2002. If FMC/Astaris should fail to adhere to this schedule, such that compliance with the requirements of the Consent Decree is jeopardized, the EPA has the authority to terminate the current CBC extension, or proposed renewal of this extension of the LDR effective date.

VI. How Can I Influence the EPA's Determination Regarding This Requested CBC Extension Renewal?

We welcome your comments on the factual issues associated with each of the seven demonstrations made by FMC/Astaris to support the requested renewal of the current CBC extension and the EPA's evaluation of these demonstrations. In addition, we would like your comments on the appropriateness of the proposed one-year extension renewal of the LDR effective date for the five subject waste streams generated at the Pocatello facility. We are not requesting comments on the RCRA Consent Decree or regarding other ongoing or planned regulatory/enforcement activities at the Pocatello facility.

Your comments will be most effective if you follow the suggestions below:

• Explain your views as clearly as possible and why you feel that way.

• **Tell us which parts you support, as well as those you disagree with.**

• Provide specific examples to illustrate your concerns.

• Offer specific alternatives.

• Refer your comments to specific sections of the notice, such as the units or page numbers.

• Make sure to submit your comments by the deadline in this notice.

• Be sure to include the name, date, and docket number with your comments.

VII. What Happens After We Receive Your Comments?

After reviewing comments received, we will issue a final notice of determination to either approve or deny the FMC/Astaris request for a one-year CBC extension renewal of the LDR effective date. We plan to publish a final notice regarding the Agency's decision on this request for a one-year CBC extension renewal, prior to the May 26, 2001, expiration date of the current CBC extension for the subject waste streams. The extension renewal, if approved, would remain in effect until its expiration on May 26, 2002, unless the facility fails to make a good-faith effort to meet the schedule for completion, the Agency denies or revokes any required permit, conditions certified in the application change, the requirements of the RCRA Consent Decree are not met, or the facility violates any law or regulations implemented by the EPA.

VIII. Administrative Requirements

As discussed in the March 8, 2000 (65 FR 12233) and May 31, 2000 (65 FR 34694) **Federal Register** notices, neither the requirements of Executive Order 13084 entitled Consultation and Coordination with Indian Tribal Governments nor Executive Order 13132, entitled ''Federalism,'' apply to this action.

Today, the EPA is proposing to approve the FMC/Astaris request for a one-year renewal of the current CBC extension of the effective date of the RCRA land disposal restrictions, for a facility located on Tribal Lands. This action, if approval is finalized, will significantly or uniquely affect the communities of Indian tribal governments by permitting this facility to continue to treat, store, or dispose of five waste streams as currently managed in on-site surface impoundments until May 26, 2002. This action will not impose any direct compliance costs on the communities.

This notice also does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of this Executive Order likewise do not apply to this action.

A. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 as of that date. Under section 5(b) of Executive Order 13175, the EPA may not issue a regulation that is not required by statute that has tribal implications, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or if the EPA consults with those governments. Under section 5(c) of Executive Order 13175, the EPA may not promulgate any regulation that has tribal implications and that preempts tribal law unless it consults with Tribes. If the EPA complies by consulting under sections 5(b) and 5(c) of Executive Order 13175 requires the EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, section 5(a) Executive Order 13175 requires the EPA to develop an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.

Today's decision will not impose substantial direct compliance costs on such communities or preempt tribal law. Accordingly, the requirements under sections 5(b) and 5(c) of Executive Order 13175 do not apply to this action.

However, this decision does have Tribal implications according to section 1(a) of Executive Order 13175, defined as substantial direct effects on (1) one or more federally-recognized Indian Tribes; (2) the relationship between the federal government and Tribes; or (3) the distribution of power and responsibility between the federal government and Tribes. The decision permits the facility to continue to treat, store, or dispose of five waste streams as currently managed in on-site surface impoundments until May 26, 2002. These impoundments are located on the Fort Hall Indian Reservation.

Because this decision has Tribal implications, several principles and policies of section 2 and 3 of Executive Order 13175 are triggered. In particular, the decision must respect, honor, and adhere to the unique government-to-government relationship between the federal and the Tribes, the Tribes' status as domestic dependent nation, and the federal government's trust responsibility to federally-recognized Indian Tribes.

The EPA believes it has honored the government to government relationship through the consultation processes elaborated upon in section IV, in particular through numerous meetings and calls with Tribal government officials from May to December 2000 concerning the CBC extension, such as the visits by Elizabeth Cotsworth, and the meeting with Tim Fields. The Agency will continue to consult with the Tribe in this process, as well as all other efforts to address environmental contamination affecting the Fort Hall Indian Reservation.

In addition, the Agency has closely evaluated the CBC extension in light of its trust responsibility to Tribes. We acknowledge the Tribes' concerns regarding the continued placement of untreated hazardous wastes in on-site surface impoundments at the Pocatello facility. However, the EPA has closely evaluated FMC/Astaris' efforts under section 3004 (h)(3) of the statute and the rules in 40 CFR 268.5 which implement that provision, and find it is acting in good faith. While the EPA is bound by the controlling law if FMC/Astaris meets the rigorous requirements of these rules—i.e. upon such a finding the extension is granted mandatorily—the EPA also believes that this decision is best to ensure the most effective mitigation of the environmental contamination for the long term benefit of the Tribes, consistent with the federal government's trust responsibility.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This notice does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, the EPA did consult with the State of Idaho in developing this notice, as discussed in section IV of this notice.

Authority: Sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924).

Dated: March 7, 2001.

Michael Shapiro,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 01–6724 Filed 3–15–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00439K; FRL–6776–5]

Pesticide Program Dialogue Committee (PPDC); Inert Disclosure Stakeholder Workgroup; Notice of Public Meeting; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: In the **Federal Register** of March 7, 2001 (66 FR 13733) (FRL–6768–6), EPA announced a conference call meeting of the Inert Disclosure Stakeholder Workgroup. On page 13733, second column, under the **DATES** caption, the date of the conference call meeting was inadvertently listed as March 10, 2001. The correct date is March 20, 2001. This notice announces the correct meeting date of the Inert Disclosure Stakeholder Workgroup.

DATES: The meeting will be held by conference call on Tuesday, March 20, 2001, from noon to 3 p.m. eastern standard time.

ADDRESSES: Members of the public may listen to the meeting discussions on site at: Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202; conference room 1123. Seating is limited and will be available on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (703) 305–5454. Office location: 11th floor, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA; e-mail: smoot.cameo@epa.gov.

List of Subjects

Environmental protection, Pesticides, Inerts, PPDC.

Dated: March 9, 2001.

Joseph J. Merenda, Jr.

Acting Director, Office of Pesticide Programs.

[FR Doc. 01–6723 Filed 3–14–01 12:54 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6955–6]

Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information; Development of Read-Only Information Technology System and Qualified Researcher System

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of notice.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing a notice of January 17, 2001 (66 FR 4021) describing draft plans for providing additional access to information about the potential off-site consequences of accidental chemical releases from industrial facilities. As part of the Administration's review of recent federal agency actions, we are evaluating the draft plans. When we have completed our review, we will make our plans for providing additional access available for public review.

FOR FURTHER INFORMATION CONTACT: Dorothy McManus, Program Analyst, (202) 564–8606, or Vanessa Rodriguez, Chemical Engineer, (202) 564–7913, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5104), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Off-site consequence analysis (OCA) information is submitted to EPA by facilities subject to the Chemical Accident Prevention Regulations at 40 CFR part 68. Under the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA) of 1999, EPA and the Department of Justice (DOJ) last year promulgated a rule making OCA information available to the public in specified ways (see 40 CFR part 1400). CSISSFRRA calls on EPA, in consultation with DOJ, to supplement the access provided by the rule. We are now in the process of reviewing the draft plans. When we have completed our review, we will make our plans for providing additional access available for public review.

Dated: March 13, 2001.

Michael H. Shapiro,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 01–6679 Filed 3–15–01; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–01–40–A (Auction No. 40); DA 01–593]

Auction of Licenses for the Lower and Upper Paging Bands Scheduled for June 26, 2001

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on reserve prices or minimum opening bids and other auction procedural issues.

DATES: Comments are due on or before March 19, 2001, and reply comments are due on or before March 26, 2001.