to disclose includes submissions made by Potentially Responsible Parties to EPA in accordance with EPA's enforcement activities at Superfund sites. The information would be disclosed to the contractor and its subcontractor for any of the following reasons: to assist with document handling, inventory, and indexing; to assist with document review and analysis; to verify completeness; and to provide technical review of submittals. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii), incorporated by reference into 40 CFR 2.310(h)(2). EPA Region 9 will require that each SAIC employee and subcontractor employee sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by SAIC and its subcontractors for performance of the work required by the contract or upon completion of the contract or subcontract.

Dated: February 28, 2000.

Michael Feeley,

Acting Director Superfund Division, Region 9.

[FR Doc. 00–5628 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6548–5]

Great Lakes International Coastal Wetlands Monitoring

AGENCY: Environmental Protection Agency.

ACTION: Notice of funding availability.

SUMMARY: EPA's Great Lakes National Program Office (GLNPO) is now requesting the submission of full proposals for GLNPO funding. The purposes of this request for proposals are (1) To design, and validate, indicators to assess the ecological integrity of Great Lakes coastal wetlands, (2) To design an implementable, long-term program to monitor Great Lakes coastal wetlands, and (3) To create, and populate, a binational database accessible to all scientists, decision makers and the public. GLNPO is requesting proposals from institutions or organizations which have the capacity and experience to serve as the manager and fiscal agent representing a binational, multi-disciplinary, broad-based consortium of Great Lakes wetland scientists and wetland resource managers. The successful applicant will enter into a Cooperative Agreement with GLNPO to accomplish the three purposes stated above. GLNPO will provide $400,000 of funding during Fiscal Year 2000 to be supplemented by at least $200,000 from the consortium submitting the successful proposal for a one year funding and project period. If the GLNPO budget remains consistent and the successful cooperative agreement applicant (applicant) makes adequate progress toward meeting the expectations discussed below, it is anticipated that the applicant will be able to apply annually for an additional $400,000 from GLNPO ecological protection and restoration funds for two subsequent one year funding and project periods during Fiscal Years 2001 and 2002. This anticipated future funding by GLNPO will also require the applicant to provide at least $200,000 annually in supplemental funds.

DATES: The deadline for the submission of full proposals is April 28, 2000.

ADDRESSES: *Document Availability:* The *Request for Full Proposals: Great Lakes International Coastal Wetlands Monitoring* is now available by contacting Dr. John Schneider at 312–886–0880 or by mail at the following address: U.S. Environmental Protection Agency, Great Lakes National Program Office (G–17J), Attn: Dr. John Schneider, 77 West Jackson Blvd., Chicago, IL 60604–3590

FOR FURTHER INFORMATION CONTACT: Dr. John Schneider, U.S. Environmental Protection Agency, Great Lakes National Program Office (G–17J), 77 West Jackson Blvd., Chicago, IL 60604–3590 or at 312–886–0880.

Dated: March 1, 2000.

Gary V. Gulezian,

Director, Great Lakes National Program Office.

[FR Doc. 00–5621 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[SW–FRL–6548–7]

Notice of Proposed Decision on Request by FMC Corporation for an Extension of the Land Disposal Restrictions Effective Date for Five Waste Streams Generated at the Pocatello, Idaho Facility

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed decision.

SUMMARY: EPA (''the Agency'' or ''we'' in this notice) is proposing to approve the request submitted by FMC Corporation (FMC) for a one-year Case-by-Case (CBC) extension of the May 26, 2000, effective date of the RCRA land disposal restrictions (LDRs). FMC requested the CBC extension due to the lack of available treatment capacity for five waste streams and the need for additional time to design, construct, and begin operation of an on-site treatment plant. For this CBC extension to be approved, FMC must make each of the seven demonstrations required in the procedures for CBC extensions to an effective date. These provisions establish that an applicant who satisfies the conditions for a CBC extension will be granted one. If this proposed action is finalized, FMC 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, 2001, without being subject to the LDRs applicable to these wastes.

DATES: To make sure we consider your comments in developing a final decision on FMC's request for a CBC extension of the LDR effective date for the subject waste streams, you must submit your comments on or before March 29, 2000.

ADDRESSES: You must send an original and two copies of your comments, referencing docket number F–2000–FMCP–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, N.W., 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–2000–FMCP–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, c/o 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 EPA without prior notice.

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 a.m. to 4 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.

FOR FURTHER INFORMATION CONTACT: For general information about this proposal, 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 proposal, contact William Kline, Office of Solid Waste, 5302W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460–0002, (703) 308–8440, [e-mail address: kline.bill@epamail.epa.gov].

SUPPLEMENTARY INFORMATION: The index of supporting materials evaluated by EPA in reaching our determination to propose approval of the requested CBC extension is available on the Internet. You will find this index at <http://www.epa.gov/epaoswer/hazwaste/ldr/index.htm>.

The official record for this action will be kept in paper form. Accordingly, 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.

EPA 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. 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
B. What is RCRA?
C. What is the Congressional Mandate Behind the Land Disposal Restrictions (LDRs) and Extensions of the LDR Effective Date?
D. What Regulatory and Other Actions Have Led up to the CBC Extension Requested by FMC?
E. What Other Actions Are Underway at FMC?
F. What Demonstrations Must Be Evaluated by EPA In Reviewing a Request for a CBC Extension of the LDR Effective Date?

II. Overview of FMC's Case-by-Case Extension Request

A. What is FMC's Basis for Requesting a CBC Extension ?
B. How Does FMC's Consent Decree Impact and Correlate with the Requested CBC Extension?
C. Summary of the FMC CBC Application

III. EPA's Evaluation of the Seven Demonstrations Made by FMC To Support the Requested CBC Extension

A. Section 268.5 (a)(1) demonstration of the lack of available treatment capacity.
B. Section 268.5 (a)(2) demonstration of a binding contractual commitment to construct the required treatment capacity.
C. Section 268.5 (a)(3) demonstration of circumstances beyond FMC's control to obtain necessary treatment capacity by the LDR effective date.
D. Section 268.5 (a)(4) demonstration of sufficient treatment capacity being constructed to treat the five waste streams to meet BDAT standards.
E. Section 268.5 (a)(5) demonstration of a detailed schedule for obtaining permits required to construct and operate proposed LDR Treatment Plant.
F. Section 268.5 (a)(6) demonstration of adequate capacity to manage the five waste streams during the approved extension period.
G. Section 268.5 (a)(7) demonstration that surface impoundments used to manage the waste streams during the extension period are designed to meet minimum technology requirements.

IV. Consultation with Affected State and Indian Tribes

V. What is EPA's Proposed Action?

VI. How Can I Influence EPA's Thinking on this Rule?

VII. What Happens After We Receive Your Comments?

VIII. Administrative Requirements

A. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
B. Executive Order 13132 (Federalism)

I. Background and Purpose of This Notice of Proposed Decision

A. Summary

FMC Corporation (FMC) has requested a one-year CBC extension of the May 26, 2000, effective date of the RCRA land disposal restrictions (LDRs) applicable to five waste streams generated at its facility (EPA Identification Number: IDD070929518) in Pocatello, Idaho— located adjacent to and largely on 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) NOSAP Slurry, (2) Medusa Scrubber Blowdown, (3) Furnace Building Washdown, (4) Precipitator Slurry, and (5) Phossy Water. FMC requested the CBC extension 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.

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 to address air quality, and for FMC to design, construct, and commence operation of an LDR Treatment System by May 2002. The Tribes recently have appealed 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 FMC's application for a one-year CBC extension of the May 26, 2000, effective date of the RCRA land disposal restrictions (LDRs). For this CBC extension to be approved, FMC must make each of the seven demonstrations required under 268.5(a), including that there is insufficient capacity to treat these wastes, that a binding contractual commitment has been made to construct the necessary treatment capacity, and that such treatment capacity, due to circumstances beyond FMC's control, cannot reasonably be made available by the effective date. If this proposed action is finalized, FMC 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, 2001, without being subject to the land disposal restrictions applicable to these wastes. FMC also may request a renewal, for up to one year, of an approved CBC extension. If warranted, EPA may grant a renewal of this extension, which, if requested and approved, would extend the effective date of the LDRs for these five waste streams to, at a maximum, May 26, 2002.

B. What Is RCRA?

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. RCRA also establishes a program for controlling nonhazardous industrial solid waste and municipal solid waste by encouraging states to develop comprehensive plans to manage these wastes, by setting criteria for municipal solid waste landfills and other solid waste disposal facilities, and by prohibiting the open dumping of solid waste. RCRA is implemented by EPA and the states.

EPA's regulations implementing RCRA are listed in Title 40 of the Code of Federal Regulations (CFR). Within Title 40, the hazardous waste regulations are listed in parts 260 through 279. The solid waste regulations also are listed in Title 40, but in parts 240 through 258.

The specific requirements for obtaining a CBC extension of a LDR effective date, the subject of this notice of proposed decision, are found in Part 268–Land Disposal Restrictions, § 268.5(a).

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

Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act (RCRA). These amendments imposed additional responsibilities on persons managing hazardous wastes. Among other things, HSWA required EPA to develop regulations that prohibit the land disposal of certain hazardous wastes by specified dates in order to protect human health and the environment. 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.''

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, 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, 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.

D. What Regulatory and Other Actions Have Led Up to the CBC Extension Requested by FMC?

On January 25, 1996 (61 FR. 2338), 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 (FMC Pocatello), 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.

On June 27, 1996, 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 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 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 May 12, 1997 (62 FR 26041), EPA proposed to grant a two-year national capacity variance for three waste streams (Medusa Scrubber Blowdown, Anderson Filter Media Rinsate, and Furnace Building Washdown) generated at the Pocatello, Idaho facility. FMC submitted comments, noting that the Anderson Filter Media Rinsate now had been eliminated, using pollution prevention. 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 was not available and likewise needed to be granted the proposed two-year national capacity variance.

On May 26, 1998 (63 FR 28556), 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 FMC's facility in Pocatello, Idaho. This national capacity variance extended the LDR effective date to May 26, 2000.

The United States also undertook enforcement action against FMC, an action not directly connected to the national capacity extension (or for that matter, any case-by-case extension). These actions somewhat overlapped in time the national capacity variance referred to above. In February 1997, attorneys for the United States met with and informed the Tribal governing body, the Fort Hall Business Council (representing the Shoshone-Bannock Tribes (Tribes)), on whose lands the FMC 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. In September 1998, the United States agreed to delay the lodging of the Consent Decree so that options for penalty sharing with the Tribes could be further explored. 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 FMC 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 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.

E. What Other Actions Are Underway at FMC?

The Consent Decree is only one of several actions underway to address the environmental impact of operations at the FMC facility. Groundwater and soil contamination from FMC's 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 commit to perform the Remedial Action selected in the ROD. FMC's particulate air emissions are being addressed in the proposed Federal Implementation Plan, issued pursuant to the Clean Air Act on February 12, 1999 and scheduled to become effective by July 2000. Once finalized, there will be federally enforceable limits/control requirements applicable to FMC's particulate emissions.

F. What Demonstrations Must Be Evaluated by EPA in Reviewing a Request for a CBC Extension of the LDR Effective Date?

In order to receive approval for a CBC extension, EPA must evaluate the extent to which the FMC Pocatello 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's) 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 FMC's Case-by-Case Extension Request

A. What Is FMC's Basis for Requesting a CBC Extension?

FMC has provided documentation showing that research and development efforts were initiated in 1990 to develop the technology needed to treat the Pocatello, Idaho facility's elemental phosphorous production waste streams to meet anticipated LDR standards. When EPA issued the supplemental proposal to Phase IV in January 1996, FMC requested a two-year national capacity variance for three waste streams (Medusa Scrubber Blowdown, Anderson Filter Media Rinsate, and Furnace Building Washdown) generated at the Pocatello facility to enable it to design and construct appropriate on-site pollution prevention and treatment technologies. At this time, FMC also submitted the results of an extensive nationwide survey that it conducted in an attempt to find off-site available treatment capacity. This survey indicated that no commercial TSD facility contacted was able or willing to treat the Pocatello waste streams. FMC submitted supplemental comments in August 1996, subsequent to EPA and the Environmental Defense Fund amending the 1994 consent agreement, thereby postponing the promulgation of the Phase IV Supplemental rule. In these comments, FMC informed EPA that it could not design and construct a treatment system until the final treatment standards and applicable wastes were determined.

In August 1997, FMC requested that EPA modify the national capacity variance that was proposed for the initial three waste streams, by removing AFM Rinsate, and adding three additional waste streams (Precipitator Slurry, NOSAP Slurry, and Phossy Water). Each of the five waste streams for which FMC requested a national capacity variance are generated in the elemental phosphorous production process and essentially share the same issues regarding feasibility of treatment off-site. FMC indicates that it was able to further proceed with developing appropriate treatment technology processes for these waste streams but that specific treatment technologies could only be pointedly pursued once the actual final LDR standards were promulgated by EPA in May 1998. In finalizing the Final Phase IV rule, EPA did grant a two-year national capacity variance for these five waste streams generated at the Pocatello facility, extending the LDR effective date until May 26, 2000.

FMC likewise had been engaged in RCRA Consent Decree negotiations with the United States, via the Department of Justice (DOJ) and EPA Region 10, regarding the management of its waste streams. The RCRA Consent Decree was initially filed in October 1998 to promptly address FMC's past mishandling of hazardous wastes and to avoid future environmental

contamination. FMC states that its uncertainties regarding the selection of treatment standards and approval of selected technology under the RCRA Consent Decree also were factors that delayed final selection and development of a treatment technology. The RCRA Consent Decree, proposed in October 1998 and entered as final on July 13, 1999, requires FMC to complete construction and begin operation of the LDR Treatment System by May 2002 and prohibits the discharge of untreated hazardous wastes to the facility's on-site ponds after May 26, 2002. The RCRA Consent Decree does not negate the requirement for FMC to pursue case-by-Case extension(s), as needed, to allow the continued discharge of the LDR subject wastes to on-site surface impoundments beyond the May 26, 2000 expiration date of the current national capacity variance.

Since promulgation of the final LDR standards and entry of the RCRA Consent Decree, FMC states that it was finally able to ascertain the specific treatment technology that was needed to treat the FMC Pocatello waste streams. In July 1999, FMC decided to employ the Zimpro Anoxic hydrolysis process, using caustic hydrolysis at elevated temperature and pressure, as the principal treatment for the proposed on-site LDR Treatment Plant at the Pocatello facility. However, FMC determined that it could not finalize development of the treatment technology, design the LDR Treatment Plant, obtain permits, construct the LDR Treatment Plant, and begin operating the LDR Treatment Plant within the two-year period of the current national capacity variance that expires on May 26, 2000. As such, in July 1999, FMC submitted its request to EPA for a CBC extension to further extend the LDR effective date for the subject five waste streams generated at its Pocatello, Idaho facility.

FMC's Phosphorous Chemicals Division (the current owner/operator of the FMC Pocatello, Idaho facility) and Solutia, Inc. have proposed a plan to operate a joint venture company comprising the combined phosphorous chemical businesses of FMC and Solutia. If this joint venture is approved by the Federal Trade Commission (FTC), this joint-venture company will be known as Astaris LLC. If approved, Astaris will own the Pocatello facility. However, under this joint venture, FMC would retain responsibility for funding the capital costs and implementing all RCRA Consent Decree projects, including the proposed LDR Treatment Plant. FMC's liability under the RCRA Consent Decree is not transferable. Astaris would be responsible for the construction, operation, and maintenance aspects of the LDR Treatment Plant and thus be considered the owner and operator of the Pocatello facility. This CBC extension, if approved, then would be granted to FMC/Astaris. However, as of today, for the purposes of this notice, we will continue to refer to the CBC applicant as FMC Pocatello.

B. How Does FMC's Consent Decree Impact and Correlate With the Requested CBC Extension?

The FMC Pocatello facility is located on Shoshone-Bannock Tribes' lands, referred to as the Fort Hall Indian Reservation. FMC owns over 1,000 acres on the Reservation and has conducted business at this location for the past 50 years. The resulting environmental contamination, and means of redressing it, is of obvious direct concern to the Tribes. 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 FMC 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 Restriction Treatment System [1] (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 by FMC to manage the generated wastes), establishes a Pond Management Plan, and mandates certain plant upgrades, for example, the installation of secondary containment for sumps, tanks, and piping inside the Furnace Building and at the Phos Dock area.

Many of the demonstrations required under 40 CFR part 268 to obtain a CBC extension of the LDR effective date are indeed addressed under the terms of this RCRA Consent Decree. For example, under the RCRA Consent Decree, FMC is required to design and construct a Land Disposal Treatment System that provides sufficient capacity to manage the waste streams to satisfy LDR requirements, provide a detailed schedule for obtaining operating and construction permits, provide adequate capacity and management of the waste streams while the LDR Treatment System is being constructed, and ensure that, at a minimum, surface impoundments/landfills used to manage these waste streams, meet minimum technological requirements.

In essence, FMC's compliance with the terms of the RCRA Consent Decree likewise satisfies what needs to be documented for certain of the required demonstrations for a CBC extension. If anything, this overlap ensures consistency of both the CBC extension and RCRA Consent Decree processes. In effect, the requirements mandated under the RCRA Consent Decree will support the CBC extension that EPA is proposing to approve today and will further bolster FMC's commitment to begin operation of the LDR Treatment Plant by May 2002. In developing the RCRA Consent Decree, EPA and DOJ assumed that FMC still would need to pursue the CBC extension allowed under 40 CFR Part 268. This intent was elaborated upon on pages 10–11 in the ''Reply Memorandum in Further Support of Motion of the United States for Entry of Proposed RCRA Consent Decree,'' dated May 27, 1999.

Although the RCRA Consent Decree and CBC Extension, if approved, obviously are being used in conjunction to compel FMC to properly manage the subject waste streams, approval of a CBC extension of the LDR effective date does not alter any terms of the RCRA Consent Decree and, in actuality, would only remain effective contingent upon FMC's compliance with the terms of the RCRA Consent Decree. We also note that should FMC subsequently request a renewal of an approved extension, the LDR effective date could, at a maximum, be extended only to May 26, 2002—consistent with the RCRA Consent Decree date by which untreated hazardous wastes generated at the FMC Pocatello facility are prohibited from discharge to the facility's on-site surface impoundments (ponds).

C. Summary of the FMC CBC Application

The FMC facility, located in Pocatello, Idaho, manufactures elemental phosphorous. The elemental phosphorous is shipped to other facilities to produce phosphates and other phosphorous-based products, for use in numerous products, including

[1] The terms ''LDR Treatment System'' and ''LDR Treatment Plant'', as used in the RCRA Consent Decree and the FMC CBC extension application, respectively, are essentially referring to the same treatment unit and associated ancillary equipment, needed to be designed, constructed, and operated in order to treat the FMC Pocatello hazardous waste streams to meet the applicable LDR requirements.

processed foods, beverages, detergents, cleaners, agricultural chemicals, and water treatment chemicals. Elemental phosphorous is produced by feeding a combination of phosphate ore, coke, and silica rock into electric arc furnaces. This case-by-Case LDR extension application addresses five waste streams generated during the production of elemental phosphorous at the FMC Pocatello facility. These five waste streams 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. *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.

Quantity Generated and Environmental Concerns for FMC Waste Streams

Waste	Quantity generated	Concerns [2]
Precipitator Slurry	4 million gallons/year (3,000 tons/year of solids).	Due to presence of elemental phosphorous, exhibits ignitable and reactive hazardous waste characteristics.
NOSAP Slurry	21 million gallons/year (15,000 tons/year of solids).	Due to generation of phosphine gas, exhibits reactive hazardous waste characteristic.
Phossy Water	89 million gallons/year	Due to presence of elemental phosphorous, exhibits ignitable and reactive hazardous waste characteristics.
Medusa Scrubber Blowdown	55 million gallons/ year	Exhibits toxicity hazardous waste characteristic for cadmium.
Furnace Building Washdown	93 million gallons/year	Exhibits toxicity (cadmium) and reactive hazardous waste characteristics.

[2] Each of these waste streams contain varying levels of elemental phosphorous and Naturally Occurring Radioactive Material (NORM) which pose unique treatment concerns for off-site commercial TSDs.

Currently, the off-specification Precipitator Slurry, Furnace Building Washdown, and Medusa Scrubber Blowdown waste streams are piped to a holding tank, designated as Tank V3600, from which the mixture is pumped to a surface impoundment, designated as Pond 18, for clarification. Until recently, this mixture had been pumped to another surface impoundment, Pond 16S, that now is filled to capacity and scheduled for closure during the summer of 2000. Clarified water from Cell B of Pond 18 is pumped back to the production process for reuse.

The NOSAP Slurry is pumped from each of the eight slurry pots to a surge tank, designated as Tank V3700, where it is mixed with decant water from another surface impoundment, Pond 17, to increase flow and prevent settling of solids in the pipeline during transfer of the contents of Tank V3700 to Pond 17.

The Phossy Water is sent to a clarification unit to remove residual phosphorous. Clarifier overflow water is transferred to a sump for reuse in the production process. Currently, any excess water that cannot be used is pumped to Pond 18. In the future, FMC plans to first pump this excess water to a new tank, Tank V3800, from which the water then will be pumped to Pond 18. Clarifier underflow is directed to a centrifuge to remove the phosphorous from dirt and water. Water from the multistage centrifuge is directed to a sump and subsequently also pumped to Pond 18.

FMC, both in the CBC application and RCRA Consent Decree, indicates its intent to design and construct a treatment unit, referred to as the LDR Treatment Plant (System), that will treat the FMC Pocatello waste streams to meet the applicable BDAT 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. FMC has chosen the Anoxic form of the Zimpro treatment process to achieve these goals. 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 will eliminate the need for the continued use of the on-site ponds. The LDR Treatment Plant is expected to be completed and functional by May 2002. At this time, FMC plans to dispose the non-hazardous stabilized treatment residual, that meets LDR and RCRA Consent Decree requirements, at a FMC silica mine located about nine miles from the FMC Pocatello facility. FMC is seeking approval from the State of Idaho to use this site as a landfill for this treatment residual.

The Shoshone-Bannock Tribes oppose the continued generation and disposal of these untreated wastes in the FMC Pocatello on-site surface impoundments. However, as discussed in Section III.A., off-site treatment capacity is not available. It is not yet feasible for FMC to treat these wastes to meet the LDRs. The necessary treatment capacity and capability only will be realized once the proposed LDR Treatment Plant is constructed and commences operation by May 2002. Also, as discussed below in Sections III.F. and III.G., the surface

impoundments into which these wastes would be placed during the CBC extension, if approved, were constructed to meet the RCRA minimum technological requirements of 40 CFR 268.5(h)(2), including liners and groundwater monitoring, and must be operated in compliance with the Pond Management Plan, as incorporated into the Consent Decree.

III. EPA's Evaluation of the Seven Demonstrations Made by FMC To Support the Requested CBC Extension

In order for EPA to approve FMC's CBC extension application, FMC must satisfy the requirements outlined in 40 CFR 268.5 and fully address each of the required seven demonstrations of 40 CFR 268.5(a)(1)–(7). EPA evaluated FMC's demonstrations, as follows:

A. § Section 268.5 (a)(1)—the applicant (FMC) 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, 2000).

In 1995, in support of its request for a national capacity variance for several of the subject waste streams, FMC surveyed 168 treatment, storage, and disposal facilities (TSDs) throughout the nation, in an effort to locate commercial treatment or disposal capacity. The results of this survey can be found in the Docket established for this notice. Not one of the surveyed facilities was able or willing to provide treatment or disposal capacity for the FMC Pocatello waste streams. TSDs cited a number of factors 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, EPA was not aware of any available capacity for these waste streams. As such, EPA granted a national capacity variance for the FMC Pocatello waste streams, extending the LDR effective date for these waste streams to May 26, 2000. See 63 FR 28556, May 26, 1998.

In support of its request for this case-by-Case extension of the LDR effective date, FMC performed another survey in February—May 1999 that supplemented the initial 1995 survey of available commercial treatment capacity. This supplemental survey was designed to focus on those facilities likely to have developed additional or new capacity since the 1995 survey. A list of 33 facilities were contacted by FMC. Again, not one of these TSD facilities was able or willing to treat the FMC Pocatello waste streams. Many of the same reasons given by TSDs in the original survey for not being able to treat these waste streams were again cited in the supplemental survey. Results of this supplemental survey likewise can be found in the Docket.

We believe that FMC has made reasonable efforts, over the past four years, to try to locate adequate, alternative treatment capacity for the off-site management of the waste streams for which it is requesting a CBC extension of the LDR effective date. Likewise, we are not aware of any available commercial treatment capacity for these wastes. As such, EPA concludes that FMC has adequately fulfilled the requirements of this § 268.5(a)(1) demonstration.

B. § Section 268.5(a)(2)—the applicant (FMC) 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.

FMC has committed considerable resources toward the development of a treatment technology necessary to treat the subject Pocatello waste streams to meet BDAT standards. The appropriate treatment technology/process now has been identified and FMC is proceeding with plans to construct the LDR Treatment Plant, incorporating the Zimpro anoxic hydrolysis process as the principal treatment technology in the treatment system. On June 24, 1999, FMC entered into a contract with Raytheon Engineers and Constructors to design, engineer, and construct the LDR Treatment Plant. A copy of this contract has been provided to EPA as Confidential Business Information (CBI). To further support its demonstration of a binding contractual commitment to construct the LDR Treatment Plant, FMC also has provided EPA with the following documentation:

- Corporate approval of funds to purchase and construct the proposed LDR Treatment Plant at the Pocatello, Idaho facility to treat the wastes to BDAT standards.
- Documentation of Supplemental Authorization for Expenditures by FMC, dedicating a total, thus far, of $15.1 million toward the LDR Treatment System (process design and engineering, development of Part A and interim status applications, analytical efforts, etc.).
- Purchase Orders for equipment.
- Contracts with vendors for supplies and services.

In addition to this documentation of contractual commitment, the RCRA Consent Decree places an additional binding legal commitment on FMC to construct the LDR Treatment System. Under the RCRA Consent Decree, FMC is compelled to design, construct, and permit 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.

We believe, as evidenced by the resources committed by FMC toward the design and construction of the LDR Treatment Plant, that it is fully committed to and aggressively pursuing construction of the necessary on-site treatment capacity to treat the subject waste streams generated at the Pocatello, Idaho facility to BDAT standards. EPA believes FMC has provided the necessary documentation to demonstrate its binding contractual commitment to provide the necessary treatment capacity.

C. § Section 268.5(a)(3)—Due to circumstances beyond the applicant's (FMC's) 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.

The unique nature of the waste streams, for which the CBC extension is being requested by FMC, pose numerous treatment problems. The non-availability of commercial treatment capacity attests to the unique nature of these waste streams. FMC has been grappling with these problems for quite some time and has provided documentation that details its efforts—involving literature searches, laboratory testing, process design, permitting, pilot plant studies and operations, etc. in attempting to determine the most appropriate treatment technology. FMC states that it has evaluated more than 50 potential waste treatment technologies. However, prior to selecting the most appropriate treatment technology and developing the construction plans, FMC needed to know the final Phase IV LDR treatment standards for these waste streams, promulgated on May 26, 1998, and the requirements of the proposed RCRA Consent Decree which was lodged with the Court on October 16, 1998. Upon learning these requirements, FMC made an intensive effort to determine the treatment technology most appropriate to treat the FMC Pocatello waste streams to meet the LDR requirements. In August 1999, FMC finally chose the Zimpro Anoxic treatment process as the treatment technology to be employed in the proposed LDR Treatment Plant.

The two-year national capacity variance that was approved for these waste streams in the final Phase IV rulemaking will expire on May 26, 2000. Now that a treatment technology has been chosen, the design, construction, and permitting of the proposed LDR Treatment Plant has commenced. The mandate of the RCRA Consent Decree that FMC begin operation of the LDR Treatment System by May 2002 is already ambitious. However, it is virtually impossible for FMC to construct the LDR Treatment Plant needed to provide the treatment capacity and to be operating by May 26, 2000.

Based on the above, we believe that FMC has made a good-faith and reasonable effort in its attempt to provide treatment capacity by the effective date. FMC has aggressively pursued the development of technology capable of treating their wastes to BDAT standards. We believe FMC has acted in good faith to provide the necessary treatment capacity but that such capacity could not reasonably be made available by May 26, 2000, the current effective date of the land disposal restriction for these waste streams. EPA believes the lack of treatment capacity for these waste streams is due to circumstances beyond the control of FMC. As such, FMC has adequately met the demonstration of § 268.5(a)(3).

D. Section 268.5 (a)(4)—The capacity being constructed or otherwise provided by the applicant (FMC) will be sufficient to manage the entire quantity of waste that is the subject of the application.

FMC, in its CBC application, states that the LDR Treatment Plant to be constructed will have sufficient capacity to adequately treat the waste streams generated by the Pocatello, Idaho facility. The RCRA Consent Decree likewise makes this a requirement. The treatment train to be provided by FMC uses a combination of lime treatment, anoxic hydrolysis, metals precipitation, filtration, and stabilization. FMC has provided test results that demonstrate that the treatment system will meet the LDR treatment standards as well as the requirements specified in the RCRA Consent Decree. This treatment system is designed to destroy elemental phosphorous and cyanide in the subject waste streams and remove the hazardous characteristics from these waste streams. FMC has submitted information, designated as CBI, regarding the process design flow and operating conditions of the proposed LDR Treatment System. As such, the planned LDR Treatment Plant is expected to have sufficient treatment capacity. Included in the capacity calculations are the estimated 39 acre-feet of accumulated solids in Pond 18 that is required per the RCRA Consent Decree to be removed and treated in the LDR Treatment System within five years of commencing operation. Using historic and predicted elemental phosphorous production and waste generation data and taking into consideration design requirements mandated in the RCRA Consent Decree, FMC states that it has designed the proposed LDR Treatment Plant to manage 610 gallons per minute of waste, thus providing adequate treatment capacity, including reasonable unexpected increases in waste generation flow rates. FMC anticipates a significant reduction of the quantity of wastes it generates and thus needs to treat in the proposed LDR Treatment Plant. For one thing, FMC anticipates, as part of the proposed joint venture with Solutia, Inc., that the construction of a new raw material supply plant, that produces purified phosphoric acid, potentially will serve as a substitute for some of the elemental phosphorous currently generated at Pocatello. FMC states that this plant should be operational within two to three years. Also, the joint venture's intention to develop additional wet phosphoric acid capacity is expected to reduce the need for elemental phosphorous and thus reduce the quantity of the subject waste streams generated. FMC also describes several ongoing waste minimization projects, including the control of the quantity of fine feed material to the electric arc furnaces and upgrades to operations at the Phos Dock. FMC anticipates that these efforts further will reduce the quantity of wastes, especially solids, needed to be treated in the LDR Treatment Plant. Both the current and anticipated generation rates for the subject waste streams are adequately covered by the design size of the proposed LDR Treatment Plant. The following table shows the current and anticipated generation rates for the waste streams to be treated in the LDR Treatment Plant.

In initial comments on the draft notice, the Tribes questioned whether FMC is constructing alternative treatment capacity sufficient to treat the volume of wastes which are to be removed from Pond 18 (Letter of February 25, 2000). EPA will investigate this issue further. EPA notes that the Consent Decree requires the on-site LDR Treatment System be designed with the capacity necessary to treat all of the phossy wastes, including all sediment collected in Pond 18. More specifically, as previously mentioned above, the Consent Decree mandates that FMC remove and treat all of the Pond 18 sediment within five (5) years after the LDR Treatement System begins operation.

CURRENT AND ANTICIPATED QUANTITIES OF WASTE STREAMS FOR TREATMENT

Waste stream	Current waste generation rate	Expected waste generation rate [3]
Precipitator Slurry	55 gallons per minute	28 gallons per minute.
Phossy Water (from Tank V3800)	200 gallons per minute	180 gallons per minute.
Medusa Scrubber Blowdown and Furnace Building Washdown (from Tank V3600).	300 gallons per minute	250 gallons per minute.
Pond 18 Excavated Solids [4]	Not Applicable	18 gallons per minute.
Total	555 gallons per minute	476 gallons per minute.

[3] Based on projections of reduced production of elemental phosphorous.
[4] Per the RCRA Consent Decree, the Pond 18 excavated solids must be treated in the LDR Treatment System within five years of commencement of operation of the LDR Treatment System.

EPA believes that FMC has adequately demonstrated that the LDR Treatment Plant to be constructed will provide the necessary treatment capacity to ensure that the entire quantity of these waste streams, for which FMC is requesting a CBC extension, and will meet applicable BDAT standards. The proposed LDR Treatment Plant is projected to generate approximately 242 cubic yards/day of non-hazardous stabilized treatment residual. FMC plans to transport this treatment residual in 20 cubic yard roll-off containers for disposal at the FMC silica mine, an off-site facility, located

nine miles from the FMC Pocatello Plant. This proposed landfill currently has an existing capacity of 260 acre feet and is expected to provide disposal capacity for about 5 years. FMC is evaluating several options to manage the treatment residuals generated beyond that time, including expanding the proposed landfill or using other landfill sites. FMC currently is preparing the application to be submitted to the State of Idaho for approval of this site as a landfill.

E. § Section 268.5 (a)(5)'' the applicant (FMC) provides a detailed schedule for obtaining operating and construction permits or an outline of how and when alternative capacity will be available.

FMC has provided EPA with a detailed schedule for the design, construction, and permitting of the LDR Treatment Plant to be constructed at its Pocatello, Idaho facility. This schedule, in effect, reflects the requirements for bringing the LDR Treatment System on-line under the Consent Decree. The Table below shows some of the key milestones and dates in the schedule. FMC anticipates actual physical on-site construction to begin in July 2000 and start-up and operation of the LDR Treatment Plant by May 2002.

Key Milestones and Dates in FMC's Schedule for The LDR Treatment Plant

Milestone	Scheduled date of completion
Design and Engineering	January 2001.
RCRA Permitting (Submittal)	Part A—November 1999; Interim Status—March 2000. Part B—March 2001.
Equipment Procurement	June 2000 through July 2001.
Physical On-Site Construction	July 2000 through April 2002.
Start-up/Commence Operation	May 2002.

We believe that FMC has provided the necessary design, construction and permitting milestones for bringing the LDR Treatment Plant on-line and therefore providing the treatment capacity needed to treat the subject waste streams to BDAT standards. However, the CBC extension that EPA is proposing to approve today would only extend the LDR effective date until May 26, 2001. Even this extension apparently will not provide sufficient time for FMC to bring the LDR Treatment Plant into operation. FMC likely will need to request a renewal of any approved CBC extension to provide additional time to complete construction and commence operation of the LDR Treatment Plant. However, any such renewal cannot extend the LDR effective date beyond May 26, 2002.

F. § Section 268.5(a)(6)—the applicant (FMC) 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 would continue to manage these waste streams in two of its on-site surface impoundments, referred to as Ponds 17 and 18, that it has been using for this purpose. FMC has provided data showing that these surface impoundments would have the necessary capacity available to manage these wastes during the extension, if approved. As of November 1, 1999, FMC estimated that Pond 17 has approximately 58 acre feet of capacity remaining. Pond 17 only is used to manage NOSAP Slurry, which is estimated to accumulate solids at a rate of almost 20 acre feet per year. FMC, however, views this accumulation rate as an upper bound and anticipates that waste minimization efforts and a reduced production mode will reduce the quantity of solids going to Pond 17. Thus, Pond 17, even at the current rate of inflow NOSAP Slurry, would have enough capacity for another three years. Once the LDR Treatment Plant is operating, Pond 17 will no longer be needed and will be closed. As of November 1, 1999, FMC indicated that Pond 18, composed of Cells A and B, has approximately 127 acre-feet of remaining capacity. The bulk of the solids are contained in Cell A, with a capacity of 40 acre-feet. FMC states that solids accumulate in Pond 18 at the rate of about 12.6 acre-feet per year. At this rate of solids accumulation and assuming that most of the solids precipitate out of the water while in Cell A, Pond 18 also would have sufficient capacity for another three years. Once the LDR Treatment Plant is operating, Pond 18 will no longer be needed. The RCRA Consent Decree requires that the solids accumulated in Pond 18 be treated in the LDR Treatment System within five years of commencement of plant operation.

To provide even more assurance of adequate capacity and proper management of these surface impoundments (ponds), FMC is adhering to the Pond Management Plan, as required by the RCRA Consent Decree. Among other requirements, the Pond Management Plan requires that pond levels be maintained within defined minimum and maximum levels.

EPA believes that FMC has provided the documentation necessary to satisfy the demonstration under § 268.5(a)(6).

G. § 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).

During the extension period, if approved, the subject waste streams would be piped directly to the on-site surface impoundments, i.e., Ponds 17 and 18, as described above. Both of these surface impoundments were constructed to meet the RCRA minimum technological requirements of 40 CFR 268.5(h)(2). Pond 17 has double liners, a leak detection system, and is equipped with one upgradient and three downgradient groundwater monitoring wells. Pond 18 (both Cells A and B) are lined with a double composite geosynthetic/soil liner and a leak detection system. Each liner consists of a flexible membrane overlying a low permeability soil layer. The soil component of the primary liner is a geosynthetic clay liner; the soil component of the secondary liner is compacted bentonite amended soil. A sacrificial 80-mil high-density polyethylene liner covered with one foot of bentonite soil overlays the liner system—constructed to allow sediment removal once the LDR Treatment System is operational. Pond 18 has a groundwater monitoring system composed of two upgradient and four downgradient monitoring wells.

As previously mentioned, the RCRA Consent Decree, incorporating the Pond Management Plan, requires these ponds to meet the minimum technology requirements (MTRs). The Pond Management Plan also imposes stringent operating conditions on the use and management of the FMC Pocatello ponds. These conditions include:

- Pond 18 must have an electronic leak detection system and a sacrificial liner to allow for sediment removal once the LDR Treatment System is operational.
- Human exposure to phosphine and hydrogen cyanide must be minimized at the ponds by installing additional fencing and continuous gas monitors.
- Fires must be prevented by managing pond water levels, using electronic level monitoring and alarm devices.
- Wildlife injuries or fatalities must be prevented at the ponds by installing netting and/or bird balls over pond surfaces to deter avian intrusion.

However, the Shoshone-Bannock Tribes oppose the continued disposal of these untreated wastes in the FMC Pocatello on-site surface impoundments. In initial comments on the draft notice, the Tribes questioned whether the FMC's surface impoundments (Ponds 17 and 18), that would be used to manage the wastes during the requested extension, were capable of meeting the requirements of 268.5 (h)(2). These standards require compliance with the so-called minimum technology requirements of double liners and a leachate collection system. EPA's review of all available information indicates that the impoundments satisfy the minimum technology requirements.

The Tribes further questioned whether the impoundments met other substantive design and operating standards, particularly those relating to air emissions. EPA notes that compliance with air emission standards is not directly relevant to this case-by-case extension (section 3005 (j)(11) of the statute and the codifying regulations in 268.5 (h)(2) refer only to the minimum technology requirements). The regulations in 40 CFR Parts 264 and 265 subpart CC, relate to air emissions from certain hazardous waste surface impoundments. EPA's review of all available information indicates that these provisions do not apply to the FMC impoundments in question because only certain types of volatile organic wastes are subject to the rules (40 CFR 265.1083 (c)(1)), and we do not believe volatile organic wastes are present in these impoundments.

EPA believes that FMC has provided the documentation necessary to satisfy the demonstration under § 268.5(a)(7), but we will of course review any new information received during the comment period to ensure that all conditions are satisfied.

IV. Consultation With Affected State and Indian Tribes

In accordance with 40 CFR 268.5(e), 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 this respective facility that EPA should take into consideration in deciding to grant or deny FMC's application for a CBC extension of the LDR effective date. The State of Idaho has indicated its support for the approval of the CBC extension requested by FMC.

The majority of the FMC Pocatello site, including most of the processing areas, is located on the Fort Hall Indian Reservation. Consistent with the Presidential Memorandum of April 29, 1994, EPA has engaged in advance consultation of this proposed CBC extension with representatives of the Tribes and also sent a copy of this Notice to the Tribes in advance of the public comment period in order to further provide opportunities for comment. It is EPA's understanding that the Tribes do not wish for the FMC facility to close, and support the overall federal and company efforts to remediate groundwater and soil contamination caused by historic facility operations, and to better control particulate air emissions from the facility. However, the Tribes continue to believe that FMC's hazardous waste should be treated now before being land disposed, and consequently oppose granting a CBC extension of the land disposal prohibition and pretreatment requirement. EPA will continue to consult with the Tribes prior to finalizing any decision on the capacity extension.

V. What Is EPA's Proposed Action?

We believe that FMC 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 of the LDR effective date. The United States recognizes and concurs that it does owe an important trust responsibility to the Tribes, on whose lands the FMC Pocatello facility is located, including a responsibility to perform its obligations under RCRA and other statutes intended to protect the environment. We also recognize the Tribes's legitimate concerns regarding the continued placement of untreated hazardous wastes in the FMC 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. EPA notes that the controlling law here is section 3004 (h) (3) of the statute and the rules in 268.5 which implement that provision. These provisions establish that an applicant who satisfies the rigorous conditions for a CBC extension will be granted one. The ultimate and controlling issue in processing FMC's application consequently is whether the company has satisfied the statutory and regulatory conditions.

We see no reasonable and quick way of achieving the goal of the Tribes, *i.e.,* the immediate cessation of on-site disposal of these wastes. As explained earlier in this Notice, we believe that it is not yet feasible for FMC to treat these wastes prior to placement in the on-site surface impoundments, and no other company is willing to accept the wastes for off-site treatment. Treatment capacity and capability only will be available once FMC constructs and commences operation of the proposed LDR Treatment Plant. Short of the FMC facility shutting down—which the Tribes do not want to happen—we believe that the Tribes's concerns about continued on-site disposal can most practically and judiciously be addressed by compelling FMC to expeditiously proceed with the construction of the proposed treatment plant so as to have it operational at the earliest possible date. We believe FMC is on such a schedule.

As such, EPA is proposing to grant an extension of the land disposal restrictions effective date for these wastes, until May 26, 2001. If this extension is finalized, FMC may continue to manage these five waste streams in the on-site surface impoundments (Ponds 17 and 18) at the Pocatello, Idaho facility until May 26, 2001. FMC likely will need to request a renewal of any approved CBC extension to provide additional time to complete construction and commence operation of the LDR Treatment Plant and may request renewal of the one-year extension, if approved. For a renewal of the extension, FMC would need to re-demonstrate each of the seven required demonstrations in § 268.5(a). However, any such renewal cannot extend the LDR effective date beyond May 26, 2002.

Once FMC is granted a one-year CBC extension, it must immediately notify EPA of any change in the demonstrations made in its initial application (40 CFR 268.5(f)). The approval of this one-year CBC extension, and any potential extension renewal, is conditional on FMC adhering to its stated schedule for the construction and operation of the LDR treatment plant. EPA will maintain close oversight of the scheduled progress being made by FMC towards this goal by requiring progress reports. FMC would need to submit progress

reports that describe the progress being made toward constructing and bringing the LDR Treatment Plant into operation. EPA proposes that FMC submit a monthly progress report and that the first progress report be due thirty (30) days after the date of final approval of the requested CBC extension. The progress reports also must identify any delay or possible delay in providing the planned treatment capacity and describe the mitigating actions being taken in response to any such delay (40 CFR 268.5(g)). Likewise, FMC is bound by the terms of the RCRA Consent Decree to have this treatment plant operational by May 2002. If FMC should fail to adhere to this schedule, such that compliance with the requirements of the Consent Decree is jeopardized, EPA has the authority to terminate an approved CBC extension.

VI. How Can I Influence EPA's Thinking on This Notice?

We welcome your comments on the factual issues associated with each of the seven demonstrations made by FMC to support the requested CBC extension and EPA's evaluation of these demonstrations. In addition we would like your comments on the appropriateness of the proposed one-year extension of the LDR effective date for the five waste streams generated at the FMC Pocatello facility for which the CBC extension is requested. We are not requesting comments on the RCRA Consent Decree or regarding other ongoing or planned regulatory/enforcement activities at the FMC 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 rulemaking to either approve or deny FMC's request for a one-year CBC extension of the LDR effective date. We plan to publish a final notice regarding the Agency's decision on FMC's request for a one-year CBC extension, prior to the May 26, 2000, expiration date of the current national capacity variance for the subject waste streams. The extension, 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, the requirements of the RCRA Consent Decree are not met, or the facility violates any law or regulations implemented by EPA.

VIII. Administrative Requirements

A. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, 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 EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires 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 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, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's notice will significantly or uniquely affect the communities of Indian tribal governments, but it will not impose substantial direct compliance costs on such communities. EPA is proposing to approve an application for a one-year CBC extension of the May 26, 2000, effective date of the RCRA land disposal restrictions for a facility located on Tribal Lands. This action will significantly or uniquely affect the communities of Indian tribal governments by permitting the facility to continue to treat, store, or dispose of five waste streams as currently managed in on-site surface impoundments until May 26, 2001. These impoundments are located on Tribal Lands. However, this action will not impose any direct compliance costs on the communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this notice.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires 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, 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 EPA consults with State and local officials early in the process of developing the proposed regulation. 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, EPA did consult with the State of Idaho in developing this rule, 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 2, 2000.

Michael Shapiro,

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

[FR Doc. 00–5604 Filed 3–7–00; 8:45 am]

BILLING CODE 6560–50–U